

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

In re:

ATOPTECH, INC.,

Debtor.¹

Chapter 11

Case No. 17-10111(MFW)

Bidding Procedures Hearing Date: TBD
Bidding Procedures Objection Deadline: TBD
Sale Hearing Date: TBD
Sale Objection Deadline: TBD

MOTION OF DEBTOR FOR ORDERS (I) AUTHORIZING AND APPROVING (A) BIDDING PROCEDURES, (B) BUYER PROTECTIONS FOR STALKING HORSE, (C) PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) THE FORM AND MANNER OF NOTICE; (II) SCHEDULING THE BID DEADLINE AND AUCTION (III) AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND (IV) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the “**Debtor**” or the “**Company**”) moves this Court pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 6004-1 and 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for entry of orders (i) authorizing and approving (a) bidding procedures (as attached hereto as **Exhibit A**, the “**Bidding Procedures**”), (b) buyer protections for stalking horse, including granting administrative expense priority to the Break-Up Fee and Expense Reimbursement (as defined below) to be paid by the Debtor to the Stalking Horse (as defined below), (c) procedures related to the assumption and assignment of certain executory contracts and unexpired leases and (d) the form and manner of service of the above-mentioned relief (the “**Sale**

¹ The last four digits of the Debtor’s federal tax identification number are 1945. The Debtor’s headquarters and mailing address is 2111 Tasman Drive, Santa Clara, CA 95054.

Notice Procedures”); (ii) scheduling the deadline to submit offers to purchase the Acquired Assets (as defined below) and scheduling an auction for such offers; (iii) authorizing and approving (a) the sale of the Debtor’s right, title and interest in the assets used in its business (net of cash, the “**Acquired Assets**”), free and clear of all liens, claims, encumbrances and interests (each as described below), pursuant to section 363 of the Bankruptcy Code and (b) the assumption and assignment of certain contracts of the Debtor and (iv) granting such other and further relief as the Court deems just and proper. In support of this Motion, the Debtor relies on the Declaration of Jue-Hsien Chern in Support of First Day Motions at Docket No. 3 (the “**Chern Declaration**”) and the Declaration of Randy Lederman attached to this Motion (the “Lederman Declaration”).

GENERAL BACKGROUND

1. On January 13, 2017 (the “**Petition Date**”), the Debtor filed its voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”). The factual background regarding the Debtor, including its business operations, its capital and debt structures, and the events leading up to the filing of the Chapter 11 Case, is set forth in the Chern Declaration, filed contemporaneously herewith.

2. The Debtor continues to manage and operate its business as debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Case, and no committees have been appointed.

3. As set forth in the Chern Declaration, pursuant to this Motion, the Debtor hereby seeks entry of an order approving certain bidding and sale procedures, the sale of its assets to the highest or otherwise best bidder and certain buyer protections for the stalking horse bidder.

JURISDICTION AND VENUE

4. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2), the *Amended Standing Order of Reference*

from the United States District Court for the District of Delaware dated February 29, 2012 and Rule 9013-1(f) of the Local Rules.

5. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

6. The statutory basis for the relief requested herein is 11 U.S.C. §§ 105 and 363 and Rules 4001, 6004(h), 7062 and 9014 of the Bankruptcy Rules and Rule 6004-1 of the Local Rules.

PRELIMINARY STATEMENT

7. Founded in April 2003 by a team of industry experts, the Company competes in the physical design segment of the electronic design automation (“**EDA**”) industry, developing technology and manufacturing software solutions for engineers in the physical design of integrated circuits. Since its founding, the Company has achieved steady financial growth, becoming a leader in the EDA field. As set forth more fully in the Chern Declaration, Synopsys² commenced litigation against the Company, asserting claims for copyright infringement, infringement of four patents, breach of a license agreement between the parties and breach of the covenant of good faith and fair dealing. The litigation on these claims has stretched out for more than three years. Through a motion to dismiss, the Company successfully limited the scope and extent of Synopsys’ breach of contract claim, and through summary judgment, limited the scope and extent of Synopsys’ copyright infringement claims. However, in March 2016, after a three-week trial, the jury found in favor of Synopsys on the remaining copyright claim, which alleged that the Company’s P&R engine product, Aprisa, infringed on copyrighted elements contained in one of Synopsys’ products. The jury awarded \$30.4 million to Synopsys.

8. The Synopsys Verdict created a significant challenge to the Company’s ability to continue its operations as a going concern. The Company has taken steps to streamline its operations, including ceasing any investment into its growth. After thoroughly considering the strategic alternatives for the Company, the board of directors decided that pursuing a sale, merger,

² Capitalized terms not defined herein have the same meaning as ascribed to them in the Chern Declaration.

acquisition and/or related transaction (a “**Transaction**”) was in the best interests of the Company, its creditors and equity holders.

9. As more fully set forth in the Lederman Declaration, in July 2016, the Company retained Cowen and Company (“**Cowen**”) as its investment banker to assist in exploring a potential Transaction. Cowen has engaged in a comprehensive marketing process, among other things, contacting more than one hundred and forty (140) potentially interested parties comprised of both strategic and financial buyers, both in the United States and China. Cowen scheduled introductory conferences with more than 50 entities. After the initial conferences, twenty-nine (29) entities expressed continued interest and executed non-disclosure agreements. (*See* Lederman Dec. ¶ 9).

10. Cowen continued discussions with these entities and transmitted bid letters and draft asset purchase agreements to 14 entities that continued to express interest, and Cowen established a deadline of October 31, 2016, for interested parties to submit proposals to qualify as a stalking horse bidder. In response, three parties submitted bids, and others expressed interest but indicated that they were not prepared at the time to commit to submitting a bid. The board, in consultation with counsel and Cowen, evaluated the three bids, negotiated revisions to the bids and eventually decided to pursue what it considered to be the highest or otherwise best bid. (*See* Lederman Dec. ¶¶ 10-11).

11. At the Company’s direction, Cowen engaged that bidder in negotiations which culminated in the execution of a letter of intent and the negotiation of substantial terms of an asset purchase agreement. However, after several rounds of negotiations, the board and the Company determined that certain demands made by the proposed bidder were not in the best interests of the Company and decided to cease negotiations and pursue alternatives. (*See* Lederman Dec. ¶ 12).

12. Consequently, the Company turned its focus to another interested party which submitted an attractive bid, Draper Athena (“**Draper Athena**”). Again at the Company’s direction, Cowen engaged Draper Athena in negotiations over several days, and, after multiple exchanges of

drafts, the Company and Draper Athena executed a Letter of Intent on December 2, 2016. Under the Letter of Intent, among other things, Draper Athena required certain conditions to be satisfied including the Debtor requesting the Court to approve, on an expedited basis, certain bidding and sale procedures and break-up fee provisions and the closing of a Transaction to Draper Athena by early March 2017. (*See* Lederman Dec. ¶ 13).

13. The Debtor has determined, after considering its alternatives, that maximizing the value of the Debtor's estate can be best accomplished through a sale (pursuant to a chapter 11 case, free and clear of liabilities) of the Acquired Assets.

THE STALKING HORSE BID

14. On January 10, 2017, after extensive arms'-length, good faith negotiations, the Debtor has executed a definitive asset purchase agreement (the "**Agreement**") setting forth the terms and conditions for the sale to and the purchase of the Acquired Assets (the "**Sale**") by a Delaware corporation to be formed by Draper Athena (the "**Stalking Horse**") pursuant to sections 363 and 365 the Bankruptcy Code, subject to higher or otherwise better bids (the "**Stalking Horse Bid**").³ A copy of the Agreement is attached hereto as **Exhibit C** hereto and incorporated by reference herein. (*See* Lederman Dec. ¶¶ 14-16).

15. The Debtor and the Stalking Horse also agreed to the bidding procedures for an auction, which include a break-up fee and expense reimbursement in the event a higher or otherwise better bid is consummated.

16. Because the proposed Transaction would permit the business to be sold as a going concern and given the extensive marketing efforts undertaken by Cowen and analysis of the offers received thus far, the Debtor has determined that the Stalking Horse Bid represents the best opportunity for the Debtor to maximize the value of its estate and serve as a basis for conducting an

³ Frank Chang signed the Agreement for and on behalf of a Delaware corporation to be formed prior to Closing to act as the Purchaser and Draper Athena Management Co. Ltd, a Chinese limited liability company signed in its capacity as a Guarantor of the obligations undertaken by the Stalking Horse in the Agreement.

auction to seek higher or otherwise better offers.

17. As described above, the Transaction is subject to competitive bidding as set forth in the Bidding Procedures. Pursuant to the terms of the Agreement, the Stalking Horse has agreed to purchase the Acquired Assets for \$8 million in immediately available funds, less certain adjustments based on deferred revenue, plus the assumption of certain post-petition liabilities as specifically set forth in the Agreement.

RELIEF REQUESTED

18. By this Motion, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008 and 9014, and Local Rules 2002-1, 6004-1 and 9006-1, the Debtor requests entry of the following:

(a) the “**Bidding Procedures Order**” substantially in the form attached hereto as **Exhibit**

B:

- (1) authorizing and approving the Bidding Procedures substantially in the form attached hereto as **Exhibit A** in connection with (1) submitting bids for the Acquired Assets and (2) conducting an auction (the “**Auction**”) of the Acquired Assets, in the event the Debtor receives at least one additional bid for substantially all of the Acquired Assets;
- (2) approving the Break-Up Fee and Expense Reimbursement in accordance with the terms and conditions set forth in the Bidding Procedures;
- (3) scheduling the Auction to be held on ____ __, 2017 at 10:00 a.m. (prevailing Eastern Time) at the offices of **Wilson, Sonsini, Goodrich & Rosati at 1301 Avenue of the Americas, New York, NY 10019**, or at such other place, date and time as may be designated by the Debtor;
- (4) scheduling a hearing (the “**Sale Hearing**”) on March __, 2017 to consider approval of the Sale;

- (5) authorizing and approving the proposed notice of the Bidding Procedures, Auction and Sale Hearing, substantially in the form attached hereto as **Exhibit D** (the “**Sale Procedures Notice**”);
 - (6) authorizing and approving procedures (the “**Cure Procedures**”) to be served on counterparties to the executory contracts (the “**Contracts**”) and unexpired leases (the “**Leases**,” and together with the Contracts, the “**Executory Contracts**”) that will be assumed by the Debtor and assigned to the successful purchaser(s) of the Acquired Assets, and to resolve any objections thereto;
 - (7) authorizing and approving the proposed form of notice to be served on counterparties to Executory Contracts (the “**Cure Procedures Notice Parties**”) and the amount that Debtor has determined is necessary to cure any monetary defaults thereunder (the “**Cure Costs**”), substantially in the form attached hereto as **Exhibit “E”** (the “**Cure Notice**”); and
 - (8) such other relief as determined by the Court.
- (b) an order in the form attached hereto as **Exhibit “F”** (the “**Sale Order**”) authorizing and approving the following:
- (1) the Sale of the Acquired Assets free and clear of all liens, claims, encumbrances and liabilities, except as provided in the agreement with the successful bidder, with such claims to attach to the proceeds of the Sale in the same amount and order of priority as such liens attached to the Acquired Assets;
 - (2) authorizing the Debtor to consummate the Sale and all documents, agreements and contracts executed in conjunction therewith; and
 - (3) granting such other relief as determined by the Court.

PROPOSED BIDDING AND SALE PROCEDURES

The Purchase Agreement

19. A summary of the principal terms of the APA, including terms that are required to be highlighted pursuant to Local Rule 6004-1, is as follows:

Purchaser	Special purpose entity to be formed by Draper Athena. Draper Athena Management Co. Ltd is the guarantor of the of the obligations undertaken by the Stalking Horse in the Agreement. Agreement, Recitals, §§ 2.1, 7.8
Purchase Price	\$8,000,000 less Adjusted Deferred Gross Revenue as defined in the Agreement Agreement, §2.2(a)
Purchased Assets	Substantially all assets of the Debtor Agreement, §2.1
Excluded Assets	Excluded assets include all Contracts not assigned to purchaser, cash and cash equivalents, all assets in trust for purpose of funding Benefit plans, Agreement, §2.1(c)
Assumed Liabilities	All liabilities under the Designated Contracts to the extent arising after the Closing; and any obligations related to the continued use of Intellectual Property Rights after the Closing as determined in a final judgment in connection with the Synopsys Patent Litigation. Agreement, §2.1(d)
Excluded Liabilities	All liabilities of the Debtor arising prior to Closing, all liabilities arising out of any Excluded Asset, all Employment Liabilities, any restructuring fees, all liabilities of Debtor arising from complaints instituted prior to the Closing except any obligations related to the continued use of Intellectual Property Rights after the Closing as determined in a final judgment in connection with the Synopsys Patent Litigation, any taxes of Seller including any Taxes related to the Transferred Assets to the extent attributable to taxable periods

	(or portions thereof) ending on or prior to the Closing Date. Agreement, § 2.1(e)
Termination	Agreement can be terminated by (i) written mutual consent; (ii) by either Purchaser or Seller, if the Closing shall not have occurred on or before 11:59 p.m. (Pacific time) on the Outside Date (May 31, 2017); (iii) by either Purchaser or Seller if a Government Entity shall have issued a regulation or order which has the effect of preventing the Transaction; (iv) by either the Purchaser or Seller if the Court approves an Alternative Transaction; (v) by Purchaser in the event of a breach of any obligation, warranty or representation by the Seller; (vi) if a trustee is appointed and such trustee rejects the Transaction;
Agreements with Management	None
Sale to Insider	None
Releases	Debtor releases, effective as of the Closing Date, all claims against Purchaser, except those obligations arising under the Agreement. Sale Order, Para. 14
Auction to be Conducted	Yes, in the event there are Qualified Bids other than the Stalking Horse Bid Bidding Procedures, Art. VI
Closing and Other Deadlines	Closing must occur on or prior to May 31, 2017 Agreement, § 10.1(b)
Good Faith Deposit	Stalking Horse deposit is in the amount of \$800,000, payable within 10 days of the entry of the Bidding Procedures Order Bidding Procedures, Art. IV, A. 2.
Interim Arrangements with Proposed Purchaser	Not applicable, Debtor to conduct the Business in the ordinary course consistent with past practice Agreement, Sec. 5.1
Use of Proceeds	No restriction on use of sale proceeds
Record Retention	Seller shall have continued use of records for purposes of administering the Bankruptcy Case, including claims against

	Seller. Agreement, § 2.1 (a)(v).
Sale of Avoidance Actions	Avoidance Actions are not included in the Acquired Assets
Rule 6004(h)	The Sale order provides relief from Bankruptcy Rule 6004(h) Sale Order, Para. 51

20. The Stalking Horse proposes to acquire the Acquired Assets, which are all the assets used by the Debtor in its business, including, without limitation, customer agreements, accounts receivable, foreign subsidiaries and intellectual property, including software code, through the Sale pursuant to section 363 of the Bankruptcy Code. The Stalking Horse acknowledges that its offer to purchase the Acquired Assets on the terms and conditions set forth in the Agreement will be subject to higher or otherwise better bids pursuant to an auction process as authorized by the Bankruptcy Court and conducted in accordance with the Bidding Procedures Order. The Acquired Assets may be sold to one or more higher or otherwise better bidders (such transaction, if consummated by a party other than the Stalking Horse, an “**Alternative Transaction**”) pursuant to the Bidding Procedures Order.

Terms of Sale

21. The Debtor seeks approval of the Sale to the Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363 of the Bankruptcy Code, with all liens, claims, interests, and encumbrances to attach to the proceeds of the Sale (the “**Sale Proceeds**”) with the same validity and priority as they attached to the Acquired Assets prior to the Sale. The Debtor seeks an order of the Court prohibiting all persons holding liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, from asserting them against the Purchaser as authorized by section 363(f) of the

Bankruptcy Code. The Debtor will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtor's estate and all its stakeholders, and satisfies the standards necessary to approve a sale of substantially all of a debtor's assets articulated by the Court of Appeals for the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986).

The Bid Procedures

22. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. The Debtor believes that good cause exists to expose the Purchased Assets to sale at an auction and to approve the procedures proposed herein. An auction conducted substantially in accordance with the Bidding Procedures will enable the Debtor to obtain the highest and best offers for the Purchased Assets, thereby maximizing the value for the estates.

23. The Debtor will permit existing interested parties and any new prospective purchasers to perform reasonable due diligence with respect to the Purchased Assets and will assist them with such efforts. This process will culminate in an Auction before the Sale Hearing, at which time a sale of the Purchased Assets will be submitted to the Court for its approval.

24. Subject to this Court's approval, the Debtor and the Stalking Horse have set forth the Bidding Procedures attached as Exhibit A to govern the process by which the Debtor will solicit and choose Qualified Bidders (as defined in the Bidding Procedures) and conduct an auction of the Acquired Assets. The procedures are set forth in full in Exhibit A attached hereto⁴ and are summarized below. While all interested bidders should read the Bidding Procedures in their entirety, the following describes the salient points of the Bidding Procedures and discloses certain information required pursuant to Local Rule 6004-1:

⁴ The Bidding Procedures are also attached to the Agreement as Exhibit "C-1".

Provisions Governing Qualifications of Bidders	<p>A Bid must include detailed, written evidence sufficient to the Seller demonstrating that the Potential Bidder has and will continue to have the necessary financial ability to close the Alternate Transaction and comply with section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts to be assumed and assigned in such Alternate Transaction. Such information must include, <i>inter alia</i>, (a) contact names and numbers for verification of financing sources; (b) sufficient information as requested by the Seller and its advisors to allow them to determine, in their sole discretion, that such Potential Bidder has the financial wherewithal to consummate a Sale; and (c) the Potential Bidder's current financial statements (audited, if existing) or other similar financial information reasonably acceptable to the Seller.</p> <p>Bidding Procedures, Art. 4. A. 11</p>
Provisions Governing Qualified Bids	<p>Bid must include, <i>inter alia</i>, the following (a) the purchase price for all or substantially all of the Acquired Assets which must be greater than the sum of \$8,000,000 plus the Break-Up Fee and the Expense Reimbursement (the "Auction Baseline Bid"); (b) a deposit equal to 10% of the total cash and non-cash consideration; (c) be on same or better terms than the Stalking Horse Bid; (d) a signed bid by an authorized representative and include an alternative purchase agreement marked against the Agreement; (e) must identify the Designated Contracts and Assumed Liabilities (f) must set forth each regulatory and third party approvals required for consummation of the Alternate Transaction; (g) must not contain representations or warranties more onerous than the Stalking Horse Bid and cannot be contingent on financing or third party approvals.</p> <p>Bidding Procedures Art. IV. A.</p>
Bid Deadline	<p>March 13, 2017</p>
Provisions Governing Auction	<p>If one or more Qualified Bids (other than the Stalking Horse Bid) are received, the Debtor will conduct an Auction. The minimum Overbid after and above the Auction Baseline Bid shall be made in increments of \$100,000. The Debtor reserves the right to modify this amount. The Auction shall conclude when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of its Successful Bid.</p> <p>Bidding Procedures, Art. V</p>

Selection of Successful Bid	<p>The Debtor, in consultation with the Consulting Parties, shall have discretion to determine the Prevailing Highest Bid after each Overbid Round and the Successful Bidder following the close of the Auction.</p> <p>Bidding Procedures, Art. VI. E.</p>
Closing with Alternative Back-Up Bidders	<p>If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Bid at the Auction with respect to all or substantially all of the Transferred Assets, as determined by the Seller, will be designated as the backup bidder (the “Backup Bidder”). The Backup Bidder shall be The Deposit of the Successful Bidder will be applied to the purchase price at the closing. The Deposits for each Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder will be returned within three (3) business days after the close of the Auction required to keep its last submitted Bid (the “Backup Bid”) open and irrevocable until the earlier of the closing of the transaction with the Successful Bidder or the Outside Date.</p> <p>Bidding Procedures, Art. V</p>
Return of Deposits	<p>The Deposit of the Successful Bidder will be applied to the purchase price at the closing. The Deposits for each Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder will be returned within three (3) business days after the close of the Auction.</p> <p>Bidding Procedures, Art. VI, Section E.</p>

25. The Bidding Procedures seek to provide a fair opportunity for the Debtor and its professionals to solicit and receive bids from Potential Bidders while providing a time frame for the closing of a Transaction consistent with the Debtor’s resources and ability to continue its business operations. In that regard, the Debtor will (i) coordinate the efforts of Potential Bidders (as defined in Exhibit B) in conducting their due diligence investigations; (ii) receive offers from Potential Bidders; (iii) determine whether any person is a Qualified Bidder; and (iv) conduct the Auction and further negotiate any offers made to purchase the Acquired Assets.

26. To become a Qualified Bidder, a Potential Bidder must, among other things, include

with its bid a cash deposit equal to ten percent (10%) of the aggregate cash and non-cash consideration of the bid, *provided that* the deposit of the Stalking Horse will be due not later than ten (10) business days after the Court enters the Bidding Procedures Order. The bid shall be on terms that the Debtor believes are substantially the same or better than the Stalking Horse Bid, include substantially all of the assets of the Debtor and have a minimum bid greater than the sum of (i) \$8 million plus (ii) the Expense Reimbursement, plus (iii) the Break-Up Fee (the “**Auction Baseline Bid**”). A Potential Bidder must also include with its bid, financial and other information sufficient to constitute adequate assurance of future performance of the applicable obligations under any Contracts to be assumed and assigned to it. The Stalking Horse will be deemed to be a Qualified Bidder.

27. In the event there are Qualified Bidders in addition to the Stalking Horse Bid, the Debtor will conduct an auction. Any Overbid for all or substantially all of the Acquired Assets after and above the Auction Baseline Bid shall be made in increments valued at not less than \$100,000 (or such other amount as shall be announced at the Auction) in cash or in cash equivalents.

Procedures for Assumption and Assignment of the Assumed Contracts

28. To facilitate and affect the sale of its assets, the Debtor seeks authorization pursuant to Section 365 of the Bankruptcy Code to assume and assign certain Executory Contracts related to the Acquired Assets, as designated by the Successful Bidder.

29. The Agreement provides that the Debtor will pay, at Closing, the Cure Amounts, as determined by the Court, if necessary, to cure all defaults, including actual or pecuniary losses that have resulted from defaults under the relevant Executory Contracts.

30. The Debtor proposes to file with the Court and serve a Cure Notice on each Cure Procedures Notice Party with respect to each Executory Contract sought to be assumed and assigned, which will set forth the Debtor’s good faith calculations of Cure Costs with respect to each with respect to each Executory Contract listed on such notice. In the event a counterparty

needs additional information, the Debtor will reasonably cooperate with the counterparty regarding the Debtor's calculation of Cure Costs. Counterparties will have an opportunity to object to the proposed assumption and assignment of their Executory Contracts prior to Sale Hearing. The following is a summary of the assumption and assignment procedures.

31. No less than twenty-one days prior to the Bid Deadline, the Debtor will file with this Court and serve on each non-Debtor counterparty to an executory contract or unexpired lease related to the Assets the Cure Notice, substantially in the form attached to the Bidding Procedures Order. The Cure Notice shall:

- a. state the cure amounts, if any, that the Debtor believes are necessary to assume such contracts or leases pursuant to section 365 of the Bankruptcy Code (the "**Cure Amount**");
- b. notify the non-Debtor counterparty that such party's contract(s) or lease(s) may be assumed and assigned to the Successful Bidder of the Assets at the conclusion of the Auction;
- c. state the date of the Sale Hearing and that objections to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by the Debtor; and,
- d. state the Contract Rejection Deadline (as defined below) by which the non-Debtor counterparty shall file an objection to the Cure Amount(s) or to the assumption and assignment of the applicable contract(s) and/or lease(s) (such objection, a "**Contract Objection**"); *provided, however*, that the inclusion of a contract, lease or agreement on the Cure Notice shall not constitute an admission that such contract, lease or agreement is an executory contract or unexpired lease or that it will, in fact, be assumed and assigned in connection with the Sale of the Assets. If no Cure Amount is listed, the Debtor believes that no amount to cure defaults under the respective executory contract or unexpired lease is owed by it thereunder. The Debtor reserves all of its rights, claims and causes of action with respect to the contracts, leases and agreements listed on the Cure Notice.

32. All Contract Objections, if any, must be in writing and filed with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801, and served on counsel for the Debtor, counsel for the Stalking Horse, the Office of the United States Trustee, and counsel to any Official

Committee (the “**Notice Parties**”) so as to be received by the **Contract Objection Deadline**, as defined in the Cure Notice.

33. Any Contract Objection must state (a) the basis for such objection and (b) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with appropriate documentation in support thereof).

34. Any Contract Objection solely to the Cure Amount(s) shall not prevent or delay the Debtor’s assumption and assignment of assumed and assigned contract(s) or lease(s). If a party objects solely to Cure Amount(s), the Debtor may, with the consent of the relevant Successful Bidder, hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract(s) or lease(s), the Debtor can, without further delay, assume and assign such contract(s) or lease(s) to the Successful Bidder. Under such circumstances, the objecting non-Debtor counterparty’s recourse is limited to the funds held in reserve.

35. If no objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

36. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by a Qualified Bidder other than the Stalking Horse under the applicable executory contract(s) or unexpired lease(s) (an “**Adequate Assurance Objection**” and together with a Contract Objection, an “**Objection**”), then such non-Debtor counterparty shall file a written Adequate Assurance Objection with the Court and serve such objection on the Notice Parties, the Stalking Horse and the applicable Qualified Bidder(s) so that such Adequate Assurance Objection is filed with the Court and received by the Notice Parties, the Stalking Horse and the

applicable Qualified Bidder(s) on or before the **Adequate Assurance Objection Deadline**, as such term is defined in the Cure Notice.

37. To the extent that any non-Debtor counterparty does not timely file and serve a Contract Objection as set forth above, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped and enjoined from asserting any additional Cure Amount(s) under the assumed and assigned executory contract(s) or unexpired lease(s); (iii) barred from objecting to the assumption and assignment of the applicable assumed and assigned executory contract(s) or unexpired lease(s) to the Successful Bidder, and (iv) barred from objecting to adequate assurance of future performance by the Successful Bidder.

Stalking Horse Protections

38. The Debtor is seeking approval of a Break-Up fee in the amount of \$400,000, which is approximately 5.0% of the purchase price for the Acquired Assets. In addition, the Debtor seeks approval of an Expense Reimbursement to the Stalking Horse in the maximum amount of \$600,000 in the event the Stalking Horse Bid is not approved.

BASIS FOR REQUESTED RELIEF

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

39. In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtor has determined that the Sale of the Acquired Assets by public auction will enable the Debtor to obtain the highest or otherwise best offer for the Acquired Assets (thereby maximizing the value of the estate) and is in the best interests of the Debtor and its stakeholders. In particular, the Agreement is the result of comprehensive arms' length negotiations for the Sale of the Acquired Assets, and the Sale, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtor's

estate than would be provided by any other existing alternative.

40. Section 363(b)(1) of the Bankruptcy Code provides: “the Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” Section 105(a) of the Bankruptcy Code provides in relevant part: “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”

41. Virtually all courts have held that approval of a proposed sale of the debtor’s assets under section 363(b) of the Bankruptcy Code prior to confirmation of a plan of reorganization is appropriate, if a court finds that the transaction represents a reasonable business judgment on the part of the trustee or debtor-in-possession. *See In re Abbotts Dairies of Pa.*, 788 F.2d 143 (3d Cir. 1986); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that court may consider the following non-exclusive list of factors in determining whether there is a sound business purpose for an asset sale: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the effect of the proposed disposition of [sic] the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value”); *Titusville Country Club V. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Industrial Valley Refrigeration & Air Conditioning Supplies Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

42. The “sound business reason” test requires a trustee or debtor-in-possession to establish four elements: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the trustee or the debtor-in-possession has obtained a fair and reasonable price; and (4) that the terms of the sale have been negotiated in good faith. *In re Titusville Country Club*, 128 B.R. at 399; *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); *Phoenix Steel*

Corp., 82 B.R. at 335-36; *see also Stephens Indus.*, 789 F.2d at 390; *In re Lionel Corp.*, 722 F.2d at 1071.

43. The paramount goal in any proposed sale of estate property is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the . . . [trustee’s] duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Prods., Inc.*, 99 B.R. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s estate, court approval of a trustee’s decision to sell should only be withheld if the trustee’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), affirmed in part and reversed in part on other grounds, 983 F.2d 336 (“The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”).

44. The Debtor submits that entry into the Agreement is a sound exercise of the Debtor’s business judgment because: (a) the Agreement provides for the sale of the Debtor’s business as a going concern, thereby maximizing the sale value, as compared to liquidating its assets on a piecemeal basis and (b) it allows certain employees to continue employment by the Successful Bidder.

B. Sale of the Acquired Assets Should Be Free and Clear of Liens, Claims, Encumbrances, and Interests

45. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor seeks authority to sell

and transfer the Debtor's right, interest and title in the Acquired Assets to the Successful Bidder (whether the Stalking Horse or another party) free and clear of all liens, claims, encumbrances, and interests, except as set forth in the Agreement, with such liens, claims, encumbrances, and interests, to attach to the proceeds of the sale of the Acquired Assets, subject to any rights and defenses of the Debtor and other parties in interest with respect thereto.

C. The Assumption and Assignment of the Assumed Contracts and the Procedures for Assumption and Assignment Should Be Authorized

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

47. Because the Debtor's business is being sold as a going-concern, the Successful Bidder will determine which Executory Contracts to be assumed and assigned to it. Therefore, the Debtor's determination regarding assumption is a sound exercise of business judgment, because the Debtor will be complying with the agreement that is maximizing the value of the Acquired Assets. Given that consummation of a Sale of the Acquired Assets is essential to maximize value of the Debtor's estate, assumption of the specified Contracts in compliance with the purchase agreement

of the successful bidder constitutes a sound exercise of business judgment.

48. Any sale transaction consummated by the Debtor will be contingent upon the Debtor's compliance with the requirements of section 365 of the Bankruptcy Code, including pursuant to 365(b)(1) of the Bankruptcy Code, curing any outstanding defaults under the Executory Contracts to be assumed or providing adequate assurance that such defaults will be promptly cured. The Debtor's assumption and assignment of the Executory Contracts will be contingent upon payment or reserve of Cure Costs and effective only upon the closing of the Sale.

49. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be provided by evidence of the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance satisfied when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; for leases, the chief determinant of adequate assurance is whether rent will be paid).

50. As discussed in the Bidding Procedures, in order for a Potential Bid to be designated as a Qualified Bid, a Potential Bidder must include with its bid, financial and other information sufficient to constitute adequate assurance of future performance of the applicable obligations under any Contracts to be assumed and assigned to it. Based on the foregoing, the Debtor's assumption

and assignment of the designated Contracts satisfies the requirements under section 365 of the Bankruptcy Code and should be approved.

51. In order to facilitate the assumption and assignment of the designated Executory Contracts, the Debtor requests the Court to hold that all anti-assignment provisions, whether express or implied, are unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.

D. The Bidding Procedures Are Appropriate and Will Maximize the Value Received for the Acquired Assets

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

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

54. The Debtor believes that the Bidding Procedures will establish a test of the value of the Acquired Assets. Such procedures will increase the likelihood that the Debtor's estate will receive the greatest possible consideration for its assets, because the procedures will ensure a fair and competitive bidding process. They also provide for an Auction of the Acquired Assets in an expeditious and efficient manner, which the Debtor believes is essential to maximizing the value of the estate for its stakeholders.

55. The Debtor also believes that the proposed Bidding Procedures will promote active bidding from interested parties and will dispel any doubt as to the best or otherwise highest offer reasonably available for the Acquired Assets. In particular, the proposed Bidding Procedures will allow the Debtor to conduct an Auction in a controlled, fair, and open manner that will encourage participation by financially capable bidders who demonstrate the ability to close the Sale of the Acquired Assets. Further, the Bidding Procedures provide the Debtor with the opportunity to consider all Qualified Bids and to select, in its reasonable business judgment, and after consultation with its professionals and any official committee, the highest or otherwise best offer(s) for the Acquired Assets. Moreover, the Bidding Procedures provide the Debtor with the flexibility to address unanticipated developments at the Auction, while ensuring that the propriety of the procedures endures.

56. Accordingly, the proposed Bidding Procedures are reasonable, appropriate, and within the Debtor's sound business judgment and should be approved.

E. The Proposed Break-Up Fee Is Reasonable and Appropriate, and Will Maximize Value for Stakeholders by Providing an Incentive for the Stalking Horse to Submit a Binding Offer

57. The Agreement provides for a Break-Up Fee of \$400,000 and a maximum Expense Reimbursement of \$600,000 (the Break-Up Fee and the Expense Reimbursement are referred to

herein collectively as the “**Stalking Horse Buyer Protections**”).⁵ Although the parties recognize that, as percentage of the purchase price, the Stalking Horse Buyer Protections may be outside of a percentage of a purchase price, under the unique circumstances of this Sale, they nevertheless are reasonable and consistent with the Debtor’s business judgment, and should be approved.

58. The Third Circuit Court of Appeals has clarified the standard for determining the appropriateness of bidding incentives in the bankruptcy context. In *Calpine Corp. v. O’Brien Envtl. Energy, Inc. (In re O’Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999). Specifically, the Third Circuit has held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions in section 503(b) of the Bankruptcy Code govern post-petition expenditures in bankruptcy cases. Accordingly, to be approved, bidding incentives such as the Break-Up Fee and Expense Reimbursement must provide a benefit to a debtor’s estate. *Id.* at 533. Benefits to the debtor’s estate may be found where “assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited” and where the availability of the break-up fees and expenses “were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely . . . increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.* at 537.

59. The circumstances of this Sale are particularly unique and challenging due to the ongoing Synopsys Litigation, which is directed not only at the Debtor, but at the Acquired Assets themselves. Performing the diligence on a complex multi-year intellectual property litigation like

⁵ In the event that the Expense Reimbursement becomes payable, Purchaser is required to send an Approval Request to the Seller with a copy to the UST and any committee counsel with a reasonably detailed summary of the actual out-of-pocket costs and expenses incurred by Purchaser and sought for reimbursement. Seller shall pay all non-disputed items and resolve any disputed items in a commercially reasonable manner. Presumably, the Court would resolve any disputes that could not be settled by the parties.

the Synopsys Litigation was an enormous task in its own right. In addition to understanding the historical posture and risks of the Synopsys Litigation, parties interested in purchasing the Acquire Assets, including the Stalking Horse, recognize that given the history of litigation between the Debtor and Synopsys it is foreseeable that there will be ongoing disputes with Synopsys in this Chapter 11 Case, including the potential for disputes regarding the Acquired Assets. As a result, the amount of diligence and potential for ongoing costs go well beyond what could be expected in a typical transaction of this size.⁶

60. Without the benefit of the Stalking Horse Buyer Protections, the Stalking Horse would have been unwilling to commit to proceed with a transaction with the costly and burdensome diligence process and risk present here, given the uncertainty whether it would prevail as the Successful Bidder. The Stalking Horse Buyer Protections, therefore, are a necessary incentive to induce the Stalking Horse into committing to the Sale process and to purchasing the Acquired Assets for a price that the Debtor believes is fair consideration.

61. The Stalking Horse Buyer Protections have a direct and meaningful benefit to the Debtor and its estate. By inducing the Stalking Horse to enter into the Agreement, a baseline bid for subsequent interested purchasers is set. Importantly, the Stalking Horse's commitment to the purchase of the Acquired Assets signals to the market that the Synopsys Litigation has not rendered the Acquired Assets toxic, increasing their value in the eyes of Potential Bidders for the ultimate benefit of the Debtor's estate and its stakeholders. Indeed, the Debtor believes that the parties prepared an agreement that covers most, if not all, of the issues faced by Potential Bidders, which

⁶ In order to complete the Transaction, the Stalking Horse will also need to comply with regulations issued by and obtain approval from the Committee on Foreign Investment in the United States ("CFIUS") prior to the hearing date on the Sale Motion. CFIUS is an inter-agency committee under the Treasury Department which is authorized to review transactions that could result in control of a U.S. business by a foreign person in order to determine the effect of such transactions on the national security of the United States. The process involves filing a notice with CFIUS in the form and content as set forth in the regulations and responding to issues or questions raised. The Stalking Horse is also required to provide two certifications, one at the beginning of the process and the second at the end, attesting to the truth of the matters set forth in the CFIUS notices. Compliance with CFIUS has added significant expense to the Stalking Horse.

the other Potential Bidders now can use to their benefit as a template for a Qualified Bid.

62. The Debtor's payment of the Break-Up Fee and Expense Reimbursement under the conditions set forth in this Motion, therefore, is (a) an actual and necessary cost of preserving the Debtor's estate within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtor's estate and its stakeholders, (c) reasonable and appropriate and (d) necessary to ensure that the Stalking Horse will continue to pursue the proposed Agreement. Accordingly, the buyer protections constitute administrative expenses with priority pursuant to Bankruptcy Code section 503(b), and should be approved by the Court.

F. The Successful Bidder Should Be Granted the Protection of Bankruptcy Code Section 363(m)

63. As will be set forth in further detail at the Sale Hearing, the Debtor also maintains that the Successful Bidder is entitled to the protections afforded by section 363(m) of the Bankruptcy Code.

G. The Agreement is Not the Subject of Collusive Bidding Under Bankruptcy Code Section 363(n)

64. As set forth above, the Debtor and the Stalking Horse negotiated the sale of the Acquired Assets at arm's length and in good faith. The Debtor will provide evidence, if necessary, that the sale of the Acquired Assets is not the result of collusion or other bad faith by the bidders. If necessary, the Debtor will provide evidence that the purchase price has not been controlled by an agreement between potential or actual bidders within the meaning of Bankruptcy Code section 363(n).

65. As will be set forth in more detail at the Sale Hearing, the Sale has been negotiated, proposed, and entered into without collusion, in good faith, and was negotiated from arm's-length positions. None of the Debtor, the Stalking Horses nor the Successful Bidder has engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code.

H. Waiver of Automatic Fourteen-Day Stay Under Bankruptcy Rules 6004(h) and 6006(h) and 6006(d)

66. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Similarly, under Bankruptcy Rule 6006(d), unless the Court orders otherwise, all orders authorizing the assignment of contracts or unexpired leases are automatically stayed for fourteen days after entry of the order. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

67. Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes do not provide specific guidance when a court should “order otherwise” and eliminate or reduce the 14-day injunction period, commentators agree that the 14-day period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally Collier on Bankruptcy* P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

68. Pursuant to the Agreement, and due to potentially diminishing value of the Acquired Assets, the Debtor must close this sale promptly. Thus, waiver of any applicable stays is appropriate in this circumstance.

NOTICE

69. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the District of Delaware; (b) those creditors holding the 30 largest unsecured claims against the Debtor’s estate; (c) counsel for the Stalking Horse and Guarantor; (d) counsel to parties whose Executory Contracts will be assigned to the Successful Bidder; (e) counsel for Silicon Valley Bank; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits

that no other or further notice need be provided.

NO PRIOR REQUEST

70. No prior request for the relief sought herein has been made to this Court or to any other court.

WHEREFORE, the Debtor respectfully requests entry of the Bidding Procedures Order, substantially in the form attached hereto as **Exhibit B**, granting the relief sought in the Motion and such other and further relief as the Court deems just and proper.

Dated: January 17, 2017

DORSEY & WHITNEY (DELAWARE) LLP

/s/ Robert W. Mallard

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Proposed Attorneys for ATopTech, Inc.

Exhibit A – Bidding Procedures

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

In re:

ATOPTECH, INC.,

Debtor.¹

Chapter 11

Case No. 17-10111(MFW)

Bidding Procedures

On January 13, 2017, the Seller commenced a voluntary case under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

On January 17, 2017, the Seller filed with the Bankruptcy Court its MOTION OF DEBTOR FOR ORDERS (I) AUTHORIZING AND APPROVING (A) BIDDING PROCEDURES, (B) BUYER PROTECTIONS FOR STALKING HORSE, (C) PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) THE FORM AND MANNER OF NOTICE; (II) SCHEDULING THE BID DEADLINE AND AUCTION (III) AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND (IV) GRANTING RELATED RELIEF (the “**Sale Motion**”).²

As set forth in the Sale Motion, the Seller and a certain stalking horse bidder (the “**Stalking Horse Bidder**”) entered into an asset purchase agreement (including all exhibits, schedules and ancillary agreements related thereto, and as amended and in effect, the “**Stalking Horse Agreement**”), dated as of January 10, 2017, whereby the Stalking Horse Bidder would purchase, subject to Bankruptcy Court approval, all of the assets used in the operation of the Seller’s business (the “**Transferred Assets**”). A copy of the Stalking Horse Agreement is attached as an exhibit to the Sale Motion.³

These bidding procedures (the “**Bidding Procedures**”) govern the process by which the Seller shall conduct a sale by auction of the Transferred Assets (the “**Auction**”). The order approving the Bidding Procedures is referred to herein as the “**Bidding Procedures Order**.”

¹ The last four digits of the Debtor’s federal tax identification number are 1945. The Debtor’s headquarters and mailing address is 2111 Tasman Drive, Santa Clara, CA 95054.

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Sale Motion.

³ The Stalking Horse Agreement defines the specific assets that comprise the “Transferred Assets.”

I. ASSETS TO BE SOLD

The Stalking Horse Agreement is an offer to purchase the Transferred Assets, which comprise substantially all of the Seller's assets. A party may participate in the bidding process by submitting a Bid (as defined below) for all or substantially all of the Transferred Assets.

All of the Seller's right, title and interest in and to the Transferred Assets shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the "**Liens**"), with such Liens to attach to the proceeds of the sale of the Transferred Assets with the same validity and priority as such Liens applied against the Transferred Assets, except as otherwise specifically provided in the Stalking Horse Agreement or an Alternate Asset Purchase Agreement (as defined below) submitted by a successful bidder at the Auction (including any exhibits or schedules thereto).

II. THE CONSULTATION PARTIES

The Seller shall consult any official committee appointed by the U.S. Trustee in the Bankruptcy Case, and their respective counsel and advisors (each, a "**Consultation Party**"), as explicitly provided in the Bidding Procedures; *provided, however*, that the Seller shall not be required to consult with any Consultation Party during the Auction process to the extent such Consultation Party has submitted a Bid (as defined below) or has had a Bid submitted by one of its members, for so long as such Bid remains open.

Subject to the terms of any Orders entered in the Chapter 11 Case, after consultation with the Consultation Parties, the Seller shall have the right and obligation to make all decisions regarding Bids and the Auction in accordance with the terms hereof, regardless of whether or not the Consultation Parties agree with that decision.

III. BIDDING PROCESS

A. Overview

The Seller and its advisors shall, subject to the provisions of these Bidding Procedures, including the consultation obligations set forth herein:

1. coordinate the efforts of Potential Bidders (as defined below) in conducting their due diligence investigations;
2. receive offers from Potential Bidders (as defined below);
3. determine whether any person is a Qualified Bidder (as defined below); and
4. conduct the Auction and further negotiate any offers made to purchase the Transferred Assets.

B. Key Dates For Potential Competing Bidders

The Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Seller and to submit competing bids for the Transferred Assets. The Seller shall accept Bids until **March 13, 2017 at 5:00 p.m. (prevailing Eastern Time)** (the "**Bid Deadline**").

Key Dates and Deadlines⁴

1. January __, 2017 at __:00 __.m. EST	Hearing motion establishing bidding procedures
2. January [●], 2017 at 5:00 p.m. EST	Bid Deadline - Due Date to submit a Qualified Bid
3. January __, 2017 at __ __.m. EST	Deadline for Sellers to notify Bidders of status as Qualified Bidders
4. [February] [●], 2017 at 10:00 a.m. EST	Auction, which will be held at [WSGR/Dorsey] located at: 1301 Avenue of the Americas, 40th Floor New York, New York 10019.
5. February __, 2017 at ____ EST	Deadline to file objections to sale and proposed cure amounts
6. March __, 2017 at [●] EST	Sale Hearing will be conducted in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, [●] Floor, Courtroom [●], Wilmington, Delaware 19801
7. March __, 2017	Target date to consummate sale with successful bidder

C. Access to Diligence Materials

To participate in the process of submitting an alternative offer for the Transferred Assets (an “**Alternate Transaction**”) and to receive access to due diligence materials (the “**Diligence Materials**”), a party must submit to the Seller an executed confidentiality agreement (the “**Confidentiality Agreement**”) substantially in the form attached to the Sale Motion and provide preliminary evidence satisfactory to the Seller and its advisors of such party’s financial wherewithal to consummate an Alternate Transaction.

A party that executes a Confidentiality Agreement and provides preliminary evidence of financial wherewithal shall be designated as a “**Potential Bidder**.” The Seller will afford any Potential Bidder time and opportunity to conduct reasonable due diligence in accordance with a diligence protocol determined by the Seller and its advisors; *provided, however*, that the Seller shall not be obligated to furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid (as defined below) on or before the Bid Deadline and may, in consultation with the Consultation Parties, limit the amount of further due diligence available to Qualified Bidders (as defined below) after the Bid Deadline.

The Seller reserves the right to withhold any Diligence Materials that the Seller determines to be business-sensitive or otherwise not appropriate for disclosure to a Potential Bidder that is a competitor

⁴ These dates are subject to extension or adjournment as provided for herein and in consultation with the Consultation Parties.

or customer (or that is affiliated with any competitor or customer) of the Seller. Neither the Seller nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder; *provided, however*, that Seller shall provide the Stalking Horse Bidder with access to the Diligence Materials that are provided to the Potential Bidders.

All due diligence requests must be directed to [●].

D. Due Diligence from Bidders

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access by the Seller or its advisors regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder (other than the Stalking Horse Bidder) to comply with requests for additional information and due diligence access may be a basis for the Seller to determine that such Potential Bidder shall not be designated as a Qualified Bidder (as defined below).

IV. AUCTION QUALIFICATION PROCESS

A. Qualifying Bids

To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “**Bid**”) submitted by a Potential Bidder (other than the Stalking Horse Bidder) must satisfy each of the following conditions in order to be designated as a Qualified Bidder:

1. Purchase Price: Each Bid must clearly set forth the consideration to be paid for the Transferred Assets. The consideration proposed to be paid for the Transferred Assets shall only be in the form of cash or assumed debt.
2. Deposit: Each Potential Bid , including the Bid of the Stalking Horse Bidder, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash and non-cash consideration of the Bid, which deposit shall be held in an escrow account to be identified and established by the Seller (the “Deposit”). The deposit of the Stalking Horse Bidder will be due not later than ten (10) business days after the Court enters the Bidding Procedures Order.
3. Same or Better Terms: In connection with any Bid for the Transferred Assets, such Bid must be on terms that the Seller determines are substantially the same or more favorable to the Seller than the terms of the Stalking Horse Agreement.
4. Executed Agreement: Each Bid must be based on the Stalking Horse Agreement and be binding, irrevocable, signed by an authorized representative of such Potential Bidder, proposing to effectuate an Alternate Transaction (an “**Alternate Asset Purchase Agreement**”). A Bid must also include a copy of the Alternate Asset Purchase Agreement (including all exhibits thereto) marked against the Stalking Horse Agreement to show all changes requested by the Potential Bidder (including those related to purchase price and to remove any provisions that apply only to the Stalking Horse Bidder, such as the expense reimbursement and break-up, which provisions shall not be contained in any Alternate Asset Purchase Agreement).
5. Scope of Bid: A Bid must be for all or substantially all of the Transferred Assets.

6. Minimum Bid: A Bid must have a purchase price, including any assumption of liabilities, that has a value greater than the sum of (i) [\$8 million]; plus (ii) the Expense Reimbursement, which for purposes of comparing Bids shall be valued at \$[●] *plus* the Break-Up Fee.
7. Designation of Assigned Contracts and Leases: A Bid must identify the executory contracts and unexpired leases that the Potential Bidder seeks to be assigned to it.
8. Designation of Assumed Liabilities: A Bid must identify all liabilities that the Bidder proposes to assume.
9. Corporate Authority: A Bid must include a statement that the Potential Bidder is capable of consummating the Alternate Asset Purchase Agreement and provide written evidence reasonably acceptable to the Seller demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; *provided, however*, that, if the Potential Bidder is an entity specially formed for the purpose of the Alternate Transaction, then the Potential Bidder must furnish written evidence reasonably acceptable to the Seller of the approval of the Alternate Transaction by the equity holder(s) of such Potential Bidder.
10. Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Transferred Assets, including the equity holders, if the Potential Bidder is specially formed in connection with the Bid, or otherwise participating in connection with such Bid (including any co-bidder or team bidder), and the complete terms of any such participation, including any agreements, arrangements or understandings concerning a collaborative or joint bid or any other combination concerning the Bid. A Bid must fully disclose any connections or agreements with the Seller, the Stalking Horse Bidder, any known Potential Bidder, and any officer, director or equity security holder of the Seller.
11. Proof of Financial Ability to Perform: A Bid must include detailed, written evidence sufficient to the Seller demonstrating that the Potential Bidder has and will continue to have the necessary financial ability to close the Alternate Transaction and comply with section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts to be assumed and assigned in such Alternate Transaction. Such information must include, *inter alia*, the following:
 - (a) contact names and numbers for verification of financing sources;
 - (b) sufficient information as requested by the Seller and its advisors (including, without limitation, agreement to such terms and conditions as may be required by the Seller's advisors), to allow them to determine, in their sole discretion, that such Potential Bidder has the financial wherewithal to consummate a Sale; and
 - (c) the Potential Bidder's current financial statements (audited, if existing) or other similar financial information reasonably acceptable to the Seller.
12. Regulatory and Third Party Approvals: A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Alternate Transaction.

13. Contact Information and Affiliates: A Bid must provide the identity and contact information for the Potential Bidder and if newly-formed, any affiliates of the Potential Bidder.
14. Contingencies: Each Bid must not (a) contain representations and warranties, covenants, or termination rights materially more onerous in the aggregate to the Seller than those set forth in the Stalking Horse Agreement, as determined by the Seller, and (b) be conditioned on obtaining financing, any internal approvals or credit committee approvals, or on the outcome or review of due diligence, including with respect to any environmental, employee, labor, health or safety matters.
15. Irrevocable: Each Bid must be irrevocable until two (2) business days after the conclusion of the Sale Hearing; *provided* that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable until the earlier of the closing of the Sale or [●] (the “**Outside Date**”).
16. Compliance with Diligence Requests: The Potential Bidder must have complied with the Seller’s reasonable requests for additional information and due diligence.
17. Diligence Complete: Each Bid must include a written acknowledgement and representation that the Bidder: (i) had an opportunity to conduct due diligence regarding the Transferred Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and inspection of any documents and the Transferred Assets in making its Bid and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Transferred Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly provided in the Stalking Horse Agreement.
18. Confidentiality Agreement: To the extent not already executed, the Bid must include an executed confidentiality agreement substantially in the form attached to the Sale Motion.
19. Termination Fees: The Bid (other than the Bid pursuant to the Stalking Horse Agreement) shall not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Potential Bidder waives the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code that in any way relates to the submission of its Bid or its participation in any Auction.
20. Adherence to Bid Procedures: By submitting its Bid, each Bidder is deemed to agree (i) to abide by and honor the terms of these Bidding Procedures, and (ii) not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
21. No Late Bids. Unless otherwise ordered by the Bankruptcy Court, the Seller shall not consider any Bids submitted after the conclusion of the Auction, and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
22. Bid Notice: Any Bid must be in writing (in both PDF and Word format) and submitted on or before the Bid Deadline to the following parties:

- (a) financial advisor to the Seller, [●], Attention: [●];
- (b) counsel to the Official Committee of Unsecured Creditors (the “Committee”), if any, and
- (c) financial advisor to the Committee, if any.

A Bid received from a Potential Bidder before the Bid Deadline and that meets all of the above requirements shall constitute a “**Qualified Bid**” and such Potential Bidder shall constitute a “**Qualified Bidder**”; *provided*, however, that, for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence requests from the Seller, Seller may disqualify any Qualified Bidder or Qualified Bid, in the Seller’s discretion and such Qualified Bidder shall not be entitled to attend or participate in the Auction.

Any amendments, supplements or other modifications to any Bids (including pursuant to this paragraph) shall be delivered to the parties listed above as provided therein. All Qualified Bids will be considered, but the Seller reserves its right to reject any or all bids. Notwithstanding anything herein to the contrary, the Stalking Horse Agreement shall be deemed to be a Qualified Bid, and the Stalking Horse Bidder, a Qualified Bidder, and is authorized to participate in the Auction.

Within [three (3) business days] after a Potential Bidder delivers a Bid, the Seller will determine and notify that Potential Bidder and the Stalking Horse Bidder whether such Potential Bidder is a Qualified Bidder and whether such Bid is a Qualified Bid.

V. AUCTION

A. Auction

If one or more Qualified Bids (other than the Stalking Horse Agreement) are submitted by the Bid Deadline, the Seller will conduct the Auction to determine the highest or otherwise best Qualified Bid with respect to the Transferred Assets.

B. Bid Assessment Criteria

The Seller’s determination of the highest or otherwise best Qualified Bid with respect to the Transferred Assets shall take into account any factors that the Seller, in consultation with the Consultation Parties, reasonably deems relevant to the value of the Qualified Bid to the estates and may include, but are not limited to, the following (collectively, the “**Bid Assessment Criteria**”):

1. the amount and nature of the consideration, including any assumed liabilities;
2. the type and nature of any modifications to the Stalking Horse Agreement, as applicable, provided in the Alternate Asset Purchase Agreement;
3. the total consideration to be received by the Seller and the net consideration to be received by the Seller after taking into account the Stalking Horse Bidder’s Buyer Protections;
4. the likelihood of the Qualified Bidder’s ability to close the proposed transaction;
5. the net benefit to the Seller’s estate.

C. Cancellation of the Auction

If no timely Qualified Bids (other than the Stalking Horse Agreement) are received, the Auction for the Transferred Assets shall be canceled and the Stalking Horse Agreement shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder.

VI. **PROCEDURES FOR THE AUCTION**

If one or more Qualified Bids (other than the Stalking Horse Agreement) are submitted by the Bid Deadline, the Seller shall commence the Auction on [●] [March] [●], 2017 at 10:00 a.m. (EST) at the offices of Wilson Sonsini in New York or such other place and time as the Seller shall notify all Qualified Bidders and the Consultation Parties.

The Seller reserves the right, in its reasonable business judgment, and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things (i) facilitate discussions between the Seller and the Qualified Bidders, (ii) allow the Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide additional evidence, as the Seller, in its reasonable business judgment, may require, that it has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate its proposed Bid at then applicable purchase price.

The Auction shall be conducted according to the following procedures:

A. Participation

The Seller, the Consultation Parties, the Stalking Horse Bidder and any other Qualified Bidder, along with their representatives and counsel, may attend the Auction (such attendance to be in person). Only the Stalking Horse Bidder and Potential Bidders that satisfy the requirements to become Qualified Bidders will be entitled to make any Bids at the Auction.

B. The Seller Shall Conduct the Auction

The Seller and its advisors shall direct and preside over the Auction, which shall be transcribed. Other than as expressly set forth herein, the Seller (in consultation with the Consultation Parties) may conduct the Auction in the manner it reasonably determines will result in the highest or otherwise best Qualified Bid(s).

Prior to commencement of the Auction, the Seller shall provide each Qualified Bidder participating in the Auction with a copy of the Alternate Asset Purchase Agreement that Seller designates as the highest or otherwise best Qualified Bid (such highest or otherwise best Qualified Bid, the “**Auction Baseline Bid**”).

In addition, at the start of the Auction, the Seller shall describe the terms of the Auction Baseline Bid. Each Qualified Bidder participating in the Auction must confirm that it (1) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (2) has reviewed, understands and accepts the Bidding Procedures, (3) has consented to the core jurisdiction of the Bankruptcy Court and (4) has waived the right to a jury trial in connection with any disputes relating to the Auction, the interpretation of the Bidding Procedures and/or the selection of the Successful Bidder (as defined below).

Before submitting any Bid with co-bidding or team bidding arrangements, whether formal or informal, among a Qualified Bidder and any third party (including a Potential Bidder that did not qualify as a Qualified Bidder) (such a Bid, a “**Joint Bid**”), each Qualified Bidder must disclose such Joint Bid to the Seller, and the Seller shall determine, in its discretion, whether the Joint Bid constitutes a Qualified Bid for purposes of participating in the Auction. The identity of any and all co-bidders or team bidders involved in submitting any Joint Bid that the Seller determines to be a Qualified Bid shall be disclosed on the record at the Auction.

The Seller shall consult in good faith with the Consultation Parties throughout the Auction process to the extent reasonably practicable.

C. Terms of Overbids

All Bids after the announcement of the Auction Baseline Bid must satisfy the requirements for Overbids (defined below) and will be made and received on an open basis, subject to the Seller’s right to require that last and final Bids be submitted on a “blind” basis. All material terms of each Overbid (as defined below) will be fully disclosed to all other Qualified Bidders.

An “**Overbid**” is any bid made at the Auction subsequent to the Seller’s announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

1. Minimum Overbid Increments: Any Overbid for all or substantially all of the Transferred Assets after and above the Auction Baseline Bid shall be made in increments valued at not less than \$[100,000] (or such other amount as shall be announced at the Auction) in cash or in cash equivalents.
2. Remaining Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, *provided, however*, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Stalking Horse Agreement or Alternate Asset Purchase Agreement, as the case may be, in connection therewith. Any Overbid must remain open and binding on the Bidder as provided herein.
3. Additional Bids; Modifications: All Qualified Bidders, including the Stalking Horse Bidder, shall have the right to submit additional bids and make additional modifications to the Stalking Horse Agreement or the Alternate Asset Purchase Agreement at the Auction, as applicable, provided that any such modifications to the Stalking Horse Agreement or Alternate Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Seller’s business judgment, be less favorable to the Seller than the terms of the Stalking Horse Agreement.
4. Conclusion of Each Overbid Round: Upon the solicitation of each round of Overbids, the Seller may announce a deadline (as the Seller may, in its business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Seller.

5. Announcement and Consideration of Overbids: Subsequent to each Overbid Round Deadline, the Seller will announce whether it has identified an Overbid as being higher or otherwise better than the Auction Baseline Bid (in the initial Overbid round) or the Overbid previously designated by the Seller as the prevailing highest or otherwise best Bid (in subsequent rounds). Such Bid shall be referred to herein as the Prevailing Highest Bid. The Seller will describe to all Qualified Bidders the material terms of any Prevailing Highest Bid as well as the value attributable by the Seller based on, among other things, the Bid Assessment Criteria.

D. Additional Procedures

The Seller (after consulting with the Consultation Parties) may announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not inconsistent in any material respect with the Bidding Procedures or the Stalking Horse Agreement. Any Auction rules adopted by the Seller will not modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Bidder thereunder without the consent of the Stalking Horse Bidder.

E. Concluding the Auction

The Auction shall continue in additional rounds of bidding until the Seller selects the Prevailing Highest Bid that is the highest or otherwise best offer for all or substantially all of the Transferred Assets (a “**Successful Bid**,” and the Bidder submitting such Successful Bid, a “**Successful Bidder**”). The Successful Bidder shall have the rights and responsibilities of the purchaser as set forth in the Stalking Horse Agreement or Alternate Asset Purchase Agreement, as applicable. In selecting the Successful Bid, the Seller, in consultation with the Consultation Parties, shall consider the Bid Assessment Criteria.

The Auction for the Transferred Assets shall conclude when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of its Successful Bid.

Promptly following the conclusion of the Auction, the Seller shall announce the Successful Bid and the Successful Bidder, and shall file with the Bankruptcy Court a notice of the Successful Bid and the Successful Bidder.

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

F. Return of Deposit

The Deposit of the Successful Bidder will be applied to the purchase price at the closing. The Deposits for each Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder will be returned within three (3) business days after the close of the Auction.

G. Backup Bidder

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Bid at the Auction with respect to all or substantially all of the Transferred Assets, as determined by the Seller, will be designated as the backup bidder (the “**Backup Bidder**”). The Backup Bidder shall be required to keep its last submitted Bid (the “**Backup Bid**”) open and irrevocable until the earlier of the closing of the transaction with the Successful Bidder or the Outside Date.

Following the Sale Hearing, if the Successful Bidder fails to consummate the purchase of the Transferred Assets, the Seller may deem the Backup Bidder to be the new Successful Bidder, and the Seller will be authorized, but not directed, without further order of the Bankruptcy Court, to consummate the transaction with such Backup Bidder at the price of its last bid. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Seller on and as of the date that the Bankruptcy Court approves a Sale to the Successful Bid.

VII. BUYER PROTECTIONS

Pursuant to the Bidding Procedures Order, the Stalking Horse Bidder is entitled to the Buyer Protections in the amounts set forth in, and in accordance with the terms of, the Stalking Horse Agreement and the Bidding Procedures Order.

Pursuant to the Bidding Procedures Order, except for the Stalking Horse Bidder, no other party submitting an offer or Bid (including a Qualified Bid) shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment.

The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, the Sale, and related matters, including the right to object to the sale of the Transferred Assets or any portion thereof (including the conduct of the Auction and interpretation of this Bidding Procedures Order), unless and until such time as another Bidder is selected as the Successful Bidder.

VIII. SALE HEARING

A hearing to consider approval of the Successful Bid (or to approve the Stalking Horse Asset Purchase Agreement if no Auction is held) (the “**Sale Hearing**”) is currently scheduled to take place on [____], 2017 at [10:00 a.m. (EST)], or as soon thereafter as counsel may be heard before the Honorable [____] in in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom [____], Wilmington Delaware 19801.

The Sale Hearing may be continued to a later date by the Seller by sending notice to the Notice Parties prior to the Sale Hearing or by making an announcement at the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder).

Exhibit C – Purchase Agreement

Execution Version

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**FRANK CHANG, FOR AND ON BEHALF OF PURCHASER,
DRAPER ATHENA MANAGEMENT CO. LTD, AS GUARANTOR,**

AND

ATOPTECH, INC.,

DATED AS OF JANUARY 10, 2017

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”), is made and entered into as of January 10, 2017, by and among Frank Chang, for and on behalf of a Delaware corporation to be formed prior to Closing to act as “Purchaser” hereunder (“**Purchaser**”), Draper Athena Management Co. Ltd, a Chinese limited liability company (“**Guarantor**”), and ATopTech, Inc., a Delaware corporation (“**Seller**”). Each of the parties hereto is referred to herein individually as a “**Party**,” and collectively as the “**Parties**.”

RECITALS

A. Seller will, not later than five (5) Business Days after the date of this Agreement, file a voluntary petition commencing a chapter 11 Bankruptcy Case (hereinafter, the “**Bankruptcy Case**”) pursuant to Title 11 of United States Code, 11 U.S.C. Sections 101 et seq. (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) (the date such petition is filed the “**Petition Date**”).

B. Seller wishes to transfer, free and clear of all Liens, to Purchaser or its Affiliates all the Transferred Assets, in exchange for the consideration set forth below, and the Parties intend to effectuate the transactions contemplated by this Agreement through a sale of the Transferred Assets pursuant to Section 363 of the Bankruptcy Code.

NOW, THEREFORE, in consideration of the mutual agreements, covenants and other premises set forth herein, the mutual benefits to be gained by the performance thereof, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged and accepted, the Parties hereby agree as follows:

ARTICLE 1 DEFINITIONS

1.1 Capitalized Terms.

For purposes of this Agreement, the following terms shall have the following respective meanings:

(a) “**Action**” means any claim, action, cause of action, suit, demand, inquiry, proceeding, audit or investigation by or before any Governmental Entity or any arbitration, mediation or similar proceeding.

(b) “**Additional Assignment Order**” has the meaning set forth in **Section 2.1(b)(i)**.

(c) “**Additional Designated Contract**” has the meaning set forth in **Section 2.1(b)(i)**.

(d) “**Adjusted Deferred Revenue Amount**” means an amount equal to 10% of the unamortized deferred revenue of Seller in respect of payments received by Seller under customer contracts included in the Designated Contracts, excluding any such amounts that are included in the accounts receivable included in the Transferred Assets.

(e) **“Affiliate”**, with respect to any Person, means a Person that, directly or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the first-mentioned Person. For the purposes of this definition, (i) **“control,”** including the terms **“controlled by”** and **“under common control with,”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, as trustee or executor, as general partner or managing member, by Contract or otherwise, including the ownership, directly or indirectly, of securities having the power to elect a majority of the board of directors or similar body governing the affairs of such Person.

(f) **“Aggregate Consideration”** has the meaning set forth in **Section 2.2(a)**.

(g) **“Agreement”** has the meaning specified in the preamble to this Agreement.

(h) **“Allocation”** means an allocation of the Aggregate Consideration and Assumed Liabilities, if any, among the Transferred Assets in accordance with Section 1060 of the Code including, to the extent any Transferred Assets are acquired by an Affiliate of Purchaser pursuant to **Section 2.1(a)**, a similar allocation with respect to such Transferred Assets (including related Assumed Liabilities).

(i) **“Alternative Transaction”** means at any time within six (6) months after the date hereof one of the following transactions with or by a party other than Purchaser or its Affiliates resulting in (a) the sale of a majority of the Transferred Assets, (b) a merger, consolidation or similar transaction involving Seller or (c) a sale, lease or other disposition directly or indirectly by merger, consolidation, tender offer, share exchange or otherwise of assets of Seller.

(j) **“Ancillary Agreements”** means the Assignment and Bill of Sale, the IP Assignment, the Employee Offer Letters and the Proprietary Information and Invention Assignment Agreements.

(k) **“Applicable Law”** means any applicable federal, state, national, local, municipal, foreign, international, supranational or other constitution, act, statute, law, principle of common law, code, edict, ordinance, treaty, rule, regulation or any official interpretation of or judgment, injunction, Order, decision, decree, license, permit, authorization, ruling or requirement issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Entity.

(l) **“Approval Request”** has the meaning set forth in **Section 10.4(b)**.

(m) **“Assignment and Bill of Sale”** means the assignment and bill of sale, in the form set forth as **Exhibit A**, to be executed and delivered by Seller and Purchaser at the Closing.

(n) **“Assumed Liabilities”** has the meaning set forth in **Section 2.1(d)**.

(o) **“Auction”** has the meaning set forth in **Section 6.1(a)**.

(p) **“Bankruptcy Case”** has the meaning specified in the recitals.

(q) **“Bankruptcy Code”** has the meaning specified in the recitals.

(r) **“Bankruptcy Court”** has the meaning specified in the recitals.

(s) **“Benefit Plan”** means any plan, program, policy, practice, contract, agreement or other arrangement providing for compensation, severance, termination pay, deferred compensation, performance awards, stock or stock-related awards, fringe benefits or other employee benefits or remuneration of any kind, whether written or unwritten or otherwise, funded or unfunded, including without limitation, each “employee benefit plan,” within the meaning of Section 3(3) of ERISA which is sponsored, maintained, contributed to, or required to be contributed to, by Seller or any ERISA Affiliate for the benefit of any Employee, or with respect to which Seller or any ERISA Affiliate has or may have any Liability or obligation.

(t) **“Bidding Procedures Motion”** shall have the meaning set forth in **Section 6.1(b)**.

(u) **“Bidding Procedures Order”** shall have the meaning set forth in **Section 6.1(b)**.

(v) **“Break-Up Fee”** means an amount in cash equal to \$400,000.

(w) **“Business”** means the business of providing software solutions for the placement, routing, clock tree synthesis, optimization, top-down floor planning and chip assembly of integrated circuits as conducted by Seller and its Affiliates.

(x) **“Business Day”** means each day that is not a Saturday, Sunday or other day on which banking institutions located in Santa Clara, California, the federal courts or the Bankruptcy Court are authorized or obligated by Applicable Law or executive order to close.

(y) **“Business Products”** means all products or services that have been or are currently sold, licensed, provided, supported, distributed or otherwise disposed of by Seller and/or any of its Subsidiaries, including all products or services in development.

(z) **“Business Product Software”** means all Software for which the underlying Intellectual Property Rights are owned by Seller that is incorporated into, distributed with, or used in the provision of any version of the Business Products, including, without limitation, websites and internal-use Software.

(aa) **“CFIUS”** means the Committee on Foreign Investment in the United States.

(bb) **“CFIUS Clearance”** means that (i) CFIUS has concluded that the Transaction is not a covered transaction and not subject to review under Section 721 of the Defense Production Act of 1950, as amended (the **“DPA”**) and notified the Parties of that conclusion in writing, (ii) CFIUS has issued a written notification that it has concluded its review (and, if applicable, any investigation) of the joint voluntary notice filed with it pursuant to Section 721 of the DPA in connection with the Transactions and determined that there are no unresolved national security concerns with respect to such Transactions, or (iii) CFIUS has sent a report to the President of the United States requesting the President’s decision with respect to the joint voluntary notice and either (x) the President has announced a decision not to take any action to suspend or prohibit the Transactions or (y) the President has not taken any action after 15 days from the date the President received such report from CFIUS.

(cc) **“Closing”** has the meaning set forth in **Section 2.3**.

(dd) **“Closing Date”** has the meaning set forth in **Section 2.3**.

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

(ff) “**Consent**” means any consent, assignment, permit, Order, certification, concession, franchise, approval, authorization, registration, waiver, declaration or filing with, of or from any Governmental Entity, parties to Contracts or any other third party.

(gg) “**Consultant Proprietary Information Agreement**” has the meaning set forth in **Section 3.9(j)**.

(hh) “**Contaminant**” has the meaning set forth in **Section 3.9(k)**.

(ii) “**Continuing Employees**” has the meaning set forth in **Section 7.2(c)**.

(jj) “**Contract**” means any note, bond, mortgage, indenture, lease, sublease, contract, covenant, plan, insurance policy, undertaking or other agreement, instrument, arrangement, obligation, understanding or commitment, permit, concession, franchise or license, including any amendment or modifications made thereto, whether oral or written.

(kk) “**Cure Costs**” has the meaning set forth in **Section 7.7**.

(ll) “**Designated Contracts**” has the meaning set forth in **Section 2.1(a)(i)**.

(mm) “**Designated Employee**” means the Employees (provided that they are current employees) listed on **Schedule 1.1(mm)**, as such Schedule may be updated from time to time by Purchaser.

(nn) “**Disabling Code**” has the meaning set forth in **Section 3.9(k)**.

(oo) “**Disclosure Schedule**” has the meaning set forth in the preamble to **Article 3**.

(pp) “**EAR**” has the meaning set forth in **Section 3.15(a)**.

(qq) “**Effect**” has the meaning set forth in **Section 1.1(cccc)**.

(rr) “**Employee**” means any current or former employee, consultant, independent contractor or director of Seller or of any ERISA Affiliate, who has provided services to the Business.

(ss) “**Employee Offer Letter**” has the meaning set forth in **Section 8.2(f)**.

(tt) “**Employee Proprietary Information Agreement**” has the meaning set forth in **Section 3.9(j)**.

(uu) “**Employment Agreement**” shall mean each management, employment, severance, consulting, relocation, repatriation, expatriation, visa, work permit or other agreement, contract or understanding between Seller or any ERISA Affiliate and any Employee.

(vv) “**Employment Liabilities**” shall mean any and all claims, debts, liabilities, commitments and obligations, whether fixed, contingent or absolute, matured or unmatured, liquidated or unliquidated, accrued or unaccrued, known or unknown, whenever or however arising, including all costs and expenses relating thereto arising under Applicable Law or any Order, of any kind relating to any Benefit Plan, Employment Agreement or otherwise relating to an Employee and his or her employment with Seller or any ERISA Affiliate.

(ww) “**Enforceability Limitations**” has the meaning set forth in **Section 3.3**.

(xx) “**Environmental Law**” means any U.S. federal, state, local or foreign statute, law, ordinance, regulation, rule, code, order, consent decree or judgment, in each case in effect as of the date hereof, relating to pollution or protection of the environment.

(yy) “**Environmental Permits**” means any permit, approval, identification number, license and other authorization required under or issued pursuant to any applicable Environmental Law.

(zz) “**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended, and the regulations issued thereunder.

(aaa) “**ERISA Affiliate**” means each subsidiary of Seller and any other person or entity under common control with Seller or any of its subsidiaries within the meaning of Section 414(b), (c), (m) or (o) of the Code and the regulations issued thereunder.

(bbb) “**Excluded Assets**” has the meaning set forth in **Section 2.1(c)**.

(ccc) “**Excluded Liabilities**” has the meaning set forth in **Section 2.1(e)**.

(ddd) “**Expense Reimbursement**” means an amount in cash equal to \$600,000.

(eee) “**Exploit**” means to use, reproduce, distribute, develop, prepare derivative works of, make, have made, offer for sale, sell, import or otherwise exploit. “Exploitation” has the correlative meaning.

(fff) “**Export Controls**” has the meaning set forth in **Section 3.15(a)**.

(ggg) “**Final Order**” means any Order or other action of a Governmental Entity, an Order or other action (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject Order in all material respects without the possibility for further appeal or rehearing thereon and (b) as to which the time for instituting or filing an appeal, motion for rehearing or motion for new trial shall have expired, excluding any additional time periods that may begin as a result of Federal Rule 60(b).

(hhh) “**GAAP**” means United States generally accepted accounting principles.

(iii) “**Governmental Entity**” means any federal, national, supranational, state, provincial, local or similar government, governmental, regulatory, legislative, administrative or quasi-governmental authority, branch, office agency, commission or other body or any court, tribunal or arbitral or judicial body (including any grand jury), whether domestic or foreign, including any securities exchange.

(jjj) “**Guaranteed Obligations**” has the meaning set forth in **Section 7.8(a)**.

(kkk) “**Guarantor**” has the meaning set forth in the preamble to this Agreement.

(lll) “**Guaranty**” has the meaning set forth in **Section 7.8(a)**.

(mmm) “**Import Restrictions**” has the meaning set forth in **Section 3.15(a)**.

(nnn) **“Incorporated Open Source Software”** means Open Source Software that has been incorporated into any Business Product, or distributed with or used in the provision of any Business Product.

(ooo) **“Incorporated Other Software”** means any Software other than Open Source Software owned by a third party that has been incorporated into or distributed with any Business Product.

(ppp) **“Incorporated Software”** means the Incorporated Open Source Software and Incorporated Other Software.

(qqq) **“Indebtedness”** means with respect to any Person, all Liabilities, indebtedness or obligations of any kind or nature, contingent or otherwise, related to (i) indebtedness for borrowed money or for the deferred purchase price of property or services; (ii) any other indebtedness that is evidenced by a note, bond, debenture, letter of credit or similar instrument or facility; (iii) obligations under financing and operating leases or capital leases; (iv) all conditional sale obligations and all obligations under any title retention agreement; (v) all obligations under any currency, interest rate or other hedge agreement or any other hedging arrangement; (vi) all indebtedness referred to in clauses (i) through (v) above secured by (or for which the holder of such indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property (including, without limitation, accounts and Contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such indebtedness and (vii) all accrued interest, prepayment premiums, penalties and other amounts related to any of the foregoing.

(rrr) **“Independent Accountant”** means an independent, regional or national public accounting firm, appointed by the mutual agreement of Purchaser and Seller.

(sss) **“Infrastructure Assets”** means any Technology licensed or leased to Seller or its Affiliates pursuant to a Contract that is not a Designated Contract. “Infrastructure Assets” explicitly excludes all Business Product Software and Incorporated Software.

(ttt) **“Intellectual Property Rights”** means, collectively, on a worldwide basis, any and all industrial and intellectual property rights in any jurisdiction, whether statutory or common law rights, including but not limited to all rights in the following: (i) patents and applications therefor and all reissues, divisionals, renewals, extensions, provisionals, continuations and continuations-in-part thereof, (ii) all industrial designs and any registrations and applications therefor, and all mask works, including all registrations and application therefor and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, (iii) all common law trademarks and service marks, domain names and trademark and service mark registrations and applications therefor, including all renewals in connection therewith, and other indicators of source, and the goodwill of the business related thereto, (iv) all copyrights (whether registered or unregistered) in any work of authorship, and all copyright registrations, renewals and applications in connection therewith, (v) all rights in databases and data collections, (vi) all moral rights of authors, however denominated, (vii) all rights in trade secrets and other confidential information (including confidential ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer, sales prospect, distributor and supplier lists, pricing and cost information, and marketing plans and proposals), (viii) any analogous, corresponding or similar proprietary rights to any of the foregoing anywhere in the world, and (ix) all rights to prosecute and perfect the foregoing through administrative prosecution, registration, recordation, or other proceeding, and all causes of action and rights to sue or seek other remedies arising from or relating to the foregoing, including for any past or ongoing misuse or misappropriation; provided, however, that to the extent that the term “Intellectual Property Rights” is used in this Agreement in the context of selling, conveying, transferring, assigning or delivering Intellectual

Property Rights, sub-clause (vi) above should be read as follows: “all moral rights of authors, however denominated, except to the extent that such personal rights are non-assignable by Applicable Laws.”

(uuu) “**International Employee Plan**” shall mean each Benefit Plan that has been adopted or maintained by Seller or any ERISA Affiliate, whether informally or formally, or with respect to which Seller or any ERISA Affiliate will or may have any Liability, for the benefit of Employees who perform or performed services outside the United States.

(vvv) “**IP Assignment**” means the patent assignment in the form set forth as **Exhibit B**, to be executed and delivered by Seller and Purchaser at the Closing.

(www) “**ITAR**” has the meaning set forth in **Section 3.15(a)**.

(xxx) “**Knowledge**” means, with respect to Seller, the actual knowledge of Jue-Hsien Chern, Ping-san Tzeng, Claudia Chen and Eric Thune after reasonable inquiry of employees of Seller who would reasonably be expected to have knowledge about the matter at issue.

(yyy) “**Lease**” means any lease, lease guaranty, license, sublease, agreement for the leasing, use or occupancy of, or other instrument granting a right in or relating to the Leased Premises, together with all amendments, modifications or supplements thereto.

(zzz) “**Leased Premises**” means the real property together with all rights, easements and privileges appertaining or relating to such real property, and all improvements located thereon, that is leased, subleased or licensed by Seller and used or held for use by Seller or any of its Affiliates.

(aaaa) “**Liability**” means any liability, Indebtedness, duty, expense, charge, cost, fee, claim, deficiency, commitment, loss, damage, guaranty, endorsement or other obligation of any type, whether known or unknown, asserted or unasserted, matured or unmatured, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, incurred or consequential, due or to become due, on- or off-balance sheet, determined, determinable or otherwise, including those arising under any Contract, Applicable Law or Action, accounts payable, royalties payable, reserves, accrued bonuses, accrued vacation or Employee expense obligations.

(bbbb) “**Lien**” means any mortgage, pledge, lien, security interest, charge, claim, community or other marital property interest, equity, encumbrance, restriction on transfer, use, voting or any other attribute of ownership, conditional sale or other title retention device or arrangement (including a capital lease), transfer for the purpose of subjection to the payment of any Indebtedness or restriction on the creation of any of the foregoing, whether relating to any property or right or the income or profits therefrom, *provided* that “Lien” does not include any license of Intellectual Property Rights.

(cccc) “**Material Adverse Effect**” with respect to Seller shall mean any state of facts, condition, change, development, event or effect (each, an “**Effect**”) that, either alone or in combination with any other Effect(s) has, or would be reasonably likely to have, a material adverse effect on the Transferred Assets, Assumed Liabilities or the ability of Seller to perform its obligations under this Agreement; *provided, however*, that any Effect(s) arising from or relating to any of the following shall not be deemed, either alone or in combination, to constitute, and shall not be taken into account in determining whether there has been or will be, a Material Adverse Effect: (A) conditions affecting the industries in which the Business operates (which Effect(s), in each case, do not disproportionately affect Seller relative to other businesses in the same industry); (B) general economic, financial market or geopolitical conditions (which Effect(s), in each case, do not disproportionately affect Seller relative to other businesses in the same industry); (C) any failure to meet any projections or forecasts for the

Business for any period ending (or for which revenues or earnings are released) on or after the date hereof (*provided* that the underlying causes of any such failure (subject to the other provisions of this definition) shall not be excluded); (D) any change in Applicable Law, accounting rules (including GAAP) or the enforcement, implementation or interpretation thereof, after the date hereof; (E) any Effect(s) caused by, relating to or resulting from the announcement or pendency of the transactions contemplated by this Agreement, including losses or threatened losses of employees, customers, suppliers, distributors, licensors or others having relationships with Seller; (G) any Effect(s) caused by, relating to or resulting from Seller's cessation of the Business following the date hereof; (H) any Effect(s) caused by, relating to or resulting from any litigation of Seller with Synopsys, Inc. and any appeal or order resulting therefrom including, but not limited to, the Synopsys Patent Litigation or (I) any Effect(s) caused by, relating to or resulting from, the commencement of the Bankruptcy Case.

(dddd) **"Material Contracts"** has the meaning set forth in **Section 3.8(b)**.

(eeee) **"Multiemployer Plan"** has the meaning set forth in **Section 3.13(e)**.

(ffff) **"Multiple Employer Plan"** has the meaning set forth in **Section 3.13(e)**.

(gggg) **"NDA"** means that certain Nondisclosure Agreement, dated as of September 4, 2016, between Seller and Purchaser, as amended.

(hhhh) **"New Plans"** has the meaning set forth in **Section 7.2(f)**.

(iiii) **"Non-Paying Party"** has the meaning set forth in **Section 7.3(b)**.

(jjjj) **"Notification"** has the meaning set forth in **Section 2.1(b)(i)**.

(kkkk) **"OFAC"** has the meaning set forth in **Section 3.15(a)**.

(llll) **"Open Source Software"** means any Software that is distributed as "free software," "open source software" or under a substantially equivalent licensing or distribution model (including the GNU General Public License (GPL), GNU Lesser General Public License (LGPL), Mozilla Public License (MPL), BSD licenses, the Artistic License, the Netscape Public License, the Sun Community Source License (SCSL), the Sun Industry Standards License (SISL) and the Apache License).

(mmmm) **"Order"** means any order, writ, judgment, injunction, decree, stipulation, certification, determination, decision, verdict, ruling, subpoena or award entered by or with any Governmental Entity (whether temporary, preliminary or permanent).

(nnnn) **"Other Excluded Assets"** has the meaning set forth in **Section 2.1(c)(iv)**.

(oooo) **"Outside Date"** means May 31, 2017.

(pppp) **"Party"** and **"Parties"** have the meanings specified in the preamble to this Agreement.

(qqqq) **"Paying Party"** has the meaning set forth in **Section 7.3(b)**.

(rrrr) **"Permitted Liens"** means (i) statutory mechanics', materialmen's or workmen's Liens arising under applicable state law and (ii) any Lien that is not extinguished by the Sale Order under Applicable Law, it being understood that the Sale Order shall extinguish Liens to the maximum extent

permissible under Applicable Law; in each case that does not materially detract from the value of, and does not individually or in the aggregate in any material respect interfere with the present use of, the property subject thereto.

(ssss) “**Person**” means an individual, partnership, corporation, limited liability company, association, joint venture, trust, unincorporated organization, Governmental Entity or other organization organized or recognized under any Applicable Law.

(tttt) “**Personal Information**” has the meaning set forth in **Section 3.9(m)**.

(uuuu) “**Petition Date**” has the meaning set forth in the recitals.

(vvvv) “**Pre-Closing Statement**” has the meaning set forth in **Section 2.2(b)**.

(wwwv) “**Property Taxes**” has the meaning set forth in **Section 7.3(b)**.

(xxxx) “**Proprietary Information and Inventions Assignment Agreement**” has the meaning set forth in **Section 8.2(f)**.

(yyyy) “**Purchaser**” has the meaning specified in the preamble to this Agreement.

(zzzz) “**Registered IPR**” means any and all Intellectual Property Rights that are or have been registered, filed, issued or otherwise recorded with or by any public or quasi-public legal authority or Governmental Entity and any applications for any of the foregoing, including all applications, reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and continuations-in-part associated with patent rights.

(aaaaa) “**Related Agreements**” means the Ancillary Agreements and all other certificates, instruments and other documents delivered in connection with this Agreement or any of the foregoing.

(bbbbb) “**Representatives**” with respect to a particular Person, means any designee, director, administrator, officer, manager, partner, employee, agent, advisor, accountant, financial advisor, legal counsel or other representative of that Person.

(ccccc) “**Sale Hearing**” has the meaning set forth in **Section 6.1(b)**.

(ddddd) “**Sale Motion**” has the meaning set forth in **Section 6.1(d)**.

(eeee) “**Sale Order**” means the order of the Bankruptcy Court, which shall be substantially the form and substance set forth in **Exhibit D** hereto or otherwise in form and substance acceptable to Purchaser, approving the sale of the Transferred Assets to Purchaser pursuant to this Agreement.

(fffff) “**Seller**” has the meaning specified in the preamble to this Agreement.

(ggggg) “**Software**” means computer software, computer programs and code, including assemblers, applets, compilers, source code (including source code listings and documentation), object code, firmware, design and development tools, and user interfaces, in any form or format, however fixed.

(hhhhh) “**Straddle Period Taxes**” has the meaning set forth in **Section 7.3(b)**.

(iiii) **“Subsidiary”** means, with respect to any Person, any corporation, partnership, joint venture, limited liability company or other business entity of which more than 50% of the voting stock is beneficially owned, or the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, by such Person.

(jjjj) **“Synopsis Patent Litigation”** means the patent-related Action between Seller and Synopsys, Inc., as set forth in Case No. 3:13-cv-02965-MMC, before the United States District Court for the Northern District of California, San Francisco Division.

(kkkk) **“Synopsis Copyright Litigation”** means the copyright-related Action between Seller and Synopsys, Inc., as set forth in Case No. 3:13-cv-02965-MMC, before the United States District Court for the Northern District of California, San Francisco Division.

(llll) **“Tax”** and **“Taxes”** means any and all United States federal, state, local and non-U.S. taxes, assessments and other governmental charges, customs, duties, impositions and liabilities, including taxes based upon or measured by gross receipts, income, profits, sales, use and occupation and value-added, ad valorem, transfer, franchise, withholding, payroll, recapture, employment, social insurance, stamp, escheat, unclaimed property, excise and property taxes or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, as well as any Taxes of any other Person imposed on the Seller under Applicable Law or pursuant to any contract, together with all interest, penalties and additions imposed with respect to such amounts payable in accordance with Applicable Law.

(mmmm) **“Tax Contests”** has the meaning set forth in **Section 7.3(c)**.

(nnnn) **“Tax Returns”** means all returns, forms, estimates, amendments, information statements and reports and any attachments, schedules, appendices or addenda thereto, that are prepared or filed or required to be prepared or filed with respect to Taxes.

(oooo) **“Taxing Authority”** means any Governmental Entity responsible for the administration or imposition of any Tax.

(pppp) **“Technology”** means all embodiments of Intellectual Property Rights, regardless of form, including but not limited to: (i) published and unpublished works of authorship, including audiovisual works, collective works, Software, compilations, databases, derivative works, literary works, photographs, sound recordings and maskworks; (ii) inventions and discoveries, including articles of manufacture, business methods, compositions of matter, improvements, machines, methods and processes and new uses for any of the preceding items; (iii) information that is not generally known or readily ascertainable through proper means, whether tangible or intangible, including algorithms, ideas, research and development, compositions, drawings, technical data, designs, formulas, know-how, methods, processes, programs, prototypes, systems and techniques, specifications, customer, sales prospect, distributor and supplier lists, pricing and cost information, and marketing plans and proposals, (iv) trade names, trade dress, brand names, model names, corporate names, URLs, and (v) other technical data; but in all cases excluding Intellectual Property Rights.

(qqqq) **“Transactions”** means the transactions contemplated by this Agreement and the Related Agreements.

(rrrr) **“Transfer Tax”** means any United States federal, state, local or non-U.S. sales, use, value-added, goods and services, gross receipts, excise, registration, stamp duty, transfer, documentary, real property transfer or gains Tax, real property records recordation fees or other similar

Tax or governmental charge or fee, together with any interest, additions, penalties, expenses or fees with respect thereto.

(sssss) “**Transferred Assets**” has the meaning set forth in **Section 2.1(a)**.

(ttttt) “**Transferred IP**” means the Transferred Technology and the Transferred IPR.

(uuuuu) “**Transferred IPR**” has the meaning set forth in **Section 2.1(a)(iii)**.

(vvvvv) “**Transferred IT Assets**” has the meaning set forth in **Section 3.9(l)**.

(wwwww) “**Transferred Lease**” means each Lease included in the Designated Contracts.

(xxxxx) “**Transferred Registered IPR**” has the meaning set forth in **Section 3.9(d)**.

(yyyyy) “**Transferred Technology**” has the meaning set forth in **Section 2.1(a)(ii)**.

(zzzzz) “**Transferred Versions**” has the meaning set forth in **Section 3.9(n)**.

ARTICLE 2 THE TRANSACTIONS

2.1 The Transactions.

(a) Transfer of Transferred Assets. Upon the terms and subject to the conditions contained in this Agreement, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Purchaser, and Purchaser shall acquire from Seller, free and clear of all Liens, other than Permitted Liens, all of Seller’s right, title and interest in, to and under the following assets, properties and rights (collectively, the “**Transferred Assets**”):

(i) the Contracts set forth on **Schedule 2.1(a)(i)** that Purchaser has designated to be assumed and assigned to it (the “**Designated Contracts**”), other than fees paid by customers of Seller or any of its Subsidiaries prior to the Closing for term licenses under such Contracts;

(ii) all Technology owned by Seller, including the Business Product Software, Incorporated Open Source Software, Incorporated Other Software to the extent licensed under a Designated Contract and other Technology listed on **Schedule 2.1(a)(ii)** (the “**Transferred Technology**”);

(iii) all Intellectual Property Rights owned or purported to be owned by Seller (either individually or with another Person), including the Intellectual Property Rights set forth on **Schedule 2.1(a)(iii)** (collectively, the “**Transferred IPR**”);

(iv) all rights to register, prosecute, maintain or record any Transferred IPR with any Governmental Entity, the right to all past, present and future income, royalties, damages and payments due with respect to Transferred IPR and all goodwill associated with or appurtenant to the trademarks included in the Transferred IPR;

(v) copies of all books, files, papers, data, databases, information systems, documentation and records (whether in paper or electronic form) related to the Transferred Assets,

including employee records relating to Continuing Employees to the extent permitted by Applicable Law, *provided* that Seller shall have continued use thereof for purposes of administering the Bankruptcy Case, including claims against Seller;

(vi) all supplies, brochures, promotional literature, customer, supplier and distributor lists, art work, other marketing materials and purchasing records related to the Transferred Assets;

(vii) all claims, causes of action, choses in action, rights of recovery and rights of set-off (of any kind, at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, contingent or non-contingent) in favor of Seller, against any Person, relating to any Transferred Asset, including the right to sue for past, present and future infringement, violation or misappropriation of any Transferred IPR and including all transferable warranties and guarantees of third parties other than any such claims, causes of action, choses in action, rights of recovery and rights of set-off in favor of Seller in connection with the Synopsys Patent Litigation and the Synopsys Copyright Litigation;

(viii) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees, to the extent the foregoing relate to the Transferred Assets or as set forth in **Schedule 2.1(a)(viii)**;

(ix) all benefits of Seller against any third party relating to the Transferred Assets and Assumed Liabilities, including any guarantees, warranties, indemnities and similar rights contained in the Designated Contracts or otherwise relating to the Transferred Assets and Assumed Liabilities and rights to Actions of any nature available to or being pursued by Seller relating to the Transferred Assets and Assumed Liabilities;

(x) all benefits of Seller under Seller's insurance policies, including rights to assert claims and to proceeds, to the extent the foregoing relate to the Transferred Assets;

(xi) all equipment, fixtures, furniture, computers, servers, tools, parts, supplies and other tangible personal property; and

(xii) all accounts receivable of Seller, other than accounts receivable arising from intercompany transactions.

(b) Assignments.

(i) Purchaser shall have the right at any time after the date hereof but prior to the Closing Date to add any Contract of the Seller to **Schedule 2.1(a)(i)** as a Designated Contract (the "**Additional Designated Contract**"); *provided* the Contract has not been rejected by an order of the Bankruptcy Court, and shall immediately notify Seller of such designation in writing (the "**Notification**"), whereupon Seller shall file one or more motions with the Bankruptcy Court seeking the entry of an order (the "**Additional Assignment Order**"), pursuant to Sections 363 and 365 of the Bankruptcy Code, to assign, transfer, convey and deliver to Purchaser such Additional Designated Contract as if it had been originally scheduled on **Schedule 2.1(a)(i)**, by written notice to Seller.

(ii) Any and all Cure Costs necessary to assume and assign a Designated Contract or Additional Designated Contract shall be paid by Seller.

(iii) With respect to each Designated Contract, Seller shall include such Designated Contract in the Sale Order to be assumed and assigned to Purchaser, subject to Seller curing all defaults under each such Designated Contract as provided herein, and Purchaser providing adequate assurance of future performance within such time as may be required by the Bankruptcy Court. Effective on the Closing Date, Purchaser shall assume each such Designated Contract. Any Designated Contract (A) not assumed and assigned to Purchaser in the Sale Order or (B) for which consent, required by Applicable Law, is not obtained, shall be deemed to be an Excluded Asset.

(iv) The Sale Order shall provide that, as of the Closing, Seller shall assign to Purchaser the Designated Contracts, and each Designated Contract shall be identified by (A) the name and date of such Designated Contract (if available), (B) the other party to such Designated Contract and (C) the address of such party for notice purposes, all included on an exhibit attached to either the motion filed in connection with the Sale Order or a motion for authority to assume and assign such Designated Contract. Such exhibit shall also set forth the amounts necessary to cure any defaults under each of the Designated Contracts as determined by Seller based on Seller's books and records, *provided, however*, that Seller shall be liable for paying any amount ordered by the Bankruptcy Court to the extent such amounts are greater than the amount set forth on the applicable schedule or exhibit to this Agreement.

(v) In the case of licenses, certificates, approvals, authorizations, leases, Contracts and other commitments included in the Transferred Assets that cannot be transferred or assigned effectively without the consent of any third party, which consent has not been obtained prior to the Closing (after giving effect to the Sale Order and the Bankruptcy Code), Seller shall cooperate with Purchaser (using Seller's commercially reasonable efforts for a period of sixty (60) days following the Closing, at Purchaser's sole expense) in endeavoring to obtain such consent.

(c) Excluded Assets. Notwithstanding anything to the contrary set forth in this Agreement, Purchaser shall not acquire, and Seller shall retain, the following assets, properties and rights owned or leased by Seller (collectively, the "**Excluded Assets**"):

(i) all Contracts of Seller that are not approved by an Order of the Bankruptcy Court to be assumed and assigned to Purchaser;

(ii) all cash and cash equivalents of Seller;

(iii) all rights to all claims, causes of action, choses in action, rights of recovery and rights of set-off (of any kind, at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, contingent or non-contingent) in favor of Seller, against any Person related to the Synopsys Patent Litigation and the Synopsys Copyright Litigation;

(iv) the assets set forth on **Schedule 2.1(c)(iv)** ("**Other Excluded Assets**");

(v) the corporate seals, minute books, stock books, Tax Returns, other similar records solely relating to the corporate organization of Seller and all employee-related or employee benefit-related files or records, other than personnel files of Continuing Employees;

(vi) all Infrastructure Assets not set forth on **Schedule 2.1(c)(vi)**;

(vii) any interests in real property other than the Transferred Leases;

(viii) any Tax refunds or credits related to the Transferred Assets attributable to taxable periods (or portions thereof) ending on or prior to the Closing Date;

(ix) all assets of or relating to, or held in trust for, the purposes of funding, any Benefit Plans;

(x) all benefits of Seller against any third party solely relating to the Excluded Assets expressly contemplated in **Sections 2.1(c)(i)** through **2.1(c)(xii)**, including, only to the extent solely related to the Excluded Assets, any guarantees, warranties, indemnities and similar rights contained in such Excluded Assets or otherwise relating to such Excluded Assets and rights to Actions of any nature available to or being pursued by Seller relating to such Excluded Assets;

(xi) all rights to all claims, causes of action, choses in action, rights of recovery and rights of set-off (of any kind, at any time or in any manner arising or existing, whether choate or inchoate, known or unknown, contingent or non-contingent) in favor of Seller, against any Person, relating solely to any Excluded Assets expressly contemplated in **Sections 2.1(c)(i)** through **2.1(c)(xii)**, including, only to the extent solely related to the Excluded Assets, the right to sue for past, present and future infringement, violation or misappropriation of such Excluded Assets, and including all transferable warranties and guarantees of third parties; and

(xii) all accounts receivable of Seller arising from intercompany transactions.

(d) Assumed Liabilities. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall assume and thereafter pay, perform and discharge (or, where applicable, shall cause its Affiliates to pay, perform or discharge) when due, all of the following Liabilities of Seller (collectively, the “**Assumed Liabilities**”) and no others: (i) all Liabilities of Seller under the Designated Contracts, to the extent that such Liabilities arise or are required to be performed on or after the Closing and do not arise from a breach, failure to perform, warranty, default or other violation by Seller on or prior to the Closing and (ii) any obligations related to the continued use of Intellectual Property Rights after the Closing as determined in a final judgment in connection with the Synopsys Patent Litigation.

(e) Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Purchaser shall not assume or otherwise be responsible for any Liabilities or losses of Seller in accordance with Applicable Law of whatever nature, whether presently in existence or arising hereafter, which are not Assumed Liabilities (collectively, the “**Excluded Liabilities**”). Without limiting the foregoing, Excluded Liabilities shall include the following Liabilities:

(i) all Liabilities of Seller to the extent arising out of the operation or conduct by Seller of any business other than the Business or relating to the operation or conduct of the Business prior to the Closing;

(ii) all Liabilities with respect to any Designated Contract arising from a breach, failure to perform, warranty, default or other violation by Seller prior to the Closing;

(iii) any Liabilities of Seller arising out of any Excluded Asset, including any Liabilities related to any claim of breach of contract or any successor liability, tortious interference, fraudulent conveyance or other claim related thereto, whether brought against Seller or any Affiliate of Seller or against any other Person, including Purchaser or any of its Affiliates, with respect to any Contract which is an Excluded Asset, except any obligations related to the continued use of Intellectual Property Rights after the Closing as determined in a final judgment in connection with the Synopsys Patent Litigation;

(iv) accounts payable of Seller or otherwise arising prior to the Closing from the conduct of the Business;

(v) all Employment Liabilities, including, for the avoidance of doubt, any severance or change in control payment due as a result of the Closing;

(vi) any fees or expenses incurred by or on behalf of Seller in connection with negotiating or documenting this Agreement, any of the Related Agreements, the Transactions or any equity or debt financing or sale transaction contemplated by Seller;

(vii) any non-compliance with any applicable bulk sale or bulk transfer laws of any jurisdiction in connection with the sale and transfer of the Transferred Assets;

(viii) all Liabilities of Seller related to, based on or arising from any Actions pending prior to the Closing against or involving Seller or any of its Affiliates, including any Liabilities of Seller related to the Synopsys Patent Litigation and the Synopsys Copyright Litigation, except any obligations related to the continued use of Intellectual Property Rights after the Closing as determined in a final judgment in connection with the Synopsys Patent Litigation;

(ix) any Taxes of Seller or its Affiliates, including any Taxes related to the Transferred Assets to the extent attributable to taxable periods (or portions thereof) ending on or prior to the Closing Date; and

(x) all Liabilities with respect to Infrastructure Assets not set forth on **Schedule 2.1(c)(vi)**.

2.2 Consideration and Payment.

(a) Aggregate Consideration. As consideration for the conveyance of the Transferred Assets to Purchaser, at the Closing, Purchaser shall pay to Seller, by wire transfer of immediately available funds to an account designated in writing by Seller, (i) Eight Million Dollars (\$8,000,000), *minus* (ii) the Adjusted Deferred Revenue Amount as agreed by Seller and Purchaser pursuant to Section 2.2(b) below (the “**Aggregate Consideration**”).

(b) Adjusted Deferred Revenue. At least ten (10) Business Days prior to entry of the Sale Order, Seller shall deliver to Purchaser a written statement setting forth a good faith calculation of the Adjusted Deferred Revenue Amount as of the Closing (the “**Pre-Closing Statement**”), together with copies of all Seller records and work papers based upon which the Adjusted Deferred Revenue Amount was calculated. From the date the Pre-Closing Statement is delivered to Purchaser until the entry of the Sale Order, each of Seller and Purchaser agrees to meet in good faith to resolve by mutual agreement any discrepancy as to the Adjusted Deferred Revenue Amount.

2.3 Closing. Subject to the terms and conditions of this Agreement, the closing of the sale of the Transferred Assets to Purchaser and the other Transactions (the “**Closing**”) shall take place at the offices of Wilson Sonsini Goodrich & Rosati, Professional Corporation, 650 Page Mill Road, Palo Alto, California 94304, no later than the third (3rd) Business Day following the date on which the conditions set forth in **Article 8** have been satisfied or (if permissible) waived (other than the conditions which by their nature are to be satisfied by actions taken at the Closing, but subject to the satisfaction or (if permissible) waiver of such conditions), or at such other place or time as Purchaser and Seller may mutually agree. The day on which the Closing takes place is referred to as the “**Closing Date**.”

2.4 Allocation of Purchase Price. The Parties intend that the transactions contemplated by this Agreement shall be treated as a sale of assets pursuant to Section 1001 of the Code. Within sixty (60) days after the Closing Date, Purchaser shall provide Seller with a draft Allocation. Within fifteen (15) days after any subsequent payment pursuant to this Agreement that has the effect of increasing or decreasing the Aggregate Consideration, Purchaser shall provide Seller with a draft amended Allocation. For a period of ten (10) days after Purchaser provides Seller with a draft Allocation (including a draft amended Allocation), Seller shall have the opportunity to review and comment on such draft, and Purchaser shall incorporate Seller's reasonable comments in the Allocation and provide Seller with a final Allocation following such period. If the Parties are unable to reach agreement during such ten (10) day period, they will promptly thereafter jointly engage the Independent Accountant and cause the Independent Accountant to promptly review the disputed items or amounts for the purpose of calculating the proposed Allocation. The Parties will cause the Independent Accountant to deliver to the Parties, as promptly as practicable, a report setting forth such calculation. Such report will be final, conclusive and binding upon the Parties and will be treated as the final Allocation. The cost of such review and report will be borne equally by Purchaser and Seller. The final Allocation and any amendments thereto shall be conclusive and binding upon Purchaser and Seller and their Affiliates for all purposes, and the Parties agree that all Tax Returns (including but not limited to IRS Form 8594) and reports and all financial statements related to Taxes shall be prepared in a manner consistent with, and the Parties shall not otherwise take any position inconsistent with, the Allocation unless required by the Internal Revenue Service or any other applicable Taxing Authority.

2.5 Transfer Taxes. All Transfer Taxes imposed or levied by reason of, in connection with or attributable to this Agreement and the transactions contemplated by this Agreement shall be borne solely by Purchaser. The Party required by Applicable Law to file any Tax Returns and documentation related to Transfer Taxes shall file such Tax Returns and documentation, and Purchaser shall reimburse Seller, as applicable, if Seller is the filing party, within twenty (20) days of receipt of reasonably satisfactory evidence of the amount of such Transfer Taxes paid by Seller. Purchaser and Seller shall use commercially reasonable efforts to minimize any Transfer Taxes payable in connection with the purchase and sale of the Transferred Assets.

2.6 Tax Withholding and Information. Purchaser shall be entitled to deduct and withhold from any amounts otherwise payable pursuant to this Agreement such amount as Purchaser is required to deduct and withhold with respect to such payment under Applicable Law. To the extent that amounts are so withheld and remitted to the appropriate Taxing Authority, such withheld amounts shall be treated for all purposes of this Agreement as having been paid to the relevant Person in respect of which such deduction and withholding was made. Purchaser is not currently aware of any requirement to withhold on any amounts payable pursuant to this Agreement, and if Purchaser becomes aware of any such withholding requirement it shall provide notice to Seller. In such circumstances, Seller and its Affiliates shall cooperate reasonably with Purchaser, including by furnishing such documentation as Purchaser reasonably requests, to secure application of the most favorable rate of Tax, charge or fee available to Purchaser (or exemption from such Tax, charge or fee, as applicable) under Applicable Laws, including any relevant Tax treaty or other statutory or regulatory provision. Purchaser shall promptly provide Seller with certificates or other documentation evidencing the payment of any such withholding Taxes, charges or fees.

2.7 Transfer of Transferred Assets and Assumed Liabilities.

(a) The Transferred Assets shall be sold, conveyed, transferred, assigned and delivered, and the Assumed Liabilities shall be assumed, pursuant to transfer and assumption agreements and such other instruments in such form as may be necessary or appropriate to effect a conveyance of the Transferred Assets and an assumption of the Assumed Liabilities in the jurisdictions

in which such transfers are to be made. Such transfer and assumption agreements shall be jointly prepared by Purchaser and Seller and shall include the IP Assignment and the Assignment and Bill of Sale, which shall be executed no later than at or as of the Closing by Seller and Purchaser and/or one or more of their respective Affiliates, as appropriate.

(b) From time to time following the Closing, Seller and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquittances and such other instruments, and shall take such further actions, as may be necessary to fully and effectively transfer, assign and convey to Purchaser and its Affiliates, as applicable, the Transferred Assets, free and clear of all Liens, other than Permitted Liens, and to fully and effectively transfer, assign and convey to Purchaser and its Affiliates, as applicable, the Assumed Liabilities, and to otherwise make effective the transactions contemplated hereby. Purchaser shall promptly, upon discovery of any asset or Liability not contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, notify Seller of any such asset or Liability in Purchaser's possession or control and transfer and deliver back to Seller such asset or Liability, which asset or Liability was transferred and/or delivered to Purchaser or any of its Affiliates at Closing, and Seller shall transfer and deliver to Purchaser and its Affiliates, as applicable, any asset or Liability contemplated by this Agreement to be a Transferred Asset or an Assumed Liability, respectively, which was not transferred and/or delivered to Purchaser or any of its Affiliates at Closing.

2.8 Misplaced Assets. If after the Closing, Purchaser in good faith identifies in writing to Seller any asset of Seller properly transferable as a Transferred Asset (except for the Excluded Assets expressly contemplated in **Sections 2.1(c)(i) through 2.1(c)(xii)**) that was not included in the Transferred Assets transferred at the Closing, then Seller will, as promptly as practicable after written notice by Purchaser, deliver or cause to be delivered, to Purchaser or one of its Affiliates, as applicable, all right, title and interest of Seller in and to such Transferred Asset (without any additional consideration payable by Purchaser), free and clear of all Liens, other than Permitted Liens, effective as of the date of transfer, conveyance, assignment or delivery. If within thirty (30) days after the Closing, Seller specifically identifies in writing to Purchaser an Excluded Asset that was transferred, conveyed, assigned or delivered inadvertently by Seller pursuant to this Agreement or the Ancillary Agreements, then Purchaser will as promptly as practicable after written notice by Seller, transfer, convey, assign and deliver back, or cause to be transferred, conveyed, assigned and delivered back, to Seller all such transferred right, title and interest of Purchaser and its Affiliates in and to such Excluded Asset that is transferable. In the event that Seller receives any payment related to any Transferred Asset after the Closing, Seller agrees to promptly remit (or cause to be promptly remitted) such funds to Purchaser. In the event that Purchaser or any Affiliate of Purchaser receives any payment related to any Excluded Asset after the Closing, Purchaser agrees to promptly remit (or cause to be promptly remitted) such funds to Seller.

2.9 Expenses. Except as expressly set forth in this Agreement, each Party shall be solely responsible for its own costs and expenses (including those of its Representatives) incurred in connection with the negotiation and execution of this Agreement and the consummation of the Transactions.

2.10 Further Assurances; Assistance.

(a) From and after the Closing, Seller shall execute such documents and instruments, provide such information, cooperation, assistance and otherwise take such steps as Purchaser may reasonably require, at Purchaser's sole cost and expense (other than as otherwise explicitly provided herein), to fulfill the provisions of and to give Purchaser the full benefit of this Agreement, including the execution and delivery of documents and instruments evidencing the transfer or assignment to Purchaser, free and clear of all Liens, other than Permitted Liens, of specific Transferred Assets, enabling the perfection of Purchaser's ownership of the Transferred Assets and the registration,

recordation and prosecution of the Transferred IPR and any other matters relating to the use of the Transferred Assets.

ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

Seller hereby represents and warrants to Purchaser, subject to such exceptions as are specifically disclosed in the disclosure schedule (which disclosure schedule shall delineate the section or subsection to which disclosure items apply, it being understood that any information set forth in one section or subsection of the disclosure schedule shall be deemed to apply to and qualify any other section or subsection of this Agreement to the extent that it is reasonably clear on its face from a reading of the disclosure item that such information is relevant to such other section or subsection) supplied by Seller to Purchaser (the “**Disclosure Schedule**”), as of the date hereof and as of the Closing Date (as though made on the Closing Date, except where a representation or warranty is expressly limited to the date of this Agreement or the Closing Date), as follows:

3.1 Organization and Standing. Seller is a corporation duly organized and validly existing and in good standing under the laws of the State of Delaware. Seller has the requisite corporate power and authority to conduct its business as it is presently being conducted, and to own or lease, as applicable, the Transferred Assets.

3.2 Subsidiaries. **Section 3.2 of the Disclosure Schedule** lists each corporation, limited liability company, partnership, association, joint venture or other business entity in which Seller owns, or has owned, any shares of capital stock or holds, or has held, any interest, or which Seller otherwise controls, or has controlled, directly or indirectly, and lists each Subsidiary of Seller. Each such Subsidiary of Seller is a corporation or other business entity duly organized, validly existing and in good standing (to the extent such concept is applicable) under the laws of the jurisdiction of its incorporation or organization. Each such Subsidiary of Seller has the power to own its properties and to carry on its business as currently conducted.

3.3 Authorization of Transactions. Seller has all requisite power and authority to enter into this Agreement, and each of Seller and each of its Subsidiaries has all requisite power and authority to enter into the Related Agreements to which Seller or such Subsidiary, as applicable, is a party and, subject to entry of the Sale Order, to consummate the Transactions. The execution, delivery and performance by Seller of this Agreement, and by each of Seller and each of its Subsidiaries of the Related Agreements, to which Seller or such Subsidiary, as applicable, is a party, and, subject to entry of the Sale Order, the consummation of the Transactions has been duly authorized by all necessary action on the part of Seller and such Subsidiaries. Subject to entry of the Sale Order, no further actions will be required on the part of Seller or any stockholders of Seller for Seller to perform all of its obligations under this Agreement or any Related Agreement to which Seller is a party or to consummate the Transactions, and no further actions will be required on the part of any Subsidiary of Seller, or any stockholders of such Subsidiary, for such Subsidiary to perform all of its obligations under any Related Agreement to which such Subsidiary is a party or to consummate the Transactions. This Agreement and, as of the Closing Date, each Related Agreement to which Seller or any of its Subsidiaries is a party have been duly executed and delivered by Seller or such Subsidiary, as applicable, and, when executed and delivered by the other parties thereto and subject to entry of the Sale Order, will constitute the valid and binding obligation of Seller or such Subsidiary, as applicable, enforceable in accordance with its terms, except as such enforceability may be subject to Applicable Law relating to bankruptcy, insolvency and the relief of debtors and Applicable Law governing specific performance, injunctive relief or other equitable remedies (collectively, the “**Enforceability Limitations**”).

3.4 Noncontravention.

(a) Neither the execution, delivery and performance by Seller of this Agreement or by Seller or any of its Subsidiaries of any Related Agreement to which Seller or such Subsidiary, as applicable, is a party, nor the consummation of the Transactions, does or will conflict with or result in any violation of, or default under (with or without notice or lapse of time, or both), or give rise to a right of termination, cancellation, modification or acceleration of any obligation or loss of any benefit under any Transferred Asset in connection with (i) any provision of the certificate of incorporation or bylaws of Seller or the organizational documents of any of its Subsidiaries, (ii) any Designated Contract, (iii) any material authorization by any Governmental Entity that is held by Seller or any of its Subsidiaries or (iv) any Applicable Law or Order applicable to Seller or any of its Subsidiaries, or any of Seller's or any of its Subsidiaries' properties or assets (including the Transferred Assets).

(b) Other than the Sale Order and the CFIUS Clearance, no Consent of or notice to any Governmental Entity or any third party is required by, or with respect to, Seller or any of its Subsidiaries in connection with the execution, delivery and performance by Seller of this Agreement or the execution, delivery and performance by Seller or any of its Subsidiaries of any of the Related Agreements to which Seller or such Subsidiary, as applicable, is a party, or the consummation of the Transactions.

3.5 Title to and Condition of Transferred Assets. Seller or one of its Subsidiaries is the sole and exclusive owner of, and has good, exclusive and transferable title to, all of the Transferred Assets, and, subject to entry of the Sale Order, has the power to sell the Transferred Assets, in each case, free and clear of all Liens, other than Permitted Liens. No Transferred Asset (i) is subject to any Action or outstanding Order that restricts in any manner the use or transfer thereof or that may materially affect the validity, use or enforceability thereof or any rights or remedies relating thereto or (ii) is owned or held, in whole or in any part, by any Person other than Seller or one of its Subsidiaries. At the Closing, Purchaser will obtain good and valid title to the Transferred Assets, free and clear of all Liens, other than Permitted Liens (subject to the entry of the Sale Order), without incurring any penalty or other adverse consequence, including any increase in royalties, or license or other fees imposed as a result of, or arising from, the consummation of the Transactions. All tangible assets and properties that are part of the Transferred Assets are in good operating condition and repair and are usable in the ordinary course of business.

3.6 Sufficiency of Transferred Assets. Except for the Excluded Assets expressly contemplated in **Section 2.1(c)**, the Transferred Assets constitute all of the Technology and other assets owned, used, held for use or leased by Seller in connection with, and necessary for, the operation of the Business as currently conducted.

3.7 Financial Statements; Absence of Certain Changes or Events. Each of the consolidated financial statements of Seller for the fiscal year ended December 31, 2015 and the interim period ended September 30, 2016, as provided to Purchaser, have been prepared in all material respects in accordance with U.S. GAAP applied on a consistent basis throughout the period indicated, and each fairly presents, in all material respects, the consolidated financial position, results of operations and cash flows of Seller as at the respective dates and for the respective periods indicated therein (subject to normal and recurring year-end adjustments, none of which is material, individually or in the aggregate, to Seller). Since September 30, 2016, Seller has used commercially reasonable efforts to preserve, and to cause its Subsidiaries to preserve, the Transferred Assets and (other than resulting from the commencement of the Bankruptcy Case) there has or have not been, occurred or arisen:

(a) any event or condition of any character that has had or would reasonably be expected to have a Material Adverse Effect;

(b) any material loss, damage or destruction to any of the material Transferred Assets (or any property, asset or right that would have constituted a material Transferred Asset);

(c) any amendment, cancellation or termination (other than in accordance with the terms thereof) of any Designated Contract or permit material to the Transferred Assets;

(d) any failure to pay any material obligations or notification of material breach with respect to any Designated Contract except those resulting from commencement of the Bankruptcy Case and those contested in good faith;

(e) any Lien against any of the Transferred Assets; and

(f) any agreement or commitment to do any of the foregoing.

3.8 Material Contracts.

(a) **Section 3.8 of the Disclosure Schedule** lists (referencing the applicable subsection of **Section 3.8(b)**) all of the Material Contracts to which Seller or any of its Subsidiaries is a party or is bound as of the date of this Agreement.

(b) “**Material Contracts**” shall mean Contracts:

(i) containing covenants limiting the freedom of Seller or any officer, director or Affiliate of Seller, to engage in any line of business or compete with any Person;

(ii) containing nonsolicitation, no hire or similar provisions that prevent Seller or any of its Subsidiaries from soliciting, hiring, engaging, retaining or employing any other Person’s current or former employees, in a manner that individually or in the aggregate is material to Seller and its Subsidiaries, taken as a whole;

(iii) providing for the sale, transfer or license of, or covenant not to sue under, Intellectual Property Rights by or from Seller (excluding any licenses to commercially available off-the-shelf Software and non-disclosure agreements (regardless of whether in the ordinary course of business), agreements with employees (regardless of whether in the ordinary course of business) and independent contractors and non-exclusive licenses granted by Seller, each in the ordinary course of business);

(iv) containing provisions of most favored nations, exclusivity or rights of first refusal or negotiation;

(v) relating to Indebtedness of Seller or any of its Subsidiaries; and

(vi) that Seller believes in good faith to be material to the Business.

(c) True, correct and complete copies of all of the Material Contracts that are written, or written summaries of oral Material Contracts, including all amendments and supplements thereto, have been made available by Seller. To the Knowledge of Seller, each of the Designated Contracts is valid, binding and enforceable in accordance with its terms except as enforcement may be subject to the Enforceability Limitations. Neither Seller nor any of its Subsidiaries is in breach of, or default under, any Designated Contract, except for such breaches or defaults that would not have a

Material Adverse Effect or relating to the commencement of the Bankruptcy Case, and no notice, whether written or oral, of any claim of breach or default has been given to Seller or any of its Subsidiaries thereunder. To the Knowledge of Seller, as of the date of this Agreement, no party to any Designated Contract has provided written notice to Seller stating its intention to terminate or amend the terms thereof or to refuse to renew any such Designated Contract upon expiration of its term.

(d) **Section 3.8(d) of the Disclosure Schedule** sets forth a true and complete schedule of all Cure Costs related to each Designated Contract.

3.9 Intellectual Property.

(a) Seller or one of its Subsidiaries has good and valid title to all of the Transferred IP, free and clear of all Liens (other than Permitted Liens) and exclusive licenses. Seller or one of its Subsidiaries exclusively owns and, subject to entry of the Sale Order, has a valid right to assign to Purchaser all right, title and interest in and to the Transferred IP and to transfer and deliver to Purchaser the Transferred Technology. The Transferred Technology, together with any Technology that is an Excluded Asset, and any Technology licensed to Seller by a third party pursuant to any Contract other than a Designated Contract, constitutes all of the Technology necessary for Seller and its Subsidiaries to operate the Business in all material respects as currently conducted and as proposed to be conducted, provided that the foregoing is not a representation of non-infringement of Intellectual Property Rights, which is addressed exclusively in **Section 3.9(c)**, and further provided that the conduct of the business as proposed to be conducted will require the development, acquisition, and/or licensing of additional Technology.

(b) **Section 3.9(b) of the Disclosure Schedule** lists all Business Products by name and version number.

(c) The operation of the Business by Seller and its Subsidiaries does not, as of the Closing, infringe, violate or constitute a misappropriation of any Intellectual Property Rights of any Person, or constitute contributory infringement, inducement of infringement or unfair competition or trade practices under the Applicable Laws of any jurisdiction; provided that the foregoing representation shall be made to Seller's Knowledge with respect to patents. Neither Seller nor any of its Affiliates have received any written notice or communication within the three (3)-year period prior to the date hereof from any Person constituting an invitation or offer to license, or otherwise claiming that the operation of the Business or the Exploitation of the Business Products infringes upon, violates or constitutes a misappropriation of any Intellectual Property Rights of any Person. To Seller's Knowledge, no Transferred IPR is being infringed, misappropriated or otherwise violated by any Person.

(d) **Section 3.9(d) of the Disclosure Schedule** sets forth a true and complete list of (i) all Registered IPR included in the Transferred IPR ("**Transferred Registered IPR**"), indicating for each the registration or application number, filing jurisdiction, date of issue or filing, and current registrant or applicant, (ii) any actions that must be taken by Seller or any of its Subsidiaries within thirty (30) days following the date hereof with respect to any of the foregoing with respect to office actions, maintenance fees or renewal fees therefor and (iii) any actions before any court or tribunal to which Seller or any of its Subsidiaries is currently a party relating to any of the Transferred Registered IPR. With respect to each item of Transferred Registered IPR, (i) Seller does not have any Knowledge that such Transferred Intellectual Property is invalid or unenforceable, and (ii) all registration, maintenance and renewal fees currently due in connection with such Transferred Registered IPR have been paid and all documents, recordations and certificates in connection with such Transferred Registered IPR currently required to be filed have been filed with the relevant patent, copyright,

trademark or other authorities in the United States or foreign jurisdictions, as the case may be, for the purposes of prosecuting, maintaining and perfecting such Transferred Registered IPR and recording Seller's and its Subsidiaries' ownership interests therein.

(e) Neither Seller nor any other Person acting on its behalf has disclosed, delivered or licensed to any Person, agreed to disclose, deliver or license to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any source code for any Business Product Software except for disclosures to Employees, contractors or consultants under binding written agreements that prohibit use or disclosure thereof except in the performance of services to or for the benefit of Seller. No third party is currently in possession of such source code.

(f) **Section 3.9(f) of the Disclosure Schedule** lists all Business Product Software that is distributed as Open Source Software. None of Seller nor any party acting on behalf of Seller or any of its Subsidiaries has used Open Source Software in any manner that would, with respect to any Business Product Software or portion thereof, and excluding in each case the underlying Open Source Software, (i) require disclosure, reverse-engineering, publication or distribution of such Business Product Software in source code form, (ii) require the licensing thereof for the purpose of making derivative works or (iii) impose any restriction on the consideration to be charged for the distribution thereof. Seller and its Subsidiaries are in material compliance with all applicable licenses with respect to any such Open Source Software.

(g) No funding, facilities or resources of any Governmental Entity, inter-governmental organization, university, college, other educational institution or research center was used in the development of the Transferred IP in a manner that has resulted in any such Person having any claim of interest, ownership or license, or right to obtain ownership or license, to any such Transferred IP. **Section 3.9(g) of the Disclosure Schedule** lists all Contracts to which Seller or any of its Subsidiaries is a party and under which Seller or any of its Subsidiaries has any obligations to grant or offer licenses under the Transferred IPR to any industry standards body, standards setting organization or similar organization, or other members thereof.

(h) Neither the execution and delivery or performance of this Agreement, the Ancillary Agreements, nor the assignment of the Designated Contracts, nor the Transactions will, with or without notice or lapse of time, cause (i) a loss or impairment of any Transferred IP; (ii) any encumbrance on any Transferred IP; (iii) a payment or increased royalty or an obligation to offer any discount or be bound by any "most favored royalty" or "most favored pricing" terms under any Designated Contract; (iv) pursuant to any Contract to which any Seller or any of its Subsidiaries is bound, the grant, assignment or transfer to any other Person of any license or other right or interest in, under, or with respect to, any Transferred IP; (v) pursuant to any Contract to which any Seller or any of its Subsidiaries is bound, Purchaser granting to any third party any right to any Intellectual Property Rights owned by Purchaser, (vi) pursuant to any Contract to which any Seller or any of its Subsidiaries is bound, Purchaser being bound by, or subject to, any non-compete or other restriction on the operation or scope of its businesses, properties or assets, including any restriction on providing services to customers or potential customers in any geographic area during any period time or in any segment of the market or (vii) pursuant to any Contract to which any Seller or any of its Subsidiaries is bound, Purchaser being obligated to pay any royalties or other amounts to any third party.

(i) Seller and its Subsidiaries have taken commercially reasonable steps to maintain, protect and preserve the confidentiality of all confidential information and trade secrets included within the Transferred Assets and of any third party that has provided any such confidential information or trade secrets to Seller and/or its Subsidiaries. To the Knowledge of Seller, (i) there has been no unauthorized disclosure or misappropriation by any Person of any confidential information or trade

secrets used in connection with the Business, (ii) no Employee, independent contractor or agent of Seller or its Subsidiaries has misappropriated any trade secrets of any other Person in the course of performance as an Employee, independent contractor or agent of Seller and its Subsidiaries, and (iii) no Employee, independent contractor or agent of Seller and its Subsidiaries is in default or breach of any term of any employment agreement, nondisclosure agreement, assignment of invention agreement or similar agreement or contract relating in any way to the confidentiality of any Intellectual Property Rights included within the Transferred Assets.

(j) Copies of Seller's current standard form(s) of proprietary information, confidentiality and assignment agreement for Employees (the "**Employee Proprietary Information Agreement**") and Seller's current standard form(s) of consulting agreement containing proprietary information, confidentiality and assignment provisions (the "**Consultant Proprietary Information Agreement**") are attached to **Section 3.9(j) of the Disclosure Schedule**. Each (a) current and former Employee of Seller and (b) current and former consultant of Seller, in each case that has been involved in the creation or development of any Transferred Technology or Transferred IP, has executed an agreement with Seller in substantially similar form as the Employee Proprietary Information Agreement or Consultant Proprietary Information Agreement, as applicable. To the extent that any Transferred IP was created or developed by any stockholder, founder, director or other non-employee of Seller, or a contractor or any other third party, Seller or one of its Subsidiaries has a valid and enforceable written agreement with such person or persons with respect thereto pursuant to which Seller or the applicable Subsidiary of Seller has obtained sole ownership of all its Intellectual Property Rights therein and thereto, free and clear of all Liens (other than Permitted Liens). To Seller's Knowledge, no current or former Employee, consultant or any other third party is in breach of any of the above-referenced agreements.

(k) To the Knowledge of Seller, all Business Products and other items of Transferred Technology (and all parts thereof) are free of any "back door," "time bomb," "Trojan horse," "worm," "drop dead device," "virus" or other Software routines or hardware components (each a "**Contaminant**") or any undocumented hidden command, undocumented hidden code, undocumented instructions key or any other code or instruction that may be used to access, modify, delete, damage or disable such Software without the authorization of the end user (each a "**Disabling Code**") that materially and adversely affects the use, functionality or performance of such Software or Business Product and/or permits unauthorized access or the unauthorized disablement or erasure of such Transferred Technology (or all parts thereof) or data other than those discovered and corrected in the normal course of Seller's Software maintenance procedures, and Seller and its Subsidiaries have used reasonable efforts to prevent the introduction of Disabling Code into Business Products. Seller has disclosed in writing to Purchaser all information relating to any problem or issue which does, or may reasonably be expected to, adversely affect the value, functionality or fitness for the intended purpose of such Business Products in any material respect. Without limiting the foregoing, there are no warranty or indemnification claims asserted against Seller or its Subsidiaries related to the Business Products which remain unresolved as of the date of this Agreement and which would reasonably be expected to cause a Material Adverse Effect.

(l) All Software, systems, servers, computers, hardware, firmware, middleware, networks, data communications lines, routers, hubs, switches and other information technology equipment used in the operation of the Business (collectively, the "**Transferred IT Assets**") operate and perform in all material respects as required in connection with the operation of the businesses. The Transferred IT Assets have not materially malfunctioned or failed within the past three (3) years and, to the Knowledge of Seller, do not contain any Contaminants, Disabling Code or other Software routines or hardware components that (i) significantly disrupt or adversely affect the functionality of any Business IT Assets or other software or systems, or (ii) enable or assist any Person to access without

authorization any Transferred IT Assets. Seller has taken commercially reasonable steps to provide for the archival, back-up, recovery and restoration of the Transferred IT Assets, and has taken reasonable steps in accordance with industry standards to secure the Transferred IT Assets from unauthorized access, disclosure or use by any Person. No unauthorized access to any Transferred IT Assets has occurred.

(m) Seller and each of its Affiliates (i) are, to their Knowledge, in compliance in all material respects with all Applicable Laws pertaining to privacy and personally identifiable information (including name, address, telephone number, electronic mail address, social security number, bank account number or credit card number), sensitive personal information and any special categories of personal information regulated thereunder or covered thereby (“**Personal Information**”) of the users of its products and services and (ii) take commercially reasonable steps to protect all such Personal Information maintained on or processed by its systems and licensed Business Products from unauthorized third-party access and acquisition. To the Knowledge of the Seller as of the date of this Agreement, neither Seller nor any of its Affiliates has suffered any material security breach of any of the Transferred IT Assets resulting in any third-party access to, or acquisition of, any information, including but not limited to Personal Information, stored or processed on or by such Business IT Assets. There is not and has not been any written complaint to, or any audit, proceeding, investigation (including any formal or, to the Knowledge of Seller, informal investigation) or claim against, Seller, any of its Affiliates, or any of their respective customers (in the case of customers, to the extent relating to Business Products), by any private party, data protection authority, the Federal Trade Commission, any state attorney general or similar state official or any other Governmental Entity, foreign or domestic, with respect to the collection, use, retention, disclosure, transfer, storage, security, disposal or other processing of Personal Information of the users of their respective products and services.

(n) The versions of Aprisa included in the Transferred Assets (the “**Transferred Versions**”) do not infringe any of Synopsys Inc.’s copyrights that Synopsys, Inc. has asserted in the Synopsys Copyright Litigation. None of the Transferred Versions contain a translation table. All customers of the Business have migrated to one of the Transferred Versions. Seller has modified the Transferred Versions to remove the features of such software accused of patent infringement in the Synopsys Patent Litigation.

3.10 Compliance with Applicable Laws. Each of Seller and each of its Subsidiaries has complied in all material respects (other than non-compliance resulting from commencement of the Bankruptcy Case) with, and has not received any written notices of violation that remain outstanding with respect to, any Applicable Laws or Orders applicable to the Transferred Assets or to Seller’s or any of its Subsidiaries’ ownership or use of any Transferred Assets.

3.11 Taxes. Except (and then to the extent) as would not adversely affect Purchaser’s and its Affiliates’ ownership or operation of the Transferred Assets or employment of the Continuing Employees after the Closing:

(a) Each of Seller and each of its Subsidiaries (i) has timely paid all Taxes it is required to pay (whether or not shown on a Tax Return) and (ii) has timely filed all required Tax Returns and such Tax Returns are true and correct in all material respects.

(b) Each of Seller and each of its Subsidiaries has timely paid or withheld with respect to its employees and other third parties (and timely paid over any withheld amounts to the appropriate Taxing Authority) all United States federal, state, local and non-U.S. income Taxes and social security charges and similar fees, Federal Insurance Contribution Act, Federal Unemployment Tax Act and other Taxes required to be withheld or paid.

(c) There are no Liens for Taxes on any of the Transferred Assets other than Permitted Liens. Seller has no Knowledge of any basis for the assertion of any claim for any Liabilities for unpaid Taxes for which Purchaser or any of its Affiliates could reasonably become liable as a result of the transactions contemplated by this Agreement or that could result in any Lien on any of the Transferred Assets.

(d) Other than as a result of the Bankruptcy Case, neither Seller nor any of its Subsidiaries has been delinquent in the payment of any Tax, nor is there any Tax deficiency outstanding, assessed or proposed against Seller or any of its Subsidiaries, nor has Seller or any of its Subsidiaries executed any outstanding waiver of any statute of limitations on or extension of the period for the assessment or collection of any Tax.

(e) To the Knowledge of Seller, no audit or other examination of any Tax Return of Seller or any of its Subsidiaries is presently in progress, nor has Seller or any of its Subsidiaries been notified in writing of any request for such an audit or other examination.

(f) There is no Contract or plan to which Seller or any of its Subsidiaries is a party, including the provisions of this Agreement, covering any individual, which, individually or collectively, could give rise to the payment of any amount that would not be deductible pursuant to Sections 280G or 404 of the Code. There is no contract, agreement, plan or arrangement to which Seller or any ERISA Affiliate is a party or by which it is bound to compensate any Employee for excise taxes paid pursuant to Section 4999 of the Code.

3.12 Litigation. There is no Action of any nature pending, or to the Knowledge of Seller, threatened, against Seller, any of its Subsidiaries or the Transferred Assets, or with respect to this Agreement, any of the Related Agreements or any of the Transactions. Nothing in this **Section 3.12** relates to privacy, data protection, or data security of personally identifiable information, which are addressed exclusively in **Section 3.9(m)**.

3.13 Employees; Benefits.

(a) As of the date hereof, Seller has made available to Purchaser a true and complete list showing, to the extent permitted by Applicable Law, the name, current annual salary rate and status, whether full or part time, active or inactive, and, if inactive, whether as a result of a leave of absence or a short-term or long-term disability, of each current Employee.

(b) Other than as a result of the Bankruptcy Case, each of Seller and each of its Subsidiaries is in compliance with all Applicable Laws respecting employment, employment practices, terms and conditions of employment, worker classification, tax withholding, prohibited discrimination, equal employment, fair employment practices, meal and rest periods, immigration status, employee safety and health, wages (including overtime wages), compensation and hours of work with respect to the Employees, except as would not result in a material Liability to Purchaser. Except as would not be material to the Business, there are no unfair labor practice complaints pending against the Seller before the National Labor Relations Board or any other Governmental Authority and no charge of discrimination in employment or employment practices, for any reason, including age, gender, race, religion or other legally protected category, which has been asserted or is now pending or threatened before the United States Equal Employment Opportunity Commission, or any other Governmental Entity in any jurisdiction in which the Seller has employed or currently employs any Person in connection with the Business. Except as would not be material to the Business, with respect to Employees, each of Seller and each of its Subsidiaries: (i) has withheld and reported all amounts required by Applicable Law or by agreement to be withheld and reported with respect to wages, salaries

and other payments to Employees, (ii) has adequately accrued for in accordance with GAAP or is not liable for any arrears of wages, salaries, commissions, bonuses, severance pay, Taxes or any other compensation due to or on behalf of Employees or any penalty for failure to comply with any of the foregoing and (iii) is not liable for any payment to any trust or other fund governed by or maintained by or on behalf of any Governmental Entity, with respect to unemployment compensation benefits, social security or other benefits or obligations for Employees (other than routine payments to be made in the normal course of business and consistent with past practice). There are no Actions pending or, to the Knowledge of Seller, threatened or reasonably anticipated against Seller, any of its Subsidiaries or any Employee relating to any Employee or Benefit Plan. To the Knowledge of Seller, neither Seller nor any of its Subsidiaries has Liability with respect to any misclassification of: (A) any Person as an independent contractor rather than as an employee, (B) any employee leased from another employer or (C) any employee currently or formerly classified as exempt from overtime wages, in each case (A)-(C) except as would not result in material Liability to Purchaser.

(c) No strike, labor dispute, slowdown, concerted refusal to work overtime or work stoppage against Seller or any of its Subsidiaries is pending, or to the Knowledge of Seller, threatened. Seller has no Knowledge of any activities or proceedings of any labor union to organize any Employees. Neither Seller nor any of its Subsidiaries is presently, nor has Seller or any of its Subsidiaries been in the past, a party to, or bound by, any collective bargaining agreement or union contract with respect to Employees, and no collective bargaining agreement is being negotiated by Seller or any of its Subsidiaries. In the past three (3) years, neither Seller nor any of its Subsidiaries has taken any action that would constitute a “plant closing” or “mass layoff” within the meaning of the WARN Act or similar state or local law, issued any notification of a plant closing or mass layoff required by the WARN Act or similar state or local law, or incurred any liability or obligation under WARN or any similar state or local law that remains unsatisfied.

(d) To the Knowledge of Seller, Seller and, as applicable, its ERISA Affiliates, are in material compliance with Benefit Plan terms and all Applicable Laws for each Benefit Plan including ERISA and the Code. There has been no prohibited transaction (within the meaning of Section 406 of ERISA or Section 4975 of the Code) with respect to any Benefit Plan.

(e) Neither Seller nor any ERISA Affiliates ever maintained, sponsored, contributed to or can reasonably be expected to have any Liability with respect to (i) any Benefit Plan which is an “employee pension benefit plan,” within the meaning of Section 3(2) of ERISA and which is subject to Part 3 of Subtitle B of Title I of ERISA, Title IV of ERISA or Section 412 of the Code or (ii) any “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA (a “**Multiemployer Plan**”) or (iii) single employer pension plan (within the meaning of Section 4001(a)(15) of ERISA) for which the Seller or any ERISA Affiliate could incur Liability under Section 4063 or 4064 of ERISA (a “**Multiple Employer Plan**”). Neither the Seller nor any of its ERISA Affiliates has incurred any Liability under, arising out of or by operation of Title IV of ERISA (other than Liability for premiums to the Pension Benefit Guaranty Corporation arising in the ordinary course), including any Liability in connection with (i) the termination or reorganization of any employee benefit plan subject to Title IV of ERISA or (ii) the withdrawal from any Multiemployer Plan or Multiple Employer Plan, and no fact or event exists that could give rise to any such Liability.

(f) No Benefit Plan provides, nor has Seller or any ERISA Affiliates promised to provide, post-employment or retiree health, disability or life insurance benefits to any Employee (or the dependent or beneficiary thereof), other than continued health coverage required by COBRA or similar Applicable Law for which the Employee (or the dependent or beneficiary thereof) pays the full cost of coverage.

(g) To the Knowledge of Seller, each International Employee Plan has been established, maintained and administered in compliance in all material respects with its terms and conditions and with the requirements prescribed by all Applicable Laws. Furthermore, no International Employee Plan has unfunded Liabilities that, as of the Closing, will not be offset by insurance or fully accrued.

3.14 Brokers' and Finders' Fees. Neither Seller nor any of its Subsidiaries has incurred, nor will Seller or any of its Subsidiaries incur, directly or indirectly, any Liability for or in connection with brokerage or finders' fees or agents' commissions or any similar charges in connection with this Agreement, the Related Agreements or any Transaction other than such Liabilities that will be borne entirely by Seller or one of its Subsidiaries, as applicable.

3.15 Export Control and Import Laws.

(a) To the Seller's Knowledge, during the past five years, (i) the Seller and each of its Subsidiaries have complied and are in compliance in all material respects with all applicable export and reexport control laws and regulations and associated recordkeeping requirements ("**Export Controls**"), including but not limited to the Export Administration Regulations ("**EAR**") maintained by the U.S. Department of Commerce, trade and economic sanctions maintained by the U.S. Treasury Department's Office of Foreign Assets Control ("**OFAC**"), and the International Traffic in Arms Regulations ("**ITAR**") maintained by the U.S. Department of State and any applicable anti-boycott compliance regulations, (ii) neither the Seller nor any of its Subsidiaries has, to its Knowledge, sold, exported, reexported, transferred, diverted, or otherwise disposed of any products, software, or technology (including products derived from or based on such technology) to any destination, entity, or person prohibited by the Laws or regulations of the United States or any other country, without obtaining prior authorization from the competent Government Entities as required by those laws and regulations, (iii) the Seller and its Subsidiaries are in compliance in all material respects with all applicable U.S. and foreign import laws and regulations and associated recordkeeping requirements ("**Import Restrictions**"), including but not limited to Title 19 of the U.S. Code and Title 19 of the Code of Federal Regulations.

(b) To the Seller's Knowledge, during the past five years, the Seller and its Subsidiaries have complied in all material respects with all terms and conditions of any license issued to the Seller or any of its Subsidiaries by the State Department's Directorate of Defense Trade Controls, the Commerce Department's Bureau of Industry and Security, or OFAC.

(c) To the Seller's Knowledge, during the past five years, the Seller and its Subsidiaries have not released or disclosed controlled technical data or technology to any foreign national whether in the United States or abroad without the authorization required under the Export Controls.

(d) No action, proceeding, writ, injunction, claim, request for information, or subpoena is pending, or to the Seller's Knowledge, threatened, concerning or relating to any export or import activity of the Seller or any Subsidiary that relates to a violation of the Export Controls and Import Restrictions by the Seller or any of its Subsidiaries. No voluntary self-disclosures have been filed by or for the Seller or any of its Subsidiaries with respect to possible violations of Export Controls and Import Restrictions during the past ten years.

3.16 Environmental Laws. (a) The Seller is in material compliance with all applicable Environmental Laws and has obtained and is in compliance with all Environmental Permits necessary for the operation of the Business as currently conducted, (b) there are no written claims pursuant to any

Environmental Law pending or, to the Seller's Knowledge, threatened, against the Seller and (c) the Seller has provided the Purchaser with copies of any and all environmental assessment or audit reports or other similar studies or analyses generated within the last three (3) years and in the Seller's possession that relate to the Transferred Assets.

3.17 Real Property. Seller has a valid leasehold interest in the Leased Premises, subject only to the Permitted Liens. Seller does not own or lease any real property other than the Leased Premises and is not utilizing other real property for the Business as currently conducted. Seller has provided Buyer with a true, complete and correct copy of each Lease relating to Leased Premises, and Seller has not received any written notice of, nor does Seller have any knowledge of, a default thereunder

ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF PURCHASER

Each of Purchaser and Guarantor, as applicable, hereby represents and warrants to Seller:

4.1 Organization and Standing. At Closing, Purchaser will be a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Guarantor is a limited liability company duly organized, validly existing and in good standing under the laws of China. At Closing, Purchaser will have the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as currently conducted. Guarantor has the requisite corporate power and authority to own, lease and operate its assets and properties and to carry on its business as currently conducted.

4.2 Availability of Funds. Purchaser will have sufficient cash or cash-equivalent funds available as of the Closing to permit Purchaser to pay the Aggregate Consideration, pursuant to **Section 2.2.**

4.3 Authorization of Transactions. Each of Purchaser and Guarantor has all requisite power and authority to enter into this Agreement, and Purchaser has all requisite power and authority to enter into the Related Agreements to which Purchaser is a party and, subject to entry of the Sale Order, to consummate the Transactions. The execution, delivery and performance by each of Purchaser and Guarantor of this Agreement and the Related Agreements to which Purchaser is a party and the consummation of the Transactions have been duly authorized by all necessary corporate action on the part of Purchaser and Guarantor. Other than entry of the Sale Order, no further actions will be required on the part of Guarantor, or the stockholders of Guarantor, for Guarantor to perform all of its obligations under this Agreement or to consummate the Transactions to which Guarantor is a party. This Agreement and each Related Agreement to which Purchaser is a party have been duly executed and delivered by Purchaser and Guarantor, as applicable, and, when executed and delivered by the other parties thereto, will constitute the valid and binding obligation of Purchaser and Guarantor, as applicable, enforceable in accordance with its terms, except as such enforceability may be subject to the Enforceability Limitations.

4.4 Noncontravention.

(a) Neither the execution, delivery and performance by Purchaser or Guarantor of this Agreement or by Purchaser of any Related Agreement to which Purchaser is a party, nor the consummation of the Transactions does or will conflict with or result in any violation of, or default under (with or without notice or lapse of time, or both) (i) any provision of the certificate of incorporation or bylaws of Purchaser or the organizational documents of Guarantor, (ii) any material authorization by any Governmental Entity that is held by Purchaser or Guarantor, or (iii) any

Applicable Law or Order applicable to Purchaser or Guarantor, or any of Purchaser's or Guarantor's properties or assets.

(b) No Consent of any Governmental Entity or any third party, other than entry of the Sale Order, is required by, or with respect to, Purchaser or Guarantor in connection with the execution, delivery and performance by Purchaser or Guarantor of this Agreement, or with respect to Purchaser in connection with the execution, delivery and performance by Purchaser of any Related Agreement to which Purchaser is a party, or the consummation of the Transactions.

4.5 Brokers and Finders. Neither Purchaser nor Guarantor has incurred any Liabilities for any brokerage, finder, investment banking or other similar fees, commissions or expenses in connection with the Transactions, except for such fees, commissions and expenses of which will be paid by Purchaser or Guarantor.

ARTICLE 5 INTERIM CONDUCT OF BUSINESS

5.1 Conduct of Business. Except as expressly required or permitted by this Agreement, as set forth in **Schedule 5.1**, or as Purchaser may otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), at all times from the date hereof until the earlier to occur of the Closing and the valid termination of this Agreement in accordance with the terms hereof, Seller shall, subject to the requirements and limitations of the Bankruptcy Code:

- (a) conduct the Business in the ordinary course consistent with past practice;
- (b) use commercially reasonable efforts to preserve and protect the Transferred Assets in good working order and condition, ordinary wear and tear and ordinary course abandonments and lapses excepted;
- (c) use commercially reasonable efforts to preserve in all material respects the Business and the goodwill and relationships with customers, suppliers and others having business dealings with the Business; and
- (d) use commercially reasonable efforts which, for purposes of clarity, shall not require Seller to pay any retention bonus or to provide any benefit outside of the ordinary course of business, monetary or otherwise, to keep available the services of its present officers and the Continuing Employees.

5.2 Restrictions on Business. Except as expressly required or permitted by this Agreement, as set forth in **Schedule 5.2**, or as Purchaser may otherwise consent in writing (which consent shall not be unreasonably withheld, conditioned or delayed), at all times from the date hereof until the earlier to occur of the Closing and the valid termination of this Agreement in accordance with the terms hereof, Seller shall not, and shall ensure that its Subsidiaries do not, take any of the following actions or seek approval of the Bankruptcy Court to:

- (a) sell, lease, abandon, license (other than non-exclusive licenses in the ordinary course of business), transfer or otherwise dispose of any Transferred Assets, or grant or otherwise create or consent to the creation of any Lien (other than Permitted Liens) affecting any Transferred Assets;

(b) (i) enter into any Contract which would have constituted a Material Contract had such Contract been entered into prior to the date of this Agreement or (ii) amend or modify, in any material respect, or terminate any Material Contract;

(c) other than pursuant to any Benefit Plan or Material Contract in effect as of the date of this Agreement, or as required by Applicable Law and other than in the ordinary course of business and consistent with past practice, (i) adopt, establish, enter into, amend or terminate any material Benefit Plan (including any agreement that would be a material Benefit Plan if entered into on the date hereof) (including any underlying agreements), or agree to pay any special bonus or special remuneration to any employee, consultant or independent contractor, except in the ordinary course of business consistent with past practice or (ii) materially increase the compensation or other benefits payable to or to become payable to any employee, consultant or independent contractor;

(d) lapse any Transferred IPR (other than patents expiring at the end of their statutory terms (and not as a result of any act or omission by Seller or any of its Affiliates, including a failure by Seller or any of its Affiliates to pay any required registration or maintenance fees));

(e) settle or compromise any Action related to any Transferred Asset; or

(f) take, or agree in writing or otherwise to take, or propose to take, any of the actions described in **Section 5.2(a)** through **Section 5.2(f)**, inclusive.

ARTICLE 6 COURT APPROVAL

6.1 Buyer Protections.

(a) Seller and Purchaser acknowledge that this Agreement and the sale of the Transferred Assets are subject to Bankruptcy Court approval. Seller and Purchaser acknowledge that (i) to obtain such approval, Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best offer possible for the Transferred Assets, including giving notice of the Transactions contemplated by this Agreement to creditors and other parties as ordered by the Bankruptcy Court, and conducting an auction in respect of the Transferred Assets (the “**Auction**”) and (ii) Purchaser must provide adequate assurance of future performance under the Designated Contracts.

(b) No later than two (2) Business Days after the Petition Date, Seller shall file with the Bankruptcy Court a motion (the “**Bidding Procedures Motion**”) and notices seeking the Bankruptcy Court’s entry of an Order substantially in the same form set forth as **Exhibit C** hereto or in such other form and manner as may be reasonably acceptable to Purchaser (the “**Bidding Procedures Order**”): (i) approving the Bidding Procedures, the Break-Up Fee and the Expense Reimbursement in substantially the same form as those set forth in the form of notice of **Exhibit C-1** hereto (which is incorporated herein by reference); (ii) scheduling the Auction and a hearing to consider the approval of the transactions contemplated herein (the “**Sale Hearing**”) and (iii) approving the form and manner of the notice of the Auction, Sale Motion and Sale Hearing. Seller and Purchaser agree that the provisions of this Agreement, including this Article 6 and **Section 10.3 (Termination Fees)** are reasonable, were material inducements to Purchaser to enter into this Agreement and are designed to achieve the highest or otherwise best offer for the Transferred Assets. To the extent that the Auction is delayed pending payment of the deposit of Purchaser, such delay shall not be considered a breach of this Agreement by Seller.

(c) Seller will use commercially reasonable efforts to cause the Bankruptcy Court to enter the Bidding Procedures Order as soon as practicable after the filing of the Bidding Procedures Motion.

(d) No later than ten (10) days after the Petition Date, Seller shall file with the Bankruptcy Court a motion (the “**Sale Motion**”) and notices, each in form and substance reasonably satisfactory to Purchaser, seeking the Bankruptcy Court’s entry of the Sale Order.

(e) Seller shall serve a copy of the Sale Motion on all known Governmental Entities in the United States that have jurisdiction over the Business with respect to Taxes, as reasonably determined by Seller, and on the attorneys general of all states in which the Transferred Assets are located. Seller shall serve a notice of the Sale Motion on all parties to Contracts and Leases (other than Excluded Assets).

(f) Seller shall use commercially reasonable efforts to provide Purchaser with copies of all motions, applications and supporting papers prepared by or on behalf of Seller (including forms of orders and notices to interested parties) directly relating to the Transferred Assets or this Agreement at least one (1) Business Day, unless the exigencies of time prevent the period from being that long, prior to the filing thereof in the Bankruptcy Case so as to allow Purchaser to provide reasonable comments for incorporation into same; *provided, however* that the Sale Motion (including forms of orders and notices to interested parties) shall be provided to Purchaser at least two (2) days prior to its filing.

(g) Upon the terms and subject to the conditions of this Agreement, each of the Parties shall use commercially reasonable efforts to take, or cause to be taken, all action, and to do, or cause to be done, all things necessary, proper or advisable consistent with Applicable Law to consummate and make effective in the most expeditious manner practicable the Transactions. Without limiting the foregoing, prior to the Closing, Seller shall not voluntarily dismiss the Bankruptcy Case once filed and shall use commercially reasonable efforts to:

(i) commence the Bankruptcy Case within five (5) Business Days following the date of this Agreement;

(ii) file the Bidding Procedures Motion within one (1) Business Day following the Petition Date;

(iii) file the Sale Motion within two (2) Business Days following the Petition Date;

(iv) obtain the Bankruptcy Court’s entry of the Bidding Procedures Order on or prior to twenty (20) Business Days after the Petition Date; and

(v) obtain the Bankruptcy Court’s entry of the Sale Order on or prior to the Outside Date.

(h) Seller agrees to comply (and cause its Representatives to comply) with each of the procedures, terms, conditions and provisions set forth in **Exhibit C** hereto.

ARTICLE 7
ADDITIONAL AGREEMENTS

7.1 Confidentiality of Agreement and Public Announcements.

(a) Except as otherwise provided in this **Section 7.1**, and taking into account the fact that this Agreement and the Related Agreements, and all associated or related exhibits and schedules, will be filed with the Bankruptcy Court and thereby become a matter of public record, the Parties agree that the terms, conditions and existence of this Agreement, the Related Agreements, the Transactions (including any claim or dispute arising out of or related to this Agreement or the Related Agreements, or the interpretation, making, performance, breach or termination thereof) and, after the Closing, all information constituting or concerning the Transferred Assets (which shall be treated as Purchaser's confidential information after the Closing) shall be kept confidential in accordance with the NDA and not used by the other Party for any purpose other than as expressly contemplated by this Agreement or any of the Related Agreements.

(b) Seller shall afford to Purchaser and its Representatives, at Purchaser's expense, access to Seller's accountants, including the financial information (including working papers and data, internal audit reports and "management letters") in the possession of Seller's accountants, in order to assist Purchaser with the preparation of the Allocation and any amendment thereto.

7.2 Employee Matters.

(a) At least ten (10) days prior to the Closing, Purchaser will, or will cause one of its Affiliates to, make a written offer of "at-will" employment to each Designated Employee who is actively employed immediately prior to the Closing, in each case conditioned on and effective as of the Closing. Such "at-will" employment arrangements will be subject to and in compliance with Purchaser's standard human resource policies and procedures. Upon the effective date of the agreements, such employment arrangements shall supersede any prior employment agreements and other arrangements with such employees in effect prior to the Closing.

(b) Seller shall cooperate (using commercially reasonable efforts which, for purposes of clarity, shall not require Seller to pay any retention bonus or to provide any benefit outside of the ordinary course of business, monetary or otherwise) with Purchaser to encourage Designated Employees to accept such offer of employment, to effect any communications with and provide access to such Designated Employees and to take such other actions as may be reasonably necessary to facilitate such employment offer.

(c) Those Designated Employees who accept employment from Purchaser pursuant to the offers of employment made pursuant to **Section 7.2(a)** and who commence employment with Purchaser at the Closing (or such later date as agreed by Purchaser) are referred to herein collectively as "**Continuing Employees**." With respect to each Continuing Employee, the Seller shall provide the Purchaser with electronically generated data extractions from the Seller's HR system, in an agreed format, of such Continuing Employee's job description, employment and job data, job code, current compensation, payroll data, date of hire, current position, biographical information, I-9s, direct deposit information, current W-4 exemptions claimed and other applicable tax data; provided that the Seller shall have no obligations to transfer any information or documents pursuant to this **Section 7.2(c)** to the extent such transfer would be restricted or prohibited by Law.

(d) Seller shall have sole responsibility, as between the Parties, for all accrued but unpaid wages, bonuses and the amount of compensation with respect to the accrued and unused

vacation time that is due and owing to the Continuing Employees as of the Closing, and Purchaser shall have no Liability for any such payments on or after the Closing.

(e) Nothing in this Agreement shall constitute an agreement by Purchaser to assume or be bound by any previous or existing employment agreement or arrangement between Seller and any of its Employees (including under any Benefit Plan) or to prevent the termination of employment of any individual Continuing Employee or any change in the employee benefits provided to any individual Continuing Employee following Closing. Accordingly, each Continuing Employee shall be considered an employee “at-will.”

(f) Purchaser hereby agrees that, for at least one (1) year following the Closing Date, Purchaser will provide (or cause to be provided) to the Continuing Employees cash compensation and employee benefits that are in the aggregate comparable to the cash compensation and employee benefits provided to the Continuing Employees immediately prior to the Closing Date or, if greater, that are equivalent to the cash compensation and employee benefits provided to similarly situated employees of Purchaser and its Affiliates; *provided* that, without limiting the foregoing, the equity-based compensation to be provided to the Continuing Employees may be determined and granted by Purchaser after the Closing. Purchaser further agrees that, from and after the Closing Date, Purchaser will grant (or cause to be granted) to all Continuing Employees credit for any service with Purchaser or its Affiliates earned prior to the Closing Date (a) for eligibility and vesting purposes and (b) for purposes of post-Closing vacation accrual under any benefit plan, program or arrangement established or maintained by Purchaser or its Affiliates (the “**New Plans**”). In addition, Purchaser hereby agrees that Purchaser (x) shall waive or cause to be waived all pre-existing condition exclusion and actively-at-work requirements and similar limitations, eligibility waiting periods and evidence of insurability requirements under any New Plans and (y) shall cause any covered expenses incurred on or before the Closing Date by any Continuing Employee (or dependent or beneficiary thereof) to be taken into account for purposes of satisfying applicable deductible, coinsurance and maximum out-of-pocket provisions after the Closing Date under any New Plan.

(g) The terms and provisions of this **Section 7.2** are for the sole benefit of Seller and Purchaser. Nothing contained herein, expressed or implied, (i) shall be construed to establish, amend, or modify any Benefit Plan, or any other benefit plan, program, agreement or arrangement, (ii) is intended to confer or shall confer upon any current or former employee any right to employment or continued employment, or constitute or create an employment agreement with any Continuing Employee or (iii) is intended to confer or shall confer upon any Person other than the Parties (including employees, retirees or dependents or beneficiaries of employees or retirees and collective bargaining agents or representatives) any right (including any right to any payment) as a third-party beneficiary of this Agreement.

7.3 Tax Matters.

(a) Subject to **Section 7.3(c)**, Seller will be responsible for the preparation and timely filing of all Tax Returns relating to Seller’s operation of the Business or Seller’s use or ownership of the Transferred Assets for the taxable periods (or portions thereof) ending on or prior to the Closing Date. Such Tax Returns shall be prepared consistent with past practices, unless otherwise required by Applicable Law. Seller will be responsible for and will pay when due all Taxes reflected on such Tax Returns.

(b) In the case of any real or personal property Taxes or similar ad valorem Taxes relating or attributable to the Transferred Assets (“**Property Taxes**”) that are reported on a Tax Return covering a period commencing on or before the Closing Date and ending after the Closing Date

(“**Straddle Period Taxes**”), any such Straddle Period Taxes shall be prorated between Purchaser and Seller on a per diem basis. The Party required by Applicable Law to pay any such Straddle Period Taxes (the “**Paying Party**”) shall prepare and timely file the Tax Returns with respect thereto in the time and manner required by Applicable Law and shall timely pay all Taxes reflected on such Tax Returns. To the extent such payment exceeds the obligation of the Paying Party hereunder, the Paying Party shall be entitled to be reimbursed by the other Party (the “**Non-Paying Party**”) for the Non-Paying Party’s share of such Straddle Period Taxes within twenty (20) days of receipt of reasonably satisfactory evidence of the amount of such Straddle Period Taxes. To the extent either Party receives a refund of Taxes previously paid, such refund will be equitably apportioned between the Parties in a manner consistent with the provisions of this **Section 7.3(b)**.

(c) To the extent relevant to the Transferred Assets, Seller shall, and shall cause its Affiliates to (i) provide Purchaser with such assistance as may reasonably be required in connection with the preparation of any Tax Return and the conduct of any audit or other examination by any Taxing Authority or in connection with judicial or administrative proceedings relating to any liability for Taxes (“**Tax Contests**”) and (ii) retain and provide Purchaser with all records or other information that may be relevant to the preparation of any Tax Returns, or the conduct of any Tax Contest.

7.4 Commercially Reasonable Efforts. In addition to the items set forth in **Section 6.1**, on the terms and subject to the conditions set forth in this Agreement, each of Purchaser and Seller shall use its commercially reasonable efforts to take promptly, or cause to be taken promptly, all actions, and to do promptly, or cause to be done promptly, all things necessary, proper or advisable under Applicable Laws to consummate and make effective, as promptly as practicable, the Transactions and the other transactions contemplated by this Agreement and the Related Agreements, including using commercially reasonable efforts to (a) cause the conditions precedent set forth in **Article 8** to be satisfied as soon as practicable after the date hereof; (b) obtain all necessary or appropriate consents, waivers and approvals required in connection with this Agreement and the consummation of the Transactions and the other transactions contemplated by this Agreement and the other Related Agreements and (c) execute, acknowledge and deliver such assignments, transfers, consents, assumptions and other documents and instruments as may reasonably be requested to consummate the Transactions. For purposes of clarity, commercially reasonable efforts shall not require Seller to pay any retention bonus or to provide any benefit outside of the ordinary course of business, monetary or otherwise, to any officer or Employee.

7.5 Regulatory Filings; CFIUS Notification.

(a) Buyer and Seller shall submit or cause to be submitted, (i) promptly after the date of this Agreement (but within 20 business days of such date), a joint draft notice and other appropriate documents to CFIUS within the meaning of 31 C.F.R. §800.401(f) to obtain a CFIUS Clearance, (ii) as soon as possible (after the joint draft notice referenced in clause (i) has been updated per CFIUS’s comments, a formal voluntary notice of the transaction to CFIUS within the meaning of 31 C.F.R. §800.402 to obtain a CFIUS Clearance, and (iii) as soon as possible (and in any event in accordance with pertinent regulatory requirements) any other submissions that are formally requested by CFIUS to be made, or which Purchaser and Seller mutually agree should be made, in each case in connection with this Agreement and the transactions contemplated hereby.

(b) Each of Purchaser, on the one hand, and Seller, on the other hand, shall promptly inform the other, unless prohibited by Applicable Law or by the applicable Governmental Entity, of any communication from any Governmental Entity, including but not limited to CFIUS, regarding any of the transactions contemplated by this Agreement in connection with any filings or investigations with, by or before any Governmental Entity relating to this Agreement or the Transactions, including any proceedings initiated by a private party. In connection with and without limiting the foregoing, to the

extent reasonably practicable and unless prohibited by Applicable Law or by the applicable Governmental Entity, each of Purchaser, on the one hand, and Seller, on the other hand, shall (i) give each other reasonable advance notice of all meetings with any Governmental Entity relating to the Transactions, (ii) give each other an opportunity to participate in each of such meetings, (iii) keep such other Party reasonably apprised with respect to any oral communications with any Governmental Entity regarding the Transactions, (iv) cooperate in the filing of any analyses, presentations, memoranda, briefs, arguments, opinions or other written communications explaining or defending the Transactions, articulating any regulatory or competitive argument and/or responding to requests or objections made by any Governmental Entity, (v) provide each other with a reasonable advance opportunity to review and comment upon, and consider in good faith the views of the other with respect to, all written communications (including any analyses, presentations, memoranda, briefs, arguments and opinions) with a Governmental Entity regarding the Transactions and (vi) provide each other (or counsel of each Party, as appropriate) with copies of all written communications to or from any Governmental Entity relating to the Transactions. Any such disclosures, rights to participate or provisions of information by one Party to the other may be made on a counsel-only basis to the extent required under Applicable Law or as appropriate to protect confidential business information. Each of Purchaser and Seller shall cooperate with one another in good faith to (i) promptly determine whether any filings not contemplated by this **Section 7.5** are required to be or should be made, and whether any other consents, approvals, permits or authorizations not contemplated by this **Section 7.5** are required to be or should be obtained, from any Governmental Entity under any Applicable Law in connection with the Transactions and (ii) promptly make any filings, furnish information required in connection therewith and seek to obtain timely any such consents, permits, authorizations, approvals or waivers that the Parties determine are required to be or should be made or obtained in connection with the Transactions.

(c) Purchaser shall take all steps to mitigate any national security concerns as may be required by CFIUS in connection with, or as a condition of, obtaining CFIUS Clearance. Notwithstanding the foregoing, Purchaser shall not be required to take any steps in connection with, or as a condition of, obtaining CFIUS Clearance that would provide for the holding separate (through the establishment of a trust, proxy or otherwise) of any of the Transferred Assets, or any other step that would have a material adverse effect on the Purchaser's ability to govern or benefit from any of the Transferred Assets or any of its other businesses.

7.6 Access to Information. During the period from the date hereof to the earlier of the Closing or the valid termination of this Agreement in accordance with its terms, Seller shall, and shall cause its Affiliates to, provide to Purchaser and its accountants, counsel and other Representatives, promptly upon reasonable advance notice, information regarding the Transferred Assets that Purchaser may reasonably request (subject to any limitations that are reasonably required to comply with any Applicable Laws or third party confidentiality obligations or preserve any applicable attorney-client privilege; *provided* that Seller shall, and shall cause its Affiliates to, use commercially reasonable efforts to provide such information in a manner that would not reasonably be expected to result in the loss of such privilege); *provided, however*, that Seller's provision of such information does not unreasonably disrupt the normal operations of the Business or Seller, is subject to Seller's reasonable security measures and insurance requirements and does not include the right to perform any "invasive" testing or soil, air or groundwater sampling, including any Phase I or Phase II environmental assessments, without Seller's consent.

7.7 Cure Amounts. Set forth on **Schedule 7.7** is a list as of the date hereof of the costs that pursuant to Bankruptcy Code Section 365(b) will be required to cure any default on the part of Seller under the Designated Contracts, which costs must be delivered to the nondebtor counterparty under the Designated Contracts, or with respect to which adequate assurance of prompt delivery by Seller must be provided as a prerequisite to the assumption of such Designated Contracts under Bankruptcy Code

Section 365(a); (the amount of such costs as approved by the Bankruptcy Court, the “**Cure Costs**”). Appropriate additions and deletions shall be made to **Schedule 7.7**, and the Cure Costs shall be correspondingly amended, to reflect additions and deletions to **Schedule 2.1(a)(i)** made from time to time in accordance with **Section 2.1(b)(i)** and as approved by the Bankruptcy Court. Prior to the Closing, Seller shall cooperate with Purchaser to resolve any disputes with the nondebtor party to any of the Designated Contracts regarding the amount of the Cure Costs. All Cure Costs shall be paid for by Seller.

7.8 Guaranty.

(a) In order to induce Seller to execute and deliver this Agreement, the Guarantor hereby, absolutely, unconditionally and irrevocably, and as a primary obligation (and not as surety only) guarantees (the “**Guaranty**”) the due, punctual and full payment of all amounts required to be paid by Purchaser to Seller under this Agreement and the Related Agreements (the “**Guaranteed Obligations**”). If Purchaser fails or refuses to timely pay any of the Guaranteed Obligations, Guarantor shall promptly pay the Guaranteed Obligations after any such failure or refusal, as applicable.

(b) The Guaranty is a guarantee of payment and financial performance of the Guaranteed Obligations, and not of collection, and Guarantor hereby acknowledges and agrees that this Guaranty is full and unconditional, and no release or extinguishment of Purchaser’s or its assigns’ liabilities (other than in accordance with the terms of this Agreement), whether by decree in any bankruptcy proceeding or otherwise, shall affect the continuing validity and enforceability of the Guaranty. Guarantor hereby waives (i) any right to require Seller, as a condition of payment or financial performance by Guarantor of the Guaranteed Obligations, to proceed against Purchaser or pursue any other remedy whatsoever in the event that Purchaser fails to pay the Guaranteed Obligations, and (ii) to the fullest extent permitted by Applicable Law, any defenses or benefits that may be derived from or afforded by Applicable Law which limit the liability of or exonerate guarantors or sureties (including diligence, presentment, demand of payment, protest and notice, and any requirement that any Person exhaust any right, power or remedy or proceed against Purchaser under this Agreement).

(c) The Guaranty shall continue to be effective, or be automatically reinstated, as the case may be, if at any time payment of the Guaranteed Obligations by Purchaser is rescinded or must otherwise be restored, returned or rejected for any reason. To the fullest extent permitted by law, Guarantor hereby waives all claims of waiver, release, surrender, abstraction or compromise and all set-offs, counterclaims, cross-claims, recoupments or other defenses that it may have against Seller. Notwithstanding anything to the contrary herein, the obligations of Guarantor hereunder are unconditional and irrevocable and will not be discharged by any (i) modification of, or amendment or supplement to, this Agreement except any amendment executed by Purchaser that expressly provides otherwise, (ii) furnishing or acceptance of security or exchange or release of any security by the applicable Parties, (iii) inaction or non-exercise of any right, remedy or power with respect to Purchaser or (iv) change in the structure of Purchaser.

(d) Without limiting Guarantor’s own defenses and rights hereunder, Guarantor reserves all rights, setoffs, counterclaims and other defenses that Purchaser may have to payment of all or any portion of the Guaranteed Obligations.

ARTICLE 8 CLOSING CONDITIONS

8.1 Conditions to Obligations of Each Party. The respective obligations of Purchaser and Seller to consummate the Transactions shall be subject to the satisfaction, at or prior to the Closing Date,

of each of the following conditions, any of which may be waived in writing by Purchaser or Seller, as applicable:

(a) No Laws. No Governmental Entity of competent jurisdiction shall have enacted, issued or promulgated any Applicable Law that is in effect and has the effect of making the Transactions illegal or which has the effect of restraining, prohibiting, enjoining, invalidating or otherwise preventing the consummation of the Transactions.

(b) No Orders. No Governmental Entity of competent jurisdiction shall have enacted, issued or promulgated any Order that is in effect and has the effect of making the Transactions illegal or which has the effect of restraining, prohibiting, enjoining, invalidating or otherwise preventing the consummation of the Transactions

(c) Sale Order. The Sale Order shall have been entered on the docket of the Bankruptcy Court or such other court of competent jurisdiction.

(d) CFIUS. The Parties shall have received notice from CFIUS that (i) CFIUS has concluded that the Transaction is not a covered transaction and not subject to review under Section 721 of the DPA and notified the Parties of that conclusion in writing, (ii) CFIUS has issued a written notification that it has concluded its review (and, if applicable, any investigation) of the joint voluntary notice filed with it pursuant to Section 721 of the DPA in connection with the Transactions and determined that there are no unresolved national security concerns with respect to such Transactions, or (iii) CFIUS has sent a report to the President of the United States requesting the President's decision with respect to the joint voluntary notice and either (x) the President has announced a decision not to take any action to suspend or prohibit the Transactions or (y) the President has not taken any action after 15 days from the date the President received such report from CFIUS.

8.2 Additional Closing Conditions of Purchaser. The obligations of Purchaser to consummate the Transactions shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may only be waived in writing exclusively by Purchaser (except with respect to **Section 8.2(d)**, which shall not be waivable by Purchaser):

(a) Transaction Agreements. Purchaser shall have received duly executed counterparts to this Agreement and all of the Related Agreements to which Seller is a party.

(b) Officer's Certificate. Purchaser shall have received a certificate, validly executed by an officer of Seller, certifying as to (i) the valid adoption of resolutions of the board of directors of Seller unanimously approving and adopting this Agreement, the Related Agreements to which Seller is a party and the Transactions, (ii) the valid adoption of resolutions of the stockholders of Seller whereby the Transactions hereunder were approved and (iii) the incumbency and signatures of the officers of Seller executing this Agreement or any Related Agreement to which Seller is a party and (iv) that the conditions set forth in **Sections 8.2(j), (k) and (l)** below have been satisfied.

(c) Transferred Assets. Seller shall have delivered, or caused to be delivered, to Purchaser the Transferred Assets.

(d) Sale Order. The Sale Order shall have become a Final Order.

(e) FIRPTA Compliance. Seller shall have delivered, or caused to be delivered, to Purchaser, a statement pursuant to Treas. Reg. Section 1.1445-2(b) in a form reasonably acceptable to Purchaser that Seller is not a "foreign person" for purposes of Section 1445 of the Code.

(f) Key Employees. As of the Closing, at least two thirds of the Employees listed on **Schedule 8.2(f)** shall have entered into, and not terminated, “at will” employment arrangements with Purchaser or a Subsidiary thereof to be effective immediately after the Closing pursuant to the execution and delivery by such Employees of offer letters, in a form acceptable to Purchaser (each, an “**Employee Offer Letter**”), and a proprietary information and inventions assignment agreement, in a form acceptable to Purchaser (each, a “**Proprietary Information and Inventions Assignment Agreement**”).

(g) Designated Contracts. The Bankruptcy Court shall have approved and authorized the assumption and assignment of the Designated Contracts listed on **Schedule 8.2(g)**.

(h) Consents. The Consents listed on **Schedule 8.2(h)** shall have been obtained.

(i) Non-Competition Agreements. Each member of the board of directors of Seller that is also an executive of Seller shall have executed and delivered to Purchaser a non-competition agreement in form and substance reasonably acceptable to Purchaser.

(j) Representations and Warranties. The representations and warranties of Seller in this Agreement (other than those that are qualified by materiality) shall be true and correct in all material respects (and any representations and warranties in this Agreement that are qualified by materiality shall be true and correct in all respects) on and as of the Closing Date with the same effect as though made on and as of such date (except to the extent of those representations and warranties which address matters only as of a particular earlier date, which representations shall have been true and correct only as of such particular earlier date), excluding, for purposes of determining the satisfaction of the condition set forth in this **Section 8.2(j)**, any breach of or inaccuracy in any representation or warranty of Seller caused by, relating to or resulting from the commencement of the Bankruptcy Case.

(k) Covenants. Seller shall have performed and complied in all material respects with all covenants, obligations and undertakings required by this Agreement to be performed or complied with by Seller on or prior to the Closing Date, excluding, for purposes of determining the satisfaction of the condition set forth in this **Section 8.2(k)**, any failure of Seller to have performed or complied with any such covenant, obligation or undertaking caused by, relating to or resulting from the commencement of the Bankruptcy Case.

(l) No Material Adverse Effect. There shall not have occurred since the date of this Agreement any change constituting, or which would be reasonably likely to result in, individually or in the aggregate, a Material Adverse Effect.

(m) Governmental Approvals. Purchaser shall have received the approvals of (i) the Department of Reform Committee of the People’s Republic of China, (ii) the Ministry of Commerce of the People’s Republic of China, and (iii) the State Administration of Foreign Exchange of the People’s Republic of China, each as required in connection with the consummation of the Transactions.

8.3 Additional Closing Conditions of Seller. The obligations of Seller to consummate the Transactions shall be subject to the satisfaction at or prior to the Closing of each of the following conditions, any of which may only be waived in writing exclusively by Seller:

(a) Transaction Agreements. Seller shall have received duly executed counterparts to this Agreement and all of the Related Agreements to which Purchaser is a party.

(b) Aggregate Consideration. Seller shall have received from Purchaser the Aggregate Consideration.

(c) Officer's Certificate. Seller shall have received a certificate, validly executed by an officer of Purchaser, certifying as to (i) the valid adoption of resolutions of the board of directors of Purchaser unanimously approving and adopting this Agreement, the Related Agreements to which Purchaser is a party and the Transactions, (ii) the incumbency and signatures of the officers of Purchaser executing this Agreement or any Related Agreement to which Purchaser is a party and (iii) that the conditions set forth in **Sections 8.3(d)** and **(e)** below have been satisfied.

(d) Representations and Warranties. The representations and warranties of Purchaser (other than those that are qualified by materiality) shall be true and correct in all material respects (and any representations and warranties that are qualified by materiality shall be true and correct in all respects) on and as of the Closing Date with the same effect as though made on and as of such date (except to the extent of those representations and warranties which address matters only as of a particular earlier date, which representations shall have been true and correct only as of such particular earlier date).

(e) Covenants. Purchaser shall have performed and complied in all material respects with all covenants, obligations and undertakings required by this Agreement to be performed or complied with by Purchaser on or prior to the Closing Date.

ARTICLE 9

SURVIVAL OF REPRESENTATIONS AND WARRANTIES

9.1 Survival of Representations and Warranties. The representations, warranties and covenants required to be performed at or prior to Closing contained in this Agreement, or in any certificate or other instrument delivered pursuant to this Agreement, shall not survive after the Closing. The post-Closing covenants of Seller shall survive after the Closing in accordance with their terms.

ARTICLE 10

TERMINATION

10.1 Termination. Except as provided in **Section 10.2**, this Agreement may be terminated and the Transactions abandoned at any time prior to the Closing as follows:

(a) by mutual written consent of Purchaser and Seller;

(b) by either Purchaser or Seller, if the Closing shall not have occurred on or before 11:59 p.m. (Pacific time) on the Outside Date; *provided, however*, that the right to terminate this Agreement under this **Section 10.1(b)** shall not be available to any Party whose action or failure to act has been a principal cause of, or resulted in, the failure of the Transactions to occur on or before such date and such action or failure constitutes a breach of this Agreement;

(c) by either Purchaser or Seller, if:

(i) a Governmental Entity of competent jurisdiction shall have enacted, issued or promulgated any Applicable Law that is in effect and has the permanent effect of making the Transactions illegal or which has the permanent effect of prohibiting or otherwise preventing the consummation of the Transactions; or

(ii) a Governmental Entity of competent jurisdiction shall have issued or granted an Order that is in effect and has the permanent effect of making the Transactions illegal or which has the permanent effect of prohibiting or otherwise preventing the consummation of the Transactions, and such Order has become final and non-appealable;

(d) by Purchaser or Seller, immediately upon the occurrence of any of the following events:

(i) the Bankruptcy Court approves an Alternative Transaction;

(ii) if, following the completion of the Auction, the Purchaser has been designated as having the Backup Bid, the earlier of (A) two (2) Business Days after the closing of the Alternative Transaction or (B) twenty (20) Business Days after the Bankruptcy Court approves an Alternative Transaction;

(iii) an Alternative Transaction is consummated;

(iv) the Bankruptcy Case is dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or

(v) if the Purchaser does not have either the Successful Bid or the Backup Bid;

(e) by Purchaser, upon written notice to Seller:

(i) in the event of a breach by the Seller of any of the representations, warranties, agreements or covenants of the Seller set forth in this Agreement that results in a Material Adverse Effect;

(ii) if the Bankruptcy Case has not been commenced, or the Petition Date has not occurred within five (5) Business Days after the execution of this Agreement;

(iii) if the Bidding Procedures Motion has not been filed within two (2) Business Day following the Petition Date;

(iv) if (a) the Bidding Procedures Order, substantially as set forth herein, has not been entered on or prior to twenty (20) Business Days after the Petition Date, or does not contain approval of a break-up fee or an expense reimbursement, or (b) following the entry of the Bidding Procedures Order, the Bidding Procedures Order shall fail to be in full force and effect or shall have been stayed, reversed, modified or amended regarding the break-up fee or the expense reimbursement or otherwise in any material respect without the prior written consent of the Purchaser and the Seller;

(v) if following the entry of the Bidding Procedures Order (a) the Seller does not hold an Auction as provided in the Bidding Procedures Order (unless the Auction is cancelled because Purchaser is the prevailing bidder), or (b) the Seller fails to comply with the Bidding Procedures in any material respect;

(vi) if a trustee is appointed in the Bankruptcy Case and such trustee rejects the transactions contemplated by this Agreement;

(vii) if the Sale Motion is not filed within two (2) Business Days following the Petition Date;

(viii) if (a) the Sale Order is not entered on or prior to the Outside Date, or (b) following its entry, the Sale Order shall fail to be in full force and effect or shall have been stayed, reversed, revoked, rescinded, vacated, modified or amended in any respect without the prior written consent of the Purchaser and the Seller; or

(ix) if the Seller (a) withdraws, or seeks to withdraw, the Sale Motion, or (b) files a plan that provides for the reorganization or sale of all or any part of the Transferred Assets of the Seller inconsistent with this Agreement or the transactions contemplated hereby.

10.2 Effect of Termination. In the event of the valid termination of this Agreement in accordance with the terms of **Section 10.1**, this Agreement shall thereupon and forthwith become void and of no further force or effect whatsoever, and, subject to **Section 10.3** and **Section 10.4**, there shall be no liability or obligation on the part of Purchaser, Seller or their respective Affiliates or Representatives in connection herewith; *provided, however*, that no such termination shall relieve any Party from liability resulting from fraud or arising out of any willful breach of such Party's representations, warranties, covenants or agreements set forth herein; and *provided, further*, that the provisions of **Section 7.1**, this **Section 10.2**, **Section 10.3**, **Section 10.4** and **Article 11** shall remain in full force and effect and survive any termination of this Agreement under the terms of **Section 10.1**.

10.3 Break-Up Fee. Notwithstanding anything to the contrary in this Agreement, including **Section 10.2**:

(a) In the event that this Agreement is terminated pursuant to **Section 10.1(d)(iii)**, then a break-up fee shall be payable by Seller to Purchaser.

(b) Seller shall pay such break-up fee by wire transfer to an account designated by Purchaser within five (5) Business Days after consummation of an Alternative Transaction.

10.4 Expense Reimbursement

(a) In the event that this Agreement (i) is terminated pursuant to any of **Sections 10.1(b)** (other than where Purchaser's action or failure to act was a principal cause of, or resulted in, the failure of the Transactions to be consummated), **10.1(d)**, **10.1(e)(i)**, **10.1(e)(v)**, **10.1(e)(vi)**, **10.1(e)(viii)** or **10.1(e)(ix)**, then Purchaser shall be entitled to reimbursement of its actual out-of-pocket costs and expenses in connection with Purchaser's due diligence investigation of Seller and the negotiation and execution of this Agreement and the transactions contemplated hereby, in cash in an amount equal to such actual costs and expenses, subject to the cap approved by the Bankruptcy Court.

(b) Purchaser shall submit to Seller, with a copy to the United States Trustee and counsel to the official committee of unsecured creditors, if any, a written request for approval (the "**Approval Request**") with a reasonably detailed summary of the actual out-of-pocket costs and expenses incurred by Purchaser and sought for reimbursement.

(c) Within five (5) Business Days after transmission by electronic mail of an Approval Request, Seller shall pay Purchaser all non-disputed items on the Approval Request up to the cap in the expense reimbursement approved by the Bankruptcy Court. Seller and Purchaser shall resolve any disputes in a commercially reasonable manner.

10.5 Additional Provisions

(a) Purchaser and Seller hereby agree that the Break-Up Fee and Expense Reimbursement: (i) are not penalties, but rather, are reasonable estimates of the damages suffered by Purchaser in the event the Transactions contemplated by this Agreement are not consummated under the circumstances set forth herein, (ii) are a necessary inducement for Purchaser to enter into the Transactions and (iii) as applicable, shall be Purchaser's sole remedy for breach of this Agreement by Seller, if this Agreement is terminated under circumstances where the Break-Up Fee and/or the Expense Reimbursement are payable.

(b) Purchaser and Seller further agree that if neither the Break-Up Fee nor the Expense Reimbursement is payable, then Purchaser is not entitled to any relief for failure of the Transactions to be consummated.

ARTICLE 11
GENERAL

11.1 Notices. Any notice or other communication required or permitted to be delivered to any Party under this Agreement shall be in writing and shall be deemed properly delivered, given and received (a) when delivered in person; (b) when transmitted by facsimile (with written confirmation); (c) on the third (3rd) Business Day following the mailing thereof by certified or registered mail, return receipt requested or (d) when delivered by an express courier (with written confirmation) to the Parties at the following addresses (or to such other address or facsimile number as such Party may have specified in a written notice given to the other Parties):

(a) if to Purchaser or Guarantor, to:

Room 504, 5/F, Block A, Sports International
100 Qianshan Road,
Governmental & Cultural New District
Hefei, Anhui Province, 230000
People's Republic of China
Telephone No.: +86-551-63530092

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

Shearman & Sterling LLP
1460 El Camino Real, 2nd Floor
Menlo Park, CA 94025-4110
Attention: Alan Seem
Telephone No: (650) 838-3753

(b) if to Seller, to:

ATopTech, Inc.
2111 Tasman Drive
Santa Clara, California 95054
Attention: Chief Executive Officer
Telephone No.: (408) 550-2600

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

Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304
Attention: Robert P. Latta and Julia Reigel
Telephone No: (650) 320-4646 and (650) 320-4509

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

Dorsey & Whitney LLP
305 Lytton Avenue
Palo Alto, CA 94301
Attention: Stephen O'Neill and Janet Weiss
Telephone No: (650) 843-2719 and (212) 415-9357

11.2 Interpretation. Unless a clear contrary intention appears: (a) the singular number shall include the plural, and vice versa; (b) reference to any gender includes each other gender; (c) reference to any agreement, document or instrument means such agreement, document or instrument as amended or modified and in effect from time to time in accordance with the terms thereof; (d) "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation"; (e) all references in this Agreement to "Schedules," "Sections" and "Exhibits" are intended to refer to Schedules, Sections and Exhibits to this Agreement, except as otherwise indicated; (f) the table of contents and headings in this Agreement are for convenience of reference only, shall not be deemed to be a part of this Agreement, and shall not be referred to in connection with the construction or interpretation of this Agreement; (g) "or" is used in the inclusive sense of "and/or"; (h) with respect to the determination of any period of time, "from" means "from and including" and "to" means "to but excluding" and (i) "hereunder," "hereof," "hereto," and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article, Section or other provision hereof.

11.3 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. Until and unless each Party has received counterparts hereof signed by the other Parties hereto, this Agreement shall have no effect and no Party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Any signature page delivered electronically or by facsimile (including transmission by Portable Document Format or other fixed image form) shall be binding to the same extent as an original signature page.

11.4 Entire Agreement; Assignment. This Agreement, the exhibits hereto, the Disclosure Schedule and the Related Agreements to which the Parties are party: (a) constitute the entire agreement between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings both written and oral, between the Parties with respect to the subject matter hereof and (b) are not intended to confer upon any other Person any rights or remedies hereunder. Notwithstanding the foregoing, the Parties agree and acknowledge that the NDA survives by its terms. Purchaser shall not assign this Agreement by operation of law or otherwise without the prior written consent of Seller, except that Purchaser may assign its rights and delegate its obligations hereunder to one or more of its Affiliates as long as Purchaser remains ultimately liable for all of Purchaser's obligations hereunder. Seller shall not assign this Agreement by operation of law or otherwise without the prior written consent of Purchaser.

11.5 Severability. If any provision of this Agreement or the application thereof, becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement will continue in full force and effect and the application of such provision to other Persons or circumstances will be interpreted so as reasonably to effect the intent of the Parties. The Parties further agree to replace such void or unenforceable provision of this Agreement with a valid and enforceable provision that will achieve, to the extent possible, the economic, business and other purposes of such void or unenforceable provision.

11.6 Other Remedies. Except as otherwise set forth herein, any and all remedies herein expressly conferred upon a Party will be deemed cumulative with and not exclusive of any other remedy conferred hereby upon such Party and the exercise by a Party of any one remedy will not preclude the exercise of any other remedy. Without prejudice to remedies at law, the Parties shall be entitled to specific performance in the event of a breach or threatened breach of this Agreement.

11.7 Governing Law; Exclusive Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware and the Bankruptcy Code, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof. Each of the Parties (a) irrevocably consents to the exclusive jurisdiction and venue of the Bankruptcy Court, or, if the Bankruptcy Court lacks or abstains from exercising jurisdiction, the United States District Court for the District of Delaware, in connection with any matter based upon or arising out of this Agreement or the matters contemplated herein, (b) agrees that process may be served upon them in any manner authorized by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and/or the laws of the State of Delaware, as applicable, for such Persons and (c) waives and covenants not to assert or plead any objection which they might otherwise have to such jurisdiction, venue and such process. Each Party agrees not to commence any legal proceedings related hereto except in such courts. In any Action between the Parties concerning their respective rights and obligations under this Agreement, the prevailing party in such Action shall be entitled to receive a reasonable sum for its attorneys' fees and all other reasonable costs and expenses incurred in such Action.

11.8 Rules of Construction. The Parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document will be construed against the Party drafting such agreement or document.

11.9 Amendment; Waiver. This Agreement may be amended by the Parties hereto at any time by execution of an instrument in writing signed on behalf of the Party against whom enforcement is sought. Purchaser, on the one hand, and Seller, on the other hand, may, to the extent legally allowed, (a) extend the time for the performance of any of the obligations of the other Party hereto and (b) waive compliance with any of the covenants or agreements for the benefit of such Party contained herein. Any agreement on the part of a Party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such Party. No delay or failure by any Party to assert any of its rights or remedies shall constitute a waiver of such rights or remedies.

11.10 No Third Party Beneficiary. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the Parties hereto or their respective successors and assigns any rights, remedies or Liabilities under or by reason of this Agreement.


[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the individuals and entities listed below, in their own capacity or by their duly authorized representatives, have executed this Agreement as of the date first written above.



**FRANK CHANG, for and on behalf of
Purchaser**

**DRAPER ATHENA MANAGEMENT CO.
LTD, as Guarantor**

By: 

Name: Frank Chang

Title: _____

IN WITNESS WHEREOF, the individuals and entities listed below, in their own capacity or by their duly authorized representatives, have executed this Agreement as of the date first written above.

ATOPTECH, INC.


By: 
Name: Jue-Hsien Chern
Title: Chief Executive Officer

Exhibit A

ASSIGNMENT AND BILL OF SALE

THIS ASSIGNMENT AND BILL OF SALE (this “**Assignment and Bill of Sale**”) is entered into as of [____], 2017, by and between [____], a Delaware corporation (“**Purchaser**”), and ATopTech, Inc., a Delaware corporation (“**Seller**”), pursuant to that certain Asset Purchase Agreement, dated as of January 10, 2017 (the “**Purchase Agreement**”), by and between Purchaser and Seller. Capitalized terms used and not defined herein have the respective meanings ascribed to them in the Purchase Agreement.

WHEREAS, upon the terms and subject to the conditions set forth in the Purchase Agreement, Seller has agreed to sell, convey, transfer, assign and deliver to Purchaser, and Purchaser has agreed to acquire from Seller, all of Seller’s right, title and interest in and to the Transferred Assets, and Seller has agreed to assign, and Purchaser has agreed to assume, the Assumed Liabilities.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

1. Transferred Assets. Upon the terms and subject to the conditions set forth in the Purchase Agreement, effective as of the date hereof, Seller hereby sells, conveys, transfers, assigns and delivers to Purchaser, and Purchaser hereby acquires, all of Seller’s right, title and interest in, to and under all of the Transferred Assets.

2. Assumed Liabilities. Upon the terms and subject to the conditions set forth in the Purchase Agreement, effective as of the date hereof, Purchaser hereby assumes, and agrees to pay, perform and discharge when due, the Assumed Liabilities.

3. Subject to Purchase Agreement. This Assignment and Bill of Sale is subject to all of the representations, warranties, covenants, exclusions and indemnities set forth in the Purchase Agreement, all of which are incorporated herein by reference. In the event of a conflict between the terms and conditions of this Assignment and Bill of Sale and the terms and conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall govern, supersede and prevail.

4. Governing Law. This Assignment and Bill of Sale shall be governed by and construed in accordance with the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of conflicts of laws thereof.

5. Counterparts. This Assignment and Bill of Sale may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. Until and unless each party has received counterparts hereof signed by the other parties hereto, this Agreement shall have no effect, and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Any signature page delivered electronically or by facsimile (including transmission by Portable

Document Format or other fixed image form) shall be binding to the same extent as an original signature page.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned parties have executed this Assignment and Bill of Sale as of the date first above written.

[PURCHASER]

By: _____
Name:
Title:

ATOPTECH, INC.

By: _____
Name:
Title:

Exhibit B

MASTER PATENT ASSIGNMENT

THIS MASTER PATENT ASSIGNMENT (this “Patent Assignment”) from ATopTech, Inc., a Delaware corporation (“Assignor”) and [BUYER], a Delaware corporation (“Assignee”), is effective as of [_____], 2017.

WHEREAS, Assignor and Assignee have entered into an Asset Purchase Agreement, dated as of January 10, 2017 (the “Asset Purchase Agreement”), pursuant to which, among other things, Assignor has agreed to assign to Assignee the Assigned Patents (as defined below).

1. Assigned Patents. The term “Assigned Patents” means the issued patents and pending patent applications set forth on Schedule A attached hereto.

2. Assignment. For good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, Assignor hereby assigns, transfers, sells and delivers to Assignee all of Assignor’s right, title and interest in and to the Assigned Patents, including the right to claim priority from any of the Assigned Patents, the right to prosecute and maintain any of the Assigned Patents and the right to sue, claim remedies and recover damages for past, present and future infringement of any of the Assigned Patents.

3. No Warranties. This Patent Assignment provides no warranties of any kind, express or implied, with respect to the Assigned Patents, provided that the foregoing shall not be deemed or interpreted to modify or limit any representations or warranties with respect to the Assigned Patents provided in the Asset Purchase Agreement, if any.

4. Governing Law. This Patent Assignment shall be governed by, and construed in accordance with, the laws of the State of Delaware, regardless of the laws that might otherwise govern under applicable principles of choice or conflicts of law thereof.

5. Precedence. The Asset Purchase Agreement shall take precedence over this Patent Assignment. In the event of any difference, discrepancy or conflict between any term or condition in the Asset Purchase Agreement and any term or condition in this Patent Assignment, the terms and conditions of the Asset Purchase Agreement shall prevail and govern.

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

IN WITNESS WHEREOF, Assignor and Assignee have caused this Patent Assignment to be executed as of the date first written above by their respective officers thereunto duly authorized.

Witness Signature: _____

Witness Name (print): _____

ASSIGNOR:

ATOPTECH, INC.

By: _____

Name: _____

Title: _____

Witness Signature: _____

Witness Name (print): _____

ASSIGNEE:

[BUYER]

By: _____

Name: _____

Title: _____

ACKNOWLEDGMENT

State of California)
) ss:
County of _____)

On this _____ day of _____, before me, the undersigned, personally appeared _____, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed this instrument on behalf of the corporation named herein, and acknowledged that s/he executed it in such representative capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Notary Public

My Commission Expires on _____

SCHEDULE A
ASSIGNED PATENTS

Jurisdiction	Registered Owner	Title	Patent No. (App. No.)
United States	Atoptech, Inc.	In-hierarchy circuit analysis and modification	8,566,765
United States	Atoptech, Inc.	In-hierarchy circuit analysis and modification	8,793,633
United States	Atoptech, Inc.	Statistical optimization in place-and-route	8,806,412
United States	Atoptech, Inc.	Natively color-aware DPT compliant routing	8,935,639
United States	Atoptech, Inc.	In-hierarchy circuit analysis and modification for circuit instances	9,177,090
United States	Atoptech, Inc.	Statistical optimization in place-and-route	9,342,642
United States	Atoptech, Inc.	PASS ECO (Physical-aware Scope-based Signoff Engineering Change Order) Flow Based on Reduced Timing Scope Timer	9,418,192

Exhibit C

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

In re:

ATOPTECH, INC.,

Debtor.¹

Chapter 11

Case No. 17-____(____)

MOTION OF DEBTOR FOR ORDERS (I) AUTHORIZING AND APPROVING (A) BIDDING PROCEDURES, (B) BUYER PROTECTIONS FOR STALKING HORSE, (C) PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) THE FORM AND MANNER OF NOTICE; (II) SCHEDULING THE BID DEADLINE AND AUCTION (III) AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND (IV) GRANTING RELATED RELIEF

The above-captioned debtor and debtor in possession (the “**Debtor**” or the “**Company**”) moves this Court pursuant to sections 105, 363 and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9014 and 9018 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 6004-1 and 9018-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy for the District of Delaware (the “**Local Rules**”), for entry of orders (i) authorizing and approving (a) bidding procedures (as attached hereto as **Exhibit A**, the “**Bidding Procedures**”), (b) buyer protections for stalking horse, including granting administrative expense priority to the Break-Up Fee and Expense Reimbursement (as defined below) to be paid by the Debtor to the Stalking Horse (as defined below), (c) procedures related to the assumption and assignment of certain executory contracts and unexpired leases and (d) the form and manner of service of the above-mentioned relief (the “**Sale Notice Procedures**”); (ii) scheduling the deadline to submit offers to purchase the Acquired Assets (as defined below) and scheduling an auction for such offers; (iii) authorizing and approving (a) the sale of the Debtor’s right, title and interest in the assets used in its business (net of cash, the

¹ The last four digits of the Debtor’s federal tax identification number are 1945. The Debtor’s headquarters and mailing address is 2111 Tasman Drive, Santa Clara, CA 95054.

“**Acquired Assets**”), free and clear of all liens, claims, encumbrances and interests (each as described below), pursuant to section 363 of the Bankruptcy Code and (b) the assumption and assignment of certain contracts of the Debtor and (iv) granting such other and further relief as the Court deems just and proper. In support of this Motion, the Debtor relies on the Declaration of Jue-Hsien Chern in Support of First Day Motions (the “**First Day Declaration**”).

GENERAL BACKGROUND

1. On January __, 2017 (the “**Petition Date**”), the Debtor filed its voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”). The factual background regarding the Debtor, including its business operations, its capital and debt structures, and the events leading up to the filing of the Chapter 11 Case, is set forth in the First Day Declaration, filed contemporaneously herewith.

2. The Debtor continues to manage and operate its business as debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been requested in the Chapter 11 Case, and no committees have been appointed.

3. As set forth in the First Day Declaration, pursuant to this Motion, the Debtor hereby seeks entry of an order approving certain bidding and sale procedures, the sale of its assets to the highest or otherwise best bidder and certain buyer protections for the stalking horse bidder.

JURISDICTION AND VENUE

4. This Court has jurisdiction to consider this Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b)(2), the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012 and Rule 9013-1(f) of the Local Rules.

5. Venue is proper in this district under 28 U.S.C. §§ 1408 and 1409.

6. The statutory basis for the relief requested herein is 11 U.S.C. §§ 105 and 363 and Rules 4001, 6004(h), 7062 and 9014 of the Bankruptcy Rules and Rule 6004-1 of the Local Rules.

PRELIMINARY STATEMENT

7. Founded in April 2003 by a team of industry experts, the Company competes in the physical design segment of the electronic design automation (“**EDA**”) industry, developing technology and manufacturing software solutions for engineers in the physical design of integrated circuits. Since its founding, the Company has achieved steady financial growth, becoming a leader in the EDA field. As set forth more fully in the First Day Declaration, Synopsys² commenced litigation against the Company, asserting claims for copyright infringement, infringement of four patents, breach of a license agreement between the parties and breach of the covenant of good faith and fair dealing. The litigation on these claims has stretched out for more than three years. Through a motion to dismiss, the Company successfully limited the scope and extent of Synopsys’ breach of contract claim, and through summary judgment, limited the scope and extent of Synopsys’ copyright infringement claims. However, in March 2016, after a three-week trial, the jury found in favor of Synopsys on the remaining copyright claim, which alleged that the Company’s P&R engine product, Aprisa, infringed on copyrighted elements contained in one of Synopsys’ products. The jury awarded \$30.4 million to Synopsys.

8. The Synopsys Verdict created a significant challenge to the Company’s ability to continue its operations as a going concern. The Company has taken steps to streamline its operations, including ceasing any investment into its growth. After thoroughly considering the strategic alternatives for the Company, the board of directors decided that pursuing a sale, merger, acquisition and/or related transaction (a “**Transaction**”) was in the best interests of the Company, its creditors and equity holders.

9. In July 2016, the Company retained Cowen and Company (“**Cowen**”) as its investment banker to assist in exploring a potential Transaction. Cowen has engaged in a comprehensive marketing process, among other things, contacting more than one hundred and forty

² Capitalized terms not defined herein have the same meaning as ascribed to them in the First Day Declaration.

(140) potentially interested parties comprised of both strategic and financial buyers, both in the United States and China. Cowen scheduled introductory conferences with more than 50 entities. After the initial conferences, twenty-nine (29) entities expressed continued interest and executed non-disclosure agreements.

10. Cowen continued discussions with these entities and transmitted bid letters and draft asset purchase agreements to 14 entities that continued to express interest, and Cowen established a deadline of October 31, 2016, for interested parties to submit proposals to qualify as a stalking horse bidder. In response, three parties submitted bids, and others expressed interest but indicated that they were not prepared at the time to commit to submitting a bid. The board, in consultation with counsel and Cowen, evaluated the three bids, negotiated revisions to the bids and eventually decided to pursue what it considered to be the highest or otherwise best bid.

11. At the Company's direction, Cowen engaged that bidder in negotiations which culminated in the execution of a letter of intent and the negotiation of substantial terms of an asset purchase agreement. However, after several rounds of negotiations, the board and the Company determined that certain demands made by the proposed bidder were not in the best interests of the Company and decided to cease negotiations and pursue alternatives.

12. Consequently, the Company turned its focus to another interested party which submitted an attractive bid, Draper Athena ("**Draper Athena**"). Again at the Company's direction, Cowen engaged Draper Athena in negotiations over several days, and, after multiple exchanges of drafts, the Company and Draper Athena executed a Letter of Intent on December 2, 2016. Under the Letter of Intent, among other things, Draper Athena required certain conditions to be satisfied including the Debtor requesting the Court to approve, on an expedited basis, certain bidding and sale procedures and break-up fee provisions and the closing of a Transaction to Draper Athena by early March 2017.

13. The Debtor has determined, after considering its alternatives, that maximizing the

value of the Debtor's estate can be best accomplished through a sale (pursuant to a chapter 11 case, free and clear of liabilities) of the Acquired Assets.

THE STALKING HORSE BID

14. On January 10, 2017, after extensive arms'-length, good faith negotiations, the Debtor has executed a definitive asset purchase agreement (the "**Agreement**") setting forth the terms and conditions for the sale to and the purchase of the Acquired Assets (the "**Sale**") by a Delaware corporation to be formed by Draper Athena (the "**Stalking Horse**") pursuant to sections 363 and 365 the Bankruptcy Code, subject to higher or otherwise better bids (the "**Stalking Horse Bid**").³ A copy of the Agreement is attached hereto as **Exhibit C** hereto and incorporated by reference herein.

15. The Debtor and the Stalking Horse also agreed to the bidding procedures for an auction, which include a break-up fee and expense reimbursement in the event a higher or otherwise better bid is consummated.

16. Because the proposed Transaction would permit the business to be sold as a going concern and given the extensive marketing efforts undertaken by Cowen and analysis of the offers received thus far, the Debtor has determined that the Stalking Horse Bid represents the best opportunity for the Debtor to maximize the value of its estate and serve as a basis for conducting an auction to seek higher or otherwise better offers.

17. As described above, the Transaction is subject to competitive bidding as set forth in the Bidding Procedures. Pursuant to the terms of the Agreement, the Stalking Horse has agreed to purchase the Acquired Assets for \$8 million in immediately available funds, less certain adjustments based on deferred revenue, plus the assumption of certain post-petition liabilities as specifically set forth in the Agreement.

³ Frank Chang signed the Agreement for and on behalf of a Delaware corporation to be formed prior to Closing to act as the Purchaser and Draper Athena Management Co. Ltd, a Chinese limited liability company signed in its capacity as a Guarantor of the obligations undertaken by the Stalking Horse in the Agreement.

RELIEF REQUESTED

18. By this Motion, pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008 and 9014, and Local Rules 2002-1, 6004-1 and 9006-1, the Debtor requests entry of the following:

(a) the “**Bidding Procedures Order**” substantially in the form attached hereto as **Exhibit**

B:

- (1) authorizing and approving the Bidding Procedures substantially in the form attached hereto as **Exhibit A** in connection with (1) submitting bids for the Acquired Assets and (2) conducting an auction (the “**Auction**”) of the Acquired Assets, in the event the Debtor receives at least one additional bid for substantially all of the Acquired Assets;
- (2) approving the Break-Up Fee and Expense Reimbursement in accordance with the terms and conditions set forth in the Bidding Procedures;
- (3) scheduling the Auction to be held on ____ __, 2017 at 10:00 a.m. (prevailing Eastern Time) at the offices of **Wilson, Sonsini, Goodrich & Rosati at 1301 Avenue of the Americas, New York, NY 10019**, or at such other place, date and time as may be designated by the Debtor;
- (4) scheduling a hearing (the “**Sale Hearing**”) on _____ __, 2017 to consider approval of the Sale;
- (5) authorizing and approving the proposed notice of the Auction and Sale Hearing, substantially in the form attached hereto as **Exhibit D** (the “**Sale Notice**”);
- (6) authorizing and approving procedures (the “**Cure Procedures**”) to be served on counterparties to the executory contracts (the “**Contracts**”) and unexpired leases (the “**Leases**,” and together with the Contracts, the “**Executory Contracts**”) that will be assumed by the Debtor and assigned to the successful purchaser(s) of the

Acquired Assets, and to resolve any objections thereto;

- (7) authorizing and approving the proposed form of notice to be served on counterparties to Executory Contracts (the “**Cure Procedures Notice Parties**”) and the amount that Debtor has determined is necessary to cure any monetary defaults thereunder (the “**Cure Costs**”), substantially in the form attached hereto as **Exhibit “E”** (the “**Cure Notice**”); and
 - (8) such other relief as determined by the Court.
- (b) an order in the form attached hereto as **Exhibit “F”** (the “**Sale Order**”) authorizing and approving the following:
- (1) the Sale of the Acquired Assets free and clear of all liens, claims, encumbrances and liabilities, except as provided in the agreement with the successful bidder, with such claims to attach to the proceeds of the Sale in the same amount and order of priority as such liens attached to the Acquired Assets;
 - (2) authorizing the Debtor to consummate the Sale and all documents, agreements and contracts executed in conjunction therewith; and
 - (3) granting such other relief as determined by the Court.

PROPOSED BIDDING AND SALE PROCEDURES

The Purchase Agreement

19. A summary of the principal terms of the APA, including terms that are required to be highlighted pursuant to Local Rule 6004-1, is as follows:

Purchaser	Special purpose entity to be formed by Draper Athena. Draper Athena Management Co. Ltd is the guarantor of the of the obligations undertaken by the Stalking Horse in the
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	<p>Agreement.</p> <p>Agreement, Recitals, §§ 2.1, 7.8</p>
Purchase Price	<p>\$8,000,000 less Adjusted Deferred Gross Revenue as defined in the Agreement</p> <p>Agreement, §2.2(a)</p>
Purchased Assets	<p>Substantially all assets of the Debtor</p> <p>Agreement, §2.1</p>
Excluded Assets	<p>Excluded assets include all Contracts not assigned to purchaser, cash and cash equivalents, all assets in trust for purpose of funding Benefit plans,</p> <p>Agreement, §2.1(c)</p>
Assumed Liabilities	<p>All liabilities under the Designated Contracts to the extent arising after the Closing; and any obligations related to the continued use of Intellectual Property Rights after the Closing as determined in a final judgment in connection with the Synopsys Patent Litigation.</p> <p>Agreement, §2.1(d)</p>
Excluded Liabilities	<p>All liabilities of the Debtor arising prior to Closing, all liabilities arising out of any Excluded Asset, all Employment Liabilities, any restructuring fees, all liabilities of Debtor arising from complaints instituted prior to the Closing except any obligations related to the continued use of Intellectual Property Rights after the Closing as determined in a final judgment in connection with the Synopsys Patent Litigation, any taxes of Seller including any Taxes related to the Transferred Assets to the extent attributable to taxable periods (or portions thereof) ending on or prior to the Closing Date.</p> <p>Agreement, § 2.1(e)</p>
Termination	<p>Agreement can be terminated by (i) written mutual consent; (ii) by either Purchaser or Seller, if the Closing shall not have occurred on or before 11:59 p.m. (Pacific time) on the Outside Date (May 31, 2017); (iii) by either Purchaser or Seller if a Government Entity shall have issued a regulation or order which has the effect of preventing the Transaction; (iv) by either the Purchaser or Seller if the Court approves an Alternative Transaction; (v) by Purchaser in the event of a breach of any obligation, warranty or representation by the Seller; (vi) if a trustee is appointed and such trustee rejects the</p>

	Transaction;
Agreements with Management	None
Sale to Insider	None
Releases	Debtor releases, effective as of the Closing Date, all claims against Purchaser, except those obligations arising under the Agreement. Sale Order, Para. 14
Auction to be Conducted	Yes, in the event there are Qualified Bids other than the Stalking Horse Bid Bidding Procedures, Art. VI
Closing and Other Deadlines	Closing must occur on or prior to May 31, 2017 Agreement, § 10.1(b)
Good Faith Deposit	Stalking Horse deposit is in the amount of \$800,000, payable within 10 days of the entry of the Bidding Procedures Order Bidding Procedures, Art. IV, A. 2.
Interim Arrangements with Proposed Purchaser	Not applicable, Debtor to conduct the Business in the ordinary course consistent with past practice Agreement, Sec. 5.1
Use of Proceeds	No restriction on use of sale proceeds
Record Retention	Seller shall have continued use of records for purposes of administering the Bankruptcy Case, including claims against Seller. Agreement, § 2.1 (a)(v).
Sale of Avoidance Actions	Avoidance Actions are not included in the Acquired Assets
Rule 6004(h)	The Sale order provides relief from Bankruptcy Rule 6004(h) Sale Order, Para. 51

20. The Stalking Horse proposes to acquire the Acquired Assets, which are all the assets used by the Debtor in its business, including, without limitation, customer agreements, accounts receivable, foreign subsidiaries and intellectual property, including software code, through the Sale pursuant to section 363 of the Bankruptcy Code. The Stalking Horse acknowledges that its offer to purchase the Acquired Assets on the terms and conditions set forth in the Agreement will be subject to higher or otherwise better bids pursuant to an auction process as authorized by the Bankruptcy Court and conducted in accordance with the Bidding Procedures Order. The Acquired Assets may be sold to one or more higher or otherwise better bidders (such transaction, if consummated by a party other than the Stalking Horse, an “**Alternative Transaction**”) pursuant to the Bidding Procedures Order.

Terms of Sale

21. The Debtor seeks approval of the Sale to the Successful Bidder(s), free and clear of all liens, claims, interests, and encumbrances pursuant to section 363 of the Bankruptcy Code, with all liens, claims, interests, and encumbrances to attach to the proceeds of the Sale (the “**Sale Proceeds**”) with the same validity and priority as they attached to the Acquired Assets prior to the Sale. The Debtor seeks an order of the Court prohibiting all persons holding liens, claims, encumbrances, and other interests, including rights or claims based on any successor or transferee liability, from asserting them against the Purchaser as authorized by section 363(f) of the Bankruptcy Code. The Debtor will submit and present additional evidence, as necessary, at the Sale Hearing demonstrating that the Sale is fair, reasonable, and in the best interest of the Debtor’s estate and all its stakeholders, and satisfies the standards necessary to approve a sale of substantially all of a debtor’s assets articulated by the Court of Appeals for the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986).

The Bid Procedures

22. In accordance with Bankruptcy Rule 6004(f)(1), sales of property outside the ordinary course of business may be by private sale or by auction. The Debtor believes that good cause exists to expose the Purchased Assets to sale at an auction and to approve the procedures proposed herein. An auction conducted substantially in accordance with the Bidding Procedures will enable the Debtor to obtain the highest and best offers for the Purchased Assets, thereby maximizing the value for the estates.

23. The Debtor will permit existing interested parties and any new prospective purchasers to perform reasonable due diligence with respect to the Purchased Assets and will assist them with such efforts. This process will culminate in an Auction before the Sale Hearing, at which time a sale of the Purchased Assets will be submitted to the Court for its approval.

24. Subject to this Court's approval, the Debtor and the Stalking Horse have set forth the Bidding Procedures attached as Exhibit A to govern the process by which the Debtor will solicit and choose Qualified Bidders (as defined in the Bidding Procedures) and conduct an auction of the Acquired Assets. The procedures are set forth in full in Exhibit A attached hereto⁴ and are summarized below. While all interested bidders should read the Bidding Procedures in their entirety, the following describes the salient points of the Bidding Procedures and discloses certain information required pursuant to Local Rule 6004-1:

Provisions Governing Qualifications of Bidders	A Bid must include detailed, written evidence sufficient to the Seller demonstrating that the Potential Bidder has and will continue to have the necessary financial ability to close the Alternate Transaction and comply with section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts to be assumed and assigned in such Alternate Transaction. Such information must include, <i>inter alia</i> , (a) contact names and numbers for verification of financing sources; (b) sufficient information as requested by the Seller and its advisors to allow them to
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⁴ The Bidding Procedures are also attached to the Agreement as Exhibit "C-1".

	<p>determine, in their sole discretion, that such Potential Bidder has the financial wherewithal to consummate a Sale; and (c) the Potential Bidder's current financial statements (audited, if existing) or other similar financial information reasonably acceptable to the Seller.</p> <p>Bidding Procedures, Art. 4. A. 11</p>
Provisions Governing Qualified Bids	<p>Bid must include, <i>inter alia</i>, the following (a) the purchase price for all or substantially all of the Acquired Assets which must be greater than the sum of \$8,000,000 plus the Break-Up Fee and the Expense Reimbursement (the "Auction Baseline Bid"); (b) a deposit equal to 10% of the total cash and non-cash consideration; (c) be on same or better terms than the Stalking Horse Bid; (d) a signed bid by an authorized representative and include an alternative purchase agreement marked against the Agreement; (e) must identify the Designated Contracts and Assumed Liabilities (f) must set forth each regulatory and third party approvals required for consummation of the Alternate Transaction; (g) must not contain representations or warranties more onerous than the Stalking Horse Bid and cannot be contingent on financing or third party approvals.</p> <p>Bidding Procedures Art. IV. A.</p>
Bid Deadline	
Provisions Governing Auction	<p>If one or more Qualified Bids (other than the Stalking Horse Bid) are received, the Debtor will conduct an Auction. The minimum Overbid after and above the Auction Baseline Bid shall be made in increments of \$100,000. The Debtor reserves the right to modify this amount. The Auction shall conclude when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of its Successful Bid.</p> <p>Bidding Procedures, Art. V</p>
Selection of Successful Bid	<p>The Debtor, in consultation with the Consulting Parties, shall have discretion to determine the Prevailing Highest Bid after each Overbid Round and the Successful Bidder following the close of the Auction.</p> <p>Bidding Procedures, Art. VI. E.</p>
Closing with Alternative Back-Up Bidders	<p>If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Bid at the Auction with respect to all or substantially all of the Transferred Assets, as determined by the Seller, will be designated as the backup bidder (the</p>

	<p>“Backup Bidder”). The Backup Bidder shall be The Deposit of the Successful Bidder will be applied to the purchase price at the closing. The Deposits for each Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder will be returned within three (3) business days after the close of the Auction required to keep its last submitted Bid (the “Backup Bid”) open and irrevocable until the earlier of the closing of the transaction with the Successful Bidder or the Outside Date.</p> <p>Bidding Procedures, Art. V</p>
Return of Deposits	<p>The Deposit of the Successful Bidder will be applied to the purchase price at the closing. The Deposits for each Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder will be returned within three (3) business days after the close of the Auction.</p> <p>Bidding Procedures, Art. VI, Section E.</p>

25. The Bidding Procedures seek to provide a fair opportunity for the Debtor and its professionals to solicit and receive bids from Potential Bidders while providing a time frame for the closing of a Transaction consistent with the Debtor’s resources and ability to continue its business operations. In that regard, the Debtor will (i) coordinate the efforts of Potential Bidders (as defined in Exhibit B) in conducting their due diligence investigations; (ii) receive offers from Potential Bidders; (iii) determine whether any person is a Qualified Bidder; and (iv) conduct the Auction and further negotiate any offers made to purchase the Acquired Assets.

26. To become a Qualified Bidder, a Potential Bidder must, among other things, include with its bid a cash deposit equal to ten percent (10%) of the aggregate cash and non-cash consideration of the bid, *provided that* the deposit of the Stalking Horse will be due not later than ten (10) business days after the Court enters the Bidding Procedures Order. The bid shall be on terms that the Debtor believes are substantially the same or better than the Stalking Horse Bid, include substantially all of the assets of the Debtor and have a minimum bid greater than the sum of (i) \$8 million plus (ii) the Expense Reimbursement, plus (iii) the Break-Up Fee (the **“Auction**

Baseline Bid”). A Potential Bidder must also include with its bid, financial and other information sufficient to constitute adequate assurance of future performance of the applicable obligations under any Contracts to be assumed and assigned to it. The Stalking Horse will be deemed to be a Qualified Bidder.

27. In the event there are Qualified Bidders in addition to the Stalking Horse Bid, the Debtor will conduct an auction. Any Overbid for all or substantially all of the Acquired Assets after and above the Auction Baseline Bid shall be made in increments valued at not less than \$100,000 (or such other amount as shall be announced at the Auction) in cash or in cash equivalents.

Procedures for Assumption and Assignment of the Assumed Contracts

28. To facilitate and affect the sale of its assets, the Debtor seeks authorization pursuant to Section 365 of the Bankruptcy Code to assume and assign certain Executory Contracts related to the Acquired Assets, as designated by the Successful Bidder.

29. The Agreement provides that the Debtor will pay, at Closing, the Cure Amounts, as determined by the Court, if necessary, to cure all defaults, including actual or pecuniary losses that have resulted from defaults under the relevant Executory Contracts.

30. The Debtor proposes to file with the Court and serve a Cure Notice on each Cure Procedures Notice Party with respect to each Executory Contract sought to be assumed and assigned, which will set forth the Debtor’s good faith calculations of Cure Costs with respect to each with respect to each Executory Contract listed on such notice. In the event a counterparty needs additional information, the Debtor will reasonably cooperate with the counterparty regarding the Debtor’s calculation of Cure Costs. Counterparties will have an opportunity to object to the proposed assumption and assignment of their Executory Contracts prior to Sale Hearing. The following is a summary of the assumption and assignment procedures.

31. No less than twenty-one days prior to the Bid Deadline, the Debtor will file with this Court and serve on each non-Debtor counterparty to an executory contract or unexpired lease

related to the Assets the Cure Notice, substantially in the form attached to the Bidding Procedures Order. The Cure Notice shall:

- a. state the cure amounts, if any, that the Debtor believes are necessary to assume such contracts or leases pursuant to section 365 of the Bankruptcy Code (the “**Cure Amount**”);
- b. notify the non-Debtor counterparty that such party’s contract(s) or lease(s) may be assumed and assigned to the Successful Bidder of the Assets at the conclusion of the Auction;
- c. state the date of the Sale Hearing and that objections to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by the Debtor; and,
- d. state the Contract Rejection Deadline (as defined below) by which the non-Debtor counterparty shall file an objection to the Cure Amount(s) or to the assumption and assignment of the applicable contract(s) and/or lease(s) (such objection, a “**Contract Objection**”); *provided, however*, that the inclusion of a contract, lease or agreement on the Cure Notice shall not constitute an admission that such contract, lease or agreement is an executory contract or unexpired lease or that it will, in fact, be assumed and assigned in connection with the Sale of the Assets. If no Cure Amount is listed, the Debtor believes that no amount to cure defaults under the respective executory contract or unexpired lease is owed by it thereunder. The Debtor reserves all of its rights, claims and causes of action with respect to the contracts, leases and agreements listed on the Cure Notice.

32. All Contract Objections, if any, must be in writing and filed with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801, and served on the Notice Parties and the Stalking Horse Bidder so as to be received by [INSERT], 2017 at [INSERT] (prevailing Eastern Time) (the “**Contract Objection Deadline**”).

33. Any Contract Objection must state (a) the basis for such objection and (b) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with appropriate documentation in support thereof).

34. Any Contract Objection solely to the Cure Amount(s) shall not prevent or delay the

Debtor's assumption and assignment of assumed and assigned contract(s) or lease(s). If a party objects solely to Cure Amount(s), the Debtor may, with the consent of the relevant Successful Bidder, hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract(s) or lease(s), the Debtor can, without further delay, assume and assign such contract(s) or lease(s) to the Successful Bidder. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

35. If no objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

36. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by a Qualified Bidder other than the Stalking Horse under the applicable executory contract(s) or unexpired lease(s) (an "**Adequate Assurance Objection**" and together with a Contract Objection, an "**Objection**"), then such non-Debtor counterparty shall file a written Adequate Assurance Objection with the Court and serve such objection on the Notice Parties, the Stalking Horse and the applicable Qualified Bidder(s) so that such Adequate Assurance Objection is filed with the Court and received by the Notice Parties, the Stalking Horse and the applicable Qualified Bidder(s) on or before **[INSERT], 2017, at __: __ .m. (prevailing eastern time) (the "Adequate Assurance Objection Deadline")**.

37. To the extent that any non-Debtor counterparty does not timely file and serve a Contract Objection as set forth above, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped and enjoined from asserting any additional Cure Amount(s) under the assumed and assigned executory contract(s) or unexpired lease(s); (iii) barred from objecting to the assumption and assignment of the applicable

assumed and assigned executory contract(s) or unexpired lease(s) to the Successful Bidder, and (iv) barred from objecting to adequate assurance of future performance by the Successful Bidder.

Stalking Horse Protections

38. The Debtor is seeking approval of a Break-Up fee in the amount of \$400,000, which is approximately 5.0% of the purchase price for the Acquired Assets. In addition, the Debtor seeks approval of an Expense Reimbursement to the Stalking Horse in the maximum amount of \$600,000 in the event the Stalking Horse Bid is not approved.

BASIS FOR REQUESTED RELIEF

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

39. In accordance with Bankruptcy Rule 6004, sales of property rights outside the ordinary course of business may be by private sale or public auction. The Debtor has determined that the Sale of the Acquired Assets by public auction will enable the Debtor to obtain the highest or otherwise best offer for the Acquired Assets (thereby maximizing the value of the estate) and is in the best interests of the Debtor and its stakeholders. In particular, the Agreement is the result of comprehensive arms' length negotiations for the Sale of the Acquired Assets, and the Sale, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtor's estate than would be provided by any other existing alternative.

40. Section 363(b)(1) of the Bankruptcy Code provides: "the Trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." Section 105(a) of the Bankruptcy Code provides in relevant part: "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

41. Virtually all courts have held that approval of a proposed sale of the debtor's assets under section 363(b) of the Bankruptcy Code prior to confirmation of a plan of reorganization is

appropriate, if a court finds that the transaction represents a reasonable business judgment on the part of the trustee or debtor-in-possession. *See In re Abbotts Dairies of Pa.*, 788 F.2d 143 (3d Cir. 1986); *In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that court may consider the following non-exclusive list of factors in determining whether there is a sound business purpose for an asset sale: “the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the effect of the proposed disposition of [sic] the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value”); *Titusville Country Club V. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Industrial Valley Refrigeration & Air Conditioning Supplies Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986).

42. The “sound business reason” test requires a trustee or debtor-in-possession to establish four elements: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the trustee or the debtor-in-possession has obtained a fair and reasonable price; and (4) that the terms of the sale have been negotiated in good faith. *In re Titusville Country Club*, 128 B.R. at 399; *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); *Phoenix Steel Corp.*, 82 B.R. at 335-36; *see also Stephens Indus.*, 789 F.2d at 390; *In re Lionel Corp.*, 722 F.2d at 1071.

43. The paramount goal in any proposed sale of estate property is to maximize the proceeds received by the estate. *See, e.g., In re Food Barn Stores, Inc.*, 107 F.3d 558, 564-65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Resources*, 147 B.R. at 659 (“It is a well-established principle of bankruptcy law that the . . . [trustee’s] duty with respect to such sales is to obtain the highest price

or greatest overall benefit possible for the estate.”) (quoting *In re Atlanta Packaging Prods., Inc.*, 99 BR. 124, 130 (Bankr. N.D. Ga. 1988)). As long as the sale appears to enhance a debtor’s estate, court approval of a trustee’s decision to sell should only be withheld if the trustee’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code. *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd.*, 331 B.R. 251, 255 (N.D. Tex. 2005); *In re Lajijani*, 325 B.R. 282, 289 (9th Cir. B.A.P. 2005); *In re WPRV-TV, Inc.*, 143 B.R. 315, 319 (D.P.R. 1991), affirmed in part and reversed in part on other grounds, 983 F.2d 336 (“The trustee has ample discretion to administer the estate, including authority to conduct public or private sales of estate property. Courts have much discretion on whether to approve proposed sales, but the trustee’s business judgment is subject to great judicial deference.”).

44. The Debtor submits that entry into the Agreement is a sound exercise of the Debtor’s business judgment because: (a) the Agreement provides for the sale of the Debtor’s business as a going concern, thereby maximizing the sale value, as compared to liquidating its assets on a piecemeal basis and (b) it allows certain employees to continue employment by the Successful Bidder.

B. Sale of the Acquired Assets Should Be Free and Clear of Liens, Claims, Encumbrances, and Interests

45. Pursuant to section 363(f) of the Bankruptcy Code, the Debtor seeks authority to sell and transfer the Debtor’s right, interest and title in the Acquired Assets to the Successful Bidder (whether the Stalking Horse or another party) free and clear of all liens, claims, encumbrances, and interests, except as set forth in the Agreement, with such liens, claims, encumbrances, and interests, to attach to the proceeds of the sale of the Acquired Assets, subject to any rights and defenses of the Debtor and other parties in interest with respect thereto.

C. The Assumption and Assignment of the Assumed Contracts and the Procedures for Assumption and Assignment Should Be Authorized

46. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “subject

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

47. Because the Debtor's business is being sold as a going-concern, the Successful Bidder will determine which Executory Contracts to be assumed and assigned to it. Therefore, the Debtor's determination regarding assumption is a sound exercise of business judgment, because the Debtor will be complying with the agreement that is maximizing the value of the Acquired Assets. Given that consummation of a Sale of the Acquired Assets is essential to maximize value of the Debtor's estate, assumption of the specified Contracts in compliance with the purchase agreement of the successful bidder constitutes a sound exercise of business judgment.

48. Any sale transaction consummated by the Debtor will be contingent upon the Debtor's compliance with the requirements of section 365 of the Bankruptcy Code, including pursuant to 365(b)(1) of the Bankruptcy Code, curing any outstanding defaults under the Executory Contracts to be assumed or providing adequate assurance that such defaults will be promptly cured. The Debtor's assumption and assignment of the Executory Contracts will be contingent upon payment or reserve of Cure Costs and effective only upon the closing of the Sale.

49. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent). Among other things, adequate assurance may be provided by evidence of the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance satisfied when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding; for leases, the chief determinant of adequate assurance is whether rent will be paid).

50. As discussed in the Bidding Procedures, in order for a Potential Bid to be designated as a Qualified Bid, a Potential Bidder must include with its bid, financial and other information sufficient to constitute adequate assurance of future performance of the applicable obligations under any Contracts to be assumed and assigned to it. Based on the foregoing, the Debtor’s assumption and assignment of the designated Contracts satisfies the requirements under section 365 of the Bankruptcy Code and should be approved.

51. In order to facilitate the assumption and assignment of the designated Executory Contracts, the Debtor requests the Court to hold that all anti-assignment provisions, whether express or implied, are unenforceable and prohibited pursuant to section 365(f) of the Bankruptcy Code.

D. The Bidding Procedures Are Appropriate and Will Maximize the Value Received for the Acquired Assets

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

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

54. The Debtor believes that the Bidding Procedures will establish a test of the value of the Acquired Assets. Such procedures will increase the likelihood that the Debtor's estate will receive the greatest possible consideration for its assets, because the procedures will ensure a fair and competitive bidding process. They also provide for an Auction of the Acquired Assets in an expeditious and efficient manner, which the Debtor believes is essential to maximizing the value of the estate for its stakeholders.

55. The Debtor also believes that the proposed Bidding Procedures will promote active

bidding from interested parties and will dispel any doubt as to the best or otherwise highest offer reasonably available for the Acquired Assets. In particular, the proposed Bidding Procedures will allow the Debtor to conduct an Auction in a controlled, fair, and open manner that will encourage participation by financially capable bidders who demonstrate the ability to close the Sale of the Acquired Assets. Further, the Bidding Procedures provide the Debtor with the opportunity to consider all Qualified Bids and to select, in its reasonable business judgment, and after consultation with its professionals and any official committee, the highest or otherwise best offer(s) for the Acquired Assets. Moreover, the Bidding Procedures provide the Debtor with the flexibility to address unanticipated developments at the Auction, while ensuring that the propriety of the procedures endures.

56. Accordingly, the proposed Bidding Procedures are reasonable, appropriate, and within the Debtor's sound business judgment and should be approved.

E. The Proposed Break-Up Fee Is Reasonable and Appropriate, and Will Maximize Value for Stakeholders by Providing an Incentive for the Stalking Horse to Submit a Binding Offer

57. The Agreement provides for a Break-Up Fee of \$400,000 and a maximum Expense Reimbursement of \$600,000 (the Break-Up Fee and the Expense Reimbursement are referred to herein collectively as the "**Stalking Horse Buyer Protections**").⁵ Although the parties recognize that, as percentage of the purchase price, the Stalking Horse Buyer Protections may be outside of a percentage of a purchase price, under the unique circumstances of this Sale, they nevertheless are reasonable and consistent with the Debtor's business judgment, and should be approved.

58. The Third Circuit Court of Appeals has clarified the standard for determining the appropriateness of bidding incentives in the bankruptcy context. In *Calpine Corp. v. O'Brien Envtl.*

⁵ In the event that the Expense Reimbursement becomes payable, Purchaser is required to send an Approval Request to the Seller with a copy to the UST and any committee counsel with a reasonably detailed summary of the actual out-of-pocket costs and expenses incurred by Purchaser and sought for reimbursement. Seller shall pay all non-disputed items and resolve any disputed items in a commercially reasonable manner. Presumably, the Court would resolve any disputes that could not be settled by the parties.

Energy, Inc. (In re O'Brien Envtl. Energy, Inc.), 181 F.3d 527 (3d Cir. 1999). Specifically, the Third Circuit has held that even though bidding incentives are measured against a business judgment standard in non-bankruptcy transactions, the administrative expense provisions in section 503(b) of the Bankruptcy Code govern post-petition expenditures in bankruptcy cases. Accordingly, to be approved, bidding incentives such as the Break-Up Fee and Expense Reimbursement must provide a benefit to a debtor's estate. *Id.* at 533. Benefits to the debtor's estate may be found where "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited" and where the availability of the break-up fees and expenses "were to induce a bidder to research the value of the debtor and convert that value to a dollar figure on which other bidders can rely . . . increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id.* at 537.

59. The circumstances of this Sale are particularly unique and challenging due to the ongoing Synopsys Litigation, which is directed not only at the Debtor, but at the Acquired Assets themselves. Performing the diligence on a complex multi-year intellectual property litigation like the Synopsys Litigation was an enormous task in its own right. In addition to understanding the historical posture and risks of the Synopsys Litigation, parties interested in purchasing the Acquire Assets, including the Stalking Horse, recognize that given the history of litigation between the Debtor and Synopsys it is foreseeable that there will be ongoing disputes with Synopsys in this Chapter 11 Case, including the potential for disputes regarding the Acquired Assets. As a result, the amount of diligence and potential for ongoing costs go well beyond what could be expected in a typical transaction of this size.⁶

⁶ In order to complete the Transaction, the Stalking Horse will also need to comply with regulations issued by and obtain approval from the Committee on Foreign Investment in the United States ("CFIUS") prior to the hearing date on the Sale Motion. CFIUS is an inter-agency committee under the Treasury Department which is authorized to review transactions that could result in control of a U.S. business by a foreign person in order to determine the effect of such transactions on the national security of the United States. The process involves filing a notice with CFIUS in the

60. Without the benefit of the Stalking Horse Buyer Protections, the Stalking Horse would have been unwilling to commit to proceed with a transaction with the costly and burdensome diligence process and risk present here, given the uncertainty whether it would prevail as the Successful Bidder. The Stalking Horse Buyer Protections, therefore, are a necessary incentive to induce the Stalking Horse into committing to the Sale process and to purchasing the Acquired Assets for a price that the Debtor believes is fair consideration.

61. The Stalking Horse Buyer Protections have a direct and meaningful benefit to the Debtor and its estate. By inducing the Stalking Horse to enter into the Agreement, a baseline bid for subsequent interested purchasers is set. Importantly, the Stalking Horse's commitment to the purchase of the Acquired Assets signals to the market that the Synopsys Litigation has not rendered the Acquired Assets toxic, increasing their value in the eyes of Potential Bidders for the ultimate benefit of the Debtor's estate and its stakeholders. Indeed, the Debtor believes that the parties prepared an agreement that covers most, if not all, of the issues faced by Potential Bidders, which the other Potential Bidders now can use to their benefit as a template for a Qualified Bid.

62. The Debtor's payment of the Break-Up Fee and Expense Reimbursement under the conditions set forth in this Motion, therefore, is (a) an actual and necessary cost of preserving the Debtor's estate within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtor's estate and its stakeholders, (c) reasonable and appropriate and (d) necessary to ensure that the Stalking Horse will continue to pursue the proposed Agreement. Accordingly, the buyer protections constitute administrative expenses with priority pursuant to Bankruptcy Code section 503(b), and should be approved by the Court.

F. The Successful Bidder Should Be Granted the Protection of Bankruptcy Code Section 363(m)

form and content as set forth in the regulations and responding to issues or questions raised. The Stalking Horse is also required to provide two certifications, one at the beginning of the process and the second at the end, attesting to the truth that Compliance with CFIUS has added significant expense to the Stalking Horse.

63. As will be set forth in further detail at the Sale Hearing, the Debtor also maintains that the Successful Bidder is entitled to the protections afforded by section 363(m) of the Bankruptcy Code.

G. The Agreement is Not the Subject of Collusive Bidding Under Bankruptcy Code Section 363(n)

64. As set forth above, the Debtor and the Stalking Horse negotiated the sale of the Acquired Assets at arm's length and in good faith. The Debtor will provide evidence, if necessary, that the sale of the Acquired Assets is not the result of collusion or other bad faith by the bidders. If necessary, the Debtor will provide evidence that the purchase price has not been controlled by an agreement between potential or actual bidders within the meaning of Bankruptcy Code section 363(n).

65. As will be set forth in more detail at the Sale Hearing, the Sale has been negotiated, proposed, and entered into without collusion, in good faith, and was negotiated from arm's-length positions. None of the Debtor, the Stalking Horses nor the Successful Bidder has engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code.

H. Waiver of Automatic Fourteen-Day Stay Under Bankruptcy Rules 6004(h) and 6006(h) and 6006(d)

66. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Similarly, under Bankruptcy Rule 6006(d), unless the Court orders otherwise, all orders authorizing the assignment of contracts or unexpired leases are automatically stayed for fourteen days after entry of the order. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

67. Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes do not provide specific guidance when a court should “order otherwise” and eliminate or reduce the 14-day injunction period, commentators agree that the 14-day period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally Collier on Bankruptcy* P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.).

68. Pursuant to the Agreement, and due to potentially diminishing value of the Acquired Assets, the Debtor must close this sale promptly. Thus, waiver of any applicable stays is appropriate in this circumstance.

NOTICE

69. Notice of this Motion shall be given to (a) the office of the United States Trustee for the District of Delaware; (b) those creditors holding the 30 largest unsecured claims against the Debtor’s estate; (c) counsel for the Stalking Horse and Guarantor; (d) counsel to parties whose Executory Contracts will be assigned to the Successful Bidder; (e) counsel for Silicon Valley Bank; and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that no other or further notice need be provided.

NO PRIOR REQUEST

70. No prior request for the relief sought herein has been made to this Court or to any other court.

WHEREFORE, the Debtor respectfully requests entry of an Order, substantially in the form attached hereto as **Exhibit B**, granting the relief sought in the Motion and such other and further relief as the Court deems just and proper.

Dated: January 11, 2017

DORSEY & WHITNEY (DELAWARE) LLP

/s/ Robert W. Mallard

Eric Lopez Schnabel (DE Bar No. 3672)

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Palo Alto address

Proposed Attorneys for AToptech, Inc.

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

In re:

[Atoptech, Inc.],¹

Debtor.

)
) Chapter 11
)
) Case No. 17-_____ (____)
)
)
)

ORDER (I)(A) ESTABLISHING BIDDING PROCEDURES FOR THE SALE OF ALL, OR SUBSTANTIALLY ALL, OF THE DEBTOR'S ASSETS; (B) APPROVING BUYER PROTECTIONS; (C) ESTABLISHING PROCEDURES RELATING TO THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING FORM AND MANNER OF THE SALE, CURE AND OTHER NOTICES; (E) SCHEDULING AN AUCTION AND (F) SCHEDULING A HEARING TO CONSIDER APPROVAL OF THE (1) SALE OF THE DEBTOR'S ASSETS FREE AND CLEAR OF CLAIMS, LIENS AND ENCUMBRANCES AND (2) ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) GRANTING RELATED RELIEF

Upon the motion (“**Motion**”)² of the debtor and debtor in possession in the above-captioned case (the “**Debtor**” or the “**Seller**”) pursuant to sections 105, 363, 365 and 503 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (as amended, the “**Bankruptcy Code**”), and rules 2002, 6004, 6006, 9006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (each a “**Bankruptcy Rule**,” and collectively, the “**Bankruptcy Rules**”), for an order (the “**Bidding Procedures Order**”) (I)(A) establishing bidding procedures (“**Bidding Procedures**”) for the sale of all, or substantially all, of the debtor’s assets (the “**Sale**”); (B) approving certain buyer protections pursuant to the terms of the Asset Purchase Agreement, dated January 10, 2017 by and between the Debtor and Purchaser, as defined in the Asset Purchase Agreement (the “**Stalking Horse**”), and Draper Athena Management Co. Ltd., as guarantor, including minimum

¹ The last four digits of the Debtor’s federal tax identification number are: [INSERT]. The Debtor’s headquarters are located at [INSERT]

² Capitalized terms used but not defined herein have the meaning ascribed to them in the Motion.

overbids, a Break-Up Fee and the Expense Reimbursement (as defined therein); (C) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases; (D) approving form and manner of the sale, cure and other notices; (E) scheduling an auction (the “**Auction**”), if one is required under the terms of the Bidding Procedures, and (F) scheduling a hearing (the “**Sale Hearing**”) to consider (1) approval of the Sale free and clear of claims, liens and encumbrances and (2) approving the assumption and assignment of executory contracts and unexpired leases and (II) granting related relief (the “**Bidding Procedures Motion**”)³ and the Court having considered the Bidding Procedures, and the arguments of counsel made and the evidence adduced at the hearing held before this Court (the “**Bidding Procedures Hearing**”); and due and sufficient notice of the Bidding Procedures Hearing and the relief sought therein having been given under the particular circumstances; and it appearing that no other or further notice need be provided; and it appearing that the Bidding Procedures requested in the Motion are in the best interests of the Debtor, its estate, its creditors and other parties in interest; and after due deliberation thereon and good and sufficient cause appearing therefor, it hereby is:

FOUND, CONCLUDED AND DETERMINED THAT:⁴

A. This Court has jurisdiction to consider the Motion under 28 U.S.C. §§ 157 and 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these cases and this Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409. The statutory and legal

³ The Bidding Procedures Motion also seeks approval of the Sale to the successful bidder, which will be approved by separate order.

⁴ The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

predicates for the relief requested in the Motion are sections 105, 363, 365, 503 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014.

B. The relief granted herein is in the best interests of the Debtor, its estate and creditors, and other parties in interest.

C. The Debtor has articulated good and sufficient business reasons for the Court (1) to approve (i) the Bidding Procedures, including the Break-Up Fee and Expense Reimbursement; (ii) the procedures for the assumption and assignment of executory contracts in connection with the Sale the (“**Assumption and Assignment Procedures**”) and (iii) the form and manner of notices for the Sale (the “**Sale Notice**”), the notice of cure amounts necessary to assume and assign the designated executory contracts and unexpired leases (the “**Cure Notice**”) and the notice informing counterparties to executory contracts and unexpired leases of assumption and assignment (the “**Executory Contract Notice**”); (2) to set the date for the Auction, the Sale Hearing and the other dates set forth herein; and (3) to grant the relief requested in the Motion as provided herein.

D. Due, sufficient and adequate notice of the Bidding Procedures Hearing and the relief granted in this Order has been given in light of the circumstances and the nature of the relief requested, and no other or further notice thereof is required. The Debtor’s notice of the Motion, as it pertains to the Bidding Procedures, was appropriate and reasonably calculated to provide all interested parties with timely and proper notice under Bankruptcy Rules 2002, 6004, 6006, 9006, 9007 and 9014, and no other or further notice of, or hearing on, this Bidding Procedures Order is required.

E. The Debtor’s proposed Sale Notice, Cure Notice and other notices contemplated hereunder with respect to the Sale, the Auction, the Assumption and Assignment

Procedures, and the Sale Hearing are appropriate and reasonably calculated to provide all interested parties with timely and proper notice thereof and no further notice of each is necessary or required.

F. The Bidding Procedures, as attached as ***Exhibit A*** and incorporated herein by reference as if fully set forth herein, and the Buyer Protections included therein, are fair, reasonable and appropriate, were negotiated in good faith by the Debtor and the Stalking Horse and represent the best method for maximizing the value of the Debtor's estate in connection with the Sale.

G. The Buyer Protections, to the extent payable under the Stalking Horse Agreement, (i) shall be deemed an actual and necessary cost of preserving the Debtor's estate within the meaning of Bankruptcy Code section 503(b), (ii) are of substantial benefit to the Debtor's estate, (iii) are reasonable and appropriate, including in light of the size and nature of the transactions comprising the Stalking Horse Agreement, and the efforts that have been and will be made by the Stalking Horse, (iv) have been negotiated by the parties and their respective advisors at arm's-length and in good faith and (v) are necessary to ensure that the Stalking Horse will continue to pursue the proposed Sale. The Buyer Protections are material inducements for, and a condition of, the Stalking Horse's entry into the Stalking Horse Agreement. The Stalking Horse is unwilling to commit to purchase the assets under the terms of the Stalking Horse Agreement (the "**Assets**") unless the Stalking Horse receives the Buyer Protections.

H. The Assumption and Assignment Procedures are reasonable and appropriate.

IT HEREBY IS ORDERED, ADJUDGED AND DECREED THAT:

1. Those portions of the Motion seeking approval of the Bidding Procedures are GRANTED.

2. Any objection to the portions of the Motion seeking approval of the Bidding Procedures or any other relief granted in this Order, to the extent not resolved, waived or withdrawn, and all reservations of rights included therein, is hereby overruled and denied on the merits.

A. Bidding Procedures

3. The Bidding Procedures hereby are APPROVED. The Debtor is authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures. The failure specifically to include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or impair the effectiveness of such procedures, it being the intent of this Court that the Bidding Procedures be authorized and approved in their entirety.

B. The Bid Deadline

4. As further described in the Bidding Procedures, a Potential Bidder who desires to make a Bid for the Assets that satisfies the bidding requirements set forth in the Bidding Procedures shall deliver its Bid, so as to be received by no later than **[February __], 2017 at 5:00 p.m. (prevailing Eastern Time)** (the “**Bid Deadline**”) to the parties in paragraph 4(i) through 4(v) (collectively, the “**Notice Parties**”):

- (i) **counsel to the Debtor:**
Dorsey & Whitney LLP
305 Lytton Avenue
Palo Alto, CA 94301
Attention: Stephen O’Neill and Janet Weiss
Telephone No: (650) 843-2719 and (212) 415-9357 [INSERT];
Attention: [INSERT];
- (ii) **special counsel to the Debtor:**
Wilson Sonsini Goodrich & Rosati
650 Page Mill Road
Palo Alto, CA 94304

Attention: Robert P. Latta and Julia Reigel
Telephone No: (650) 320-4646 and (650) 320-4509

- (iii) **financial advisor to the Debtor:**
Cowen and Company
[Address]
- (iv) [counsel to the Official Committee of Unsecured Creditors (the “Committee”), [INSERT]; Attention: [INSERT]; and
- (v) **financial advisor to the Committee:**, [INSERT]; Attention: [INSERT].]

C. Notices of Sale, Bidding Procedures, Buyer Protections and the Sale Hearing

5. The notices described below are hereby approved, and service or publication thereof (as applicable) as set forth below constitutes proper, timely, adequate and sufficient notice of the Sale, the Bidding Procedures, the Buyer Protections and the Sale Hearing, and no other or further notice shall be required.

6. Within three (3) Business Days after the entry of this Order, or as soon thereafter as practicable (the “**Mailing Date**”), the Debtor (or its agents) shall serve the Stalking Horse Agreement in the form attached to the Motion, this Order and the Bidding Procedures by first-class mail, postage prepaid, or by email, where available, upon:

- (a) all entities known to have expressed a *bona fide* interest in a transaction with respect to the Assets within the past two years;
- (b) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Assets;
- (c) all federal, state and local environmental, regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief requested by the Motion;
- (d) the U.S. Trustee;
- (e) counsel to the proposed Stalking Horse;
- (f) the Internal Revenue Service;
- (g) the Securities and Exchange Commission;

- (h) the U.S. Attorney for the District of Delaware; and
- (i) all persons and entities that have filed a request for service of filings in this Bankruptcy Case pursuant to Bankruptcy Rule 2002.

7. On the Mailing Date, or as soon thereafter as practicable, the Debtor (or its agents) shall serve by first-class mail, postage prepaid, the notice of the Sale, substantially in the form attached hereto as **Exhibit B** (the “**Sale Notice**”), upon all other known creditors of the Debtor and all counterparties to the Debtor’s executory contracts and unexpired leases.

8. The Debtor shall publish a notice, substantially in the form of the Sale Notice, on one occasion, in [*The Wall Street Journal*, National Edition], on the Mailing Date or as soon as practicable thereafter. Such publication notice shall be deemed sufficient and proper notice of the Sale to any other interested parties whose identities are unknown to the Debtor.

9. The Sale Hearing shall be held on [**March**]____, **2017 at** __:___.m. (**prevailing Eastern Time**), at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, [**INSERT**] Floor, Courtroom [**INSERT**], Wilmington, Delaware 19801, before the Honorable [**INSERT**].

10. All objections to the Sale (a “**Sale Objection**”) must be in writing and filed on and served so as to be received by [**February**]_____ **2017 at** __:___.m. (**prevailing Eastern Time**) (the “**Sale Objection Deadline**”) with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801. In addition, any Sale Objection must be served on the Debtor, the Notice Parties and the Stalking Horse so as to be received on the Sale Objection Deadline; *provided however*, that any objections to the conduct of the Auction or selection of the Successful Bid or Back-Up Bids (a “**Supplemental Objection**”) shall be in writing, filed with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801, together with proof of service, and served so as to be received by the Notice Parties and the Successful Bidder as

identified at the Auction, on or before **[March ____], 2017 at __:__.m. (prevailing Eastern time).**

11. For purposes of this Bidding Procedures Order, notice to the Stalking Horse must be provided to its counsel:

Shearman & Sterling LLP
599 Lexington Avenue
New York, New York, 10022
Attention: Fredric Sosnick
Foteini Teloni
Telephone No: (212) 848-8571
(212) 848-4579

Young Conaway Stargatt & Taylor, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Attention: Pauline K. Morgan
Telephone No: (302) 571-6707

12. Failure to file and serve a Sale Objection or Supplemental Objection as provided herein shall be deemed to be consent to the Sale for purposes of section 363(f) of the Bankruptcy Code.

13. The Sale Hearing may be continued to a later date by the Debtor by sending notice to the Notice Parties prior to the Sale Hearing or by making an announcement at the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse).

D. The Auction

14. The Debtor is authorized to conduct the Auction with respect to the
The Auction shall take place on **[February ____], 2017 at __:__.m. (prevailing Eastern**
at the offices of Wilson Sonsini Goodrich & Rosati located at 1301 Avenue of the Americas,
40th Floor New York, New York 10019, or such other place and time as the Debtor shall notify

all Qualified Bidders and each of their respective counsel and advisors, the Consultation Parties and the Stalking Horse.

15. The Debtor is authorized, subject to the terms of this Order, to take actions reasonably necessary, at the discretion of the Debtor, to conduct and implement the Auction.

16. Only the Debtor, the Consultation Parties, the Stalking Horse and any other Qualified Bidder, in each case, along with their respective representatives and counsel, may attend the Auction (such attendance to be in person) and only the Stalking Horse and such other Qualified Bidder(s) will be entitled to make any Bids at the Auction. The Debtor and its advisors shall direct and preside over the Auction and the Auction shall be transcribed.

17. The Stalking Horse (in its capacity as a Qualified Bidder) and each other Qualified Bidder participating in the Auction must confirm that it has (a) not engaged in any collusion with respect to the bidding or Sale of the Assets, (b) reviewed, understands and accepts the Bidding Procedures, (c) consented to the core jurisdiction of the Court, and (d) has waived the right to a jury trial in connection with any disputes relating to the Auction, the interpretation of the Bidding Procedures and the selection of the Successful Bidder.

18. Subject to the rights of parties in interest to (i) challenge the Sale, (ii) challenge the Debtor's decisions with respect to the Sale, or (iii) such other rights as such parties may have under applicable law, the Debtor may (a) determine, in its business judgment, pursuant to the Bidding Procedures, which Qualified Bid is the highest or otherwise best proposal for the Assets and which Qualified Bid is the next highest or otherwise best proposal for the Assets and (b) reject any bid that, in the Debtor's business judgment, is (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bidding Procedures, the Bankruptcy Code, the

Bankruptcy Rules or the Local Bankruptcy Rules or (z) contrary to the best interests of the Debtor and its estate.

19. Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse shall be a Qualified Bidder.

E. The Stalking Horse Agreement and Buyer Protections

20. Any obligations of the Debtor set forth in the Stalking Horse Agreement that are intended to be performed prior to entry of the Sale Order hereby are authorized.

21. The Buyer Protections, to the extent payable under the Stalking Horse Agreement, are granted.

22. Pursuant to sections 105, 363 and 503 of the Bankruptcy Code, the Debtor is hereby authorized to pay the Buyer Protections pursuant to and subject to the terms and conditions set forth in the Stalking Horse Agreement.

23. Upon entry of this Order, the Buyer Protections shall constitute an administrative expense of the Debtor with priority equal to administrative expenses as provided in section 503(b) of the Bankruptcy Code.

24. In accordance with section 10.3 of the Stalking Horse Agreement, in the event that the Stalking Horse Agreement is terminated pursuant to Section 10.1(d)(iii), then an amount in cash equal to \$400,000 (the “**Break-Up Fee**”) shall be payable by Seller to the Stalking Horse. Seller shall pay the Break-Up Fee by wire transfer to an account designated by the Stalking Horse within five (5) Business Days after consummation of an Alternative Transaction.

25. In accordance with section 10.4 of the Stalking Horse Agreement, in the event that the Stalking Horse Agreement is terminated pursuant to any of subsections 10.1(b)

(other than where the Stalking Horse's action or failure to act was a principal cause of, or resulted in, the failure of the Transaction to be consummated), 10.1(d); 10.1(e)(i); 10.1(e)(v); 10.1(e)(vi); 10.1(e)(viii) or 10.1(e)(ix), then the Stalking Horse shall be entitled to reimbursement of its actual out-of-pocket costs and expenses in connection with the Stalking Horse's due diligence investigation of Seller and the negotiation and execution of the Stalking Horse Agreement and the transactions contemplated hereby, in cash in an amount equal to such actual costs and expenses, subject to a cap of \$600,000 (the "**Expense Reimbursement**"). Seller shall pay the Expense Reimbursement by wire transfer to an account designated by the Stalking Horse Bidder within five (5) Business Days after a termination of the Stalking Horse Agreement that gives rise to the Expense Reimbursement.

26. It is critical to the process of maximizing the value, and arranging an orderly sale, of the Assets to proceed by selecting the Stalking Horse to enter into the Stalking Horse Agreement. Without the Stalking Horse having committed considerable time and expense in connection with the Sale of the Assets, the Debtor would potentially realize a lower price for such assets; and, therefore, the contributions of the Stalking Horse to the process have indisputably provided a substantial benefit to the Debtor and its estate and creditors.

27. The Buyer Protections shall be the sole remedy of the Stalking Horse.

F. Contract Assumption and Assignment Procedures

28. The Assumption and Assignment Procedures as set forth in the Motion are hereby approved and made part of this Order as if fully set forth herein. The Assumption and Assignment Procedures are appropriate and fair to all non-Debtor counterparties and comply in all respects with the Bankruptcy Code.

29. The decision to assume and assign the applicable assumed and assigned contracts and leases to the Successful Bidder is subject to Court approval and the consummation

of a Sale of the Assets. Accordingly, absent consummation of such Sale, the applicable assumed and assigned contracts and leases shall not be deemed assumed or assigned and shall, in all respects, be subject to further administration under the Bankruptcy Code.

(a) Cure Notice

30. The Cure Notice, substantially in the form attached hereto as *Exhibit C*, is (a) reasonably calculated to provide sufficient effective notice to all non-Debtor counterparties to assumed and assigned contracts or leases and any other affected parties of the Debtor's intent to assume and assign such contracts or leases and to afford the non-Debtor counterparty to each such contract or lease the opportunity to exercise any rights affected by the Motion pursuant to Bankruptcy Code section 365 and Bankruptcy Rules 2002, 6004 and 6006, and (b) hereby approved.

31. The inclusion of a contract on a Cure Notice shall not constitute or be deemed a determination or admission by the Debtor, the Stalking Horse, the Successful Bidder or any other party in interest that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, that such contract or lease will be assumed in connection with the Sale of the Assets or an admission of the amount necessary to cure defaults under such document. The Debtor reserves all of its rights, claims and causes of action with respect to the contracts or leases listed on the Cure Notice.

32. No less than twenty-one days prior to the Bid Deadline, the Debtor will file with this Court and serve on each non-Debtor counterparty to an executory contract or unexpired lease related to the Assets the Cure Notice, substantially in the form attached to the Bidding Procedures Order. The Cure Notice shall:

- (i) state the cure amounts, if any, that the Debtor believes are necessary to assume such contracts or leases pursuant to section 365 of the Bankruptcy Code (the "**Cure Amount**");

- (ii) notify the non-Debtor counterparty that such party's contract(s) or lease(s) may be assumed and assigned to the Successful Bidder of the Assets at the conclusion of the Auction;
- (iii) state the date of the Sale Hearing and that objections to any Cure Amount or to assumption and assignment will be heard at the Sale Hearing, or at a later hearing, as determined by the Debtor; and
- (iv) state the Contract Rejection Deadline (as defined below) by which the non-Debtor counterparty shall file an objection to the Cure Amount(s) or to the assumption and assignment of the applicable contract(s) and/or lease(s) (such objection, a "**Contract Objection**"); *provided, however*, that the inclusion of a contract, lease or agreement on the Cure Notice shall not constitute an admission that such contract, lease or agreement is an executory contract or unexpired lease or that it will, in fact, be assumed and assigned in connection with the Sale of the Assets. If no Cure Amount is listed, the Debtor believes that no amount to cure defaults under the respective executory contract or unexpired lease is owed by it thereunder. The Debtor reserves all of its rights, claims and causes of action with respect to the contracts, leases and agreements listed on the Cure Notice.

(b) **Contract Objection Procedures**

33. All Contract Objections, if any, must be in writing and filed with the Clerk of the Court, 824 Market St. N, 3rd Floor, Wilmington, DE 19801, and served on the Notice Parties and the Stalking Horse Bidder so as to be received by [INSERT], 2017 at [INSERT] (prevailing Eastern Time) (the "**Contract Objection Deadline**").

34. Any Contract Objection must state (a) the basis for such objection and (b) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with appropriate documentation in support thereof).

35. Any Contract Objection solely to the Cure Amount(s) shall not prevent or delay the Debtor's assumption and assignment of assumed and assigned contract(s) or lease(s). If a party objects solely to Cure Amount(s), the Debtor may, with the consent of the relevant Successful Bidder, hold the claimed Cure Amount(s) in reserve pending further order of the

Court or mutual agreement of the parties. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable assumed and assigned contract(s) or lease(s), the Debtor can, without further delay, assume and assign such contract(s) or lease(s) to the Successful Bidder. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

36. If no objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

37. To the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by a Qualified Bidder other than the Stalking Horse under the applicable executory contract(s) or unexpired lease(s) (an “**Adequate Assurance Objection**” and together with a Contract Objection, an “**Objection**”), then such non-Debtor counterparty shall file a written Adequate Assurance Objection with the Court and serve such objection on the Notice Parties, the Stalking Horse and the applicable Qualified Bidder(s) so that such Adequate Assurance Objection is filed with the Court and received by the Notice Parties, the Stalking Horse and the applicable Qualified Bidder(s) on or before **[INSERT], 2017, at __: __.m. (prevailing eastern time) (the “Adequate Assurance Objection Deadline”).**

38. To the extent that any non-Debtor counterparty does not timely file and serve an Objection as set forth above, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped and enjoined from asserting any additional Cure Amount(s) under the assumed and assigned executory contract(s) or unexpired lease(s); (iii) barred from objecting to the assumption and assignment of the

applicable assumed and assigned executory contract(s) or unexpired lease(s) to the Successful Bidder, and (iv) barred from objecting to adequate assurance of future performance by the Successful Bidder

G. Related Relief

39. The Debtor is hereby authorized and empowered to take such actions as may be reasonably necessary to implement and effect the terms and requirements established by this Order.

40. This Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon execution hereof.

41. This Order shall be binding on the Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtor's estate.

42. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7052, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

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

Dated: _____, 2017
Wilmington, Delaware

THE HONORABLE [_____]
UNITED STATES BANKRUPTCY JUDGE

Exhibit C-1

Bidding Procedures

On January __, 2017, the Seller commenced a voluntary case under chapter 11 of the Bankruptcy Code in the Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”).

On [January [●], 2017], the Seller filed with the Bankruptcy Court its *Motion for (I) an Order (A) Establishing Bidding Procedures for the Sale of Substantially All of the Debtors’ Assets; (B) Approving Buyer Protections; (C) Establishing Procedures Relating to the Assumption and Assignment of Executory Contracts and Unexpired Leases; (D) Approving Form and Manner of the Sale, Cure and Other Notices; and (E) Scheduling an Auction and a Hearing to Consider the Approval of the Sale; (II) an Order (A) Approving the Sale of the Debtors’ Assets Free and Clear of Claims, Liens and Encumbrances; and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) Granting Related Relief* (the “**Sale Motion**”).¹

As set forth in the Sale Motion, the Seller and a certain stalking horse bidder (the “**Stalking Horse Bidder**”) entered into an asset purchase agreement (including all exhibits, schedules and ancillary agreements related thereto, and as amended and in effect, the “**Stalking Horse Agreement**”), dated as of January 10, 2017, whereby the Stalking Horse Bidder would purchase, subject to Bankruptcy Court approval, all of the assets used in the operation of the Seller’s business (the “**Transferred Assets**”). A copy of the Stalking Horse Agreement is attached as an exhibit to the Sale Motion.²

These bidding procedures (the “**Bidding Procedures**”) govern the process by which the Seller shall conduct a sale by auction of the Transferred Assets (the “**Auction**”). The order approving the Bidding Procedures is referred to herein as the “**Bidding Procedures Order**.”

I. ASSETS TO BE SOLD

The Stalking Horse Agreement is an offer to purchase the Transferred Assets, which comprise substantially all of the Seller’s assets. A party may participate in the bidding process by submitting a Bid (as defined below) for all or substantially all of the Transferred Assets.

All of the Seller’s right, title and interest in and to the Transferred Assets shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the “**Liens**”), with such Liens to attach to the proceeds of the sale of the Transferred Assets with the same validity and priority as such Liens applied against the Transferred Assets, except as otherwise specifically provided in the Stalking Horse Agreement or an Alternate Asset Purchase Agreement (as defined below) submitted by a successful bidder at the Auction (including any exhibits or schedules thereto).

¹ Capitalized terms used but not defined herein have the meaning ascribed to them in the Sale Motion.

² The Stalking Horse Agreement defines the specific assets that comprise the “Transferred Assets.”

II. THE CONSULTATION PARTIES

The Seller shall consult any official committee appointed by the U.S. Trustee in the Bankruptcy Case, and their respective counsel and advisors (each, a “**Consultation Party**”), as explicitly provided in the Bidding Procedures; *provided, however*, that the Seller shall not be required to consult with any Consultation Party during the Auction process to the extent such Consultation Party has submitted a Bid (as defined below) or has had a Bid submitted by one of its members, for so long as such Bid remains open.

Subject to the terms of any Orders entered in the Chapter 11 Case, after consultation with the Consultation Parties, the Seller shall have the right and obligation to make all decisions regarding Bids and the Auction in accordance with the terms hereof, regardless of whether or not the Consultation Parties agree with that decision.

III. BIDDING PROCESS

A. Overview

The Seller and its advisors shall, subject to the provisions of these Bidding Procedures, including the consultation obligations set forth herein:

1. coordinate the efforts of Potential Bidders (as defined below) in conducting their due diligence investigations;
2. receive offers from Potential Bidders (as defined below);
3. determine whether any person is a Qualified Bidder (as defined below); and
4. conduct the Auction and further negotiate any offers made to purchase the Transferred Assets.

B. Key Dates For Potential Competing Bidders

The Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Seller and to submit competing bids for the Transferred Assets. The Seller shall accept Bids until [**●**], 2017] at 5:00 p.m. (prevailing Eastern Time) (the “**Bid Deadline**”).

Key Dates and Deadlines³

1. January __, 2017 at __:00 __.m. EST	Hearing motion establishing bidding procedures
2. January [●], 2017 at 5:00 p.m. EST	Bid Deadline - Due Date to submit a Qualified Bid
3. January __, 2017 at ____ __.m. EST	Deadline for Sellers to notify Bidders of status as Qualified Bidders

³ These dates are subject to extension or adjournment as provided for herein and in consultation with the Consultation Parties.

4. [February] [●], 2017 at 10:00 a.m. EST	Auction, which will be held at [WSGR/Dorsey] located at: 1301 Avenue of the Americas, 40th Floor New York, New York 10019.
5. February __, 2017 at ____ EST	Deadline to file objections to sale and proposed cure amounts
6. March __, 2017 at [●] EST	Sale Hearing will be conducted in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, [●] Floor, Courtroom [●], Wilmington, Delaware 19801
7. March __, 2017	Target date to consummate sale with successful bidder

C. Access to Diligence Materials

To participate in the process of submitting an alternative offer for the Transferred Assets (an “**Alternate Transaction**”) and to receive access to due diligence materials (the “**Diligence Materials**”), a party must submit to the Seller an executed confidentiality agreement (the “**Confidentiality Agreement**”) substantially in the form attached to the Sale Motion and provide preliminary evidence satisfactory to the Seller and its advisors of such party’s financial wherewithal to consummate an Alternate Transaction.

A party that executes a Confidentiality Agreement and provides preliminary evidence of financial wherewithal shall be designated as a “**Potential Bidder**.” The Seller will afford any Potential Bidder time and opportunity to conduct reasonable due diligence in accordance with a diligence protocol determined by the Seller and its advisors; *provided, however*, that the Seller shall not be obligated to furnish any due diligence information after the Bid Deadline to any party that has not submitted a Qualified Bid (as defined below) on or before the Bid Deadline and may, in consultation with the Consultation Parties, limit the amount of further due diligence available to Qualified Bidders (as defined below) after the Bid Deadline.

The Seller reserves the right to withhold any Diligence Materials that the Seller determines to be business-sensitive or otherwise not appropriate for disclosure to a Potential Bidder that is a competitor or customer (or that is affiliated with any competitor or customer) of the Seller. Neither the Seller nor its representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder; *provided, however*, that Seller shall provide the Stalking Horse Bidder with access to the Diligence Materials that are provided to the Potential Bidders.

All due diligence requests must be directed to [●].

D. Due Diligence from Bidders

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access by the Seller or its advisors regarding such Potential Bidder and its contemplated transaction. Failure by a Potential Bidder (other than the Stalking Horse Bidder) to comply with requests for additional information and due diligence access may be a basis for the Seller to determine that such Potential Bidder shall not be designated as a Qualified Bidder (as defined below).

IV. AUCTION QUALIFICATION PROCESS

A. Qualifying Bids

To be eligible to participate in the Auction, each offer, solicitation or proposal (each, a “**Bid**”) submitted by a Potential Bidder (other than the Stalking Horse Bidder) must satisfy each of the following conditions in order to be designated as a Qualified Bidder:

1. Purchase Price: Each Bid must clearly set forth the consideration to be paid for the Transferred Assets. The consideration proposed to be paid for the Transferred Assets shall only be in the form of cash or assumed debt.
2. Deposit: Each Potential Bid , including the Bid of the Stalking Horse Bidder, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash and non-cash consideration of the Bid, which deposit shall be held in an escrow account to be identified and established by the Seller (the “Deposit”). The deposit of the Stalking Horse Bidder will be due not later than ten (10) business days after the Court enters the Bidding Procedures Order.
3. Same or Better Terms: In connection with any Bid for the Transferred Assets, such Bid must be on terms that the Seller determines are substantially the same or more favorable to the Seller than the terms of the Stalking Horse Agreement.
4. Executed Agreement: Each Bid must be based on the Stalking Horse Agreement and be binding, irrevocable, signed by an authorized representative of such Potential Bidder, proposing to effectuate an Alternate Transaction (an “**Alternate Asset Purchase Agreement**”). A Bid must also include a copy of the Alternate Asset Purchase Agreement (including all exhibits thereto) marked against the Stalking Horse Agreement to show all changes requested by the Potential Bidder (including those related to purchase price and to remove any provisions that apply only to the Stalking Horse Bidder, such as the expense reimbursement and break-up, which provisions shall not be contained in any Alternate Asset Purchase Agreement).
5. Scope of Bid: A Bid must be for all or substantially all of the Transferred Assets.
6. Minimum Bid: A Bid must have a purchase price, including any assumption of liabilities, that has a value greater than the sum of (i) [\$8 million]; plus (ii) the Expense Reimbursement, which for purposes of comparing Bids shall be valued at \$[●] *plus* the Break-Up Fee.
7. Designation of Assigned Contracts and Leases: A Bid must identify the executory contracts and unexpired leases that the Potential Bidder seeks to be assigned to it.
8. Designation of Assumed Liabilities: A Bid must identify all liabilities that the Bidder proposes to assume.
9. Corporate Authority: A Bid must include a statement that the Potential Bidder is capable of consummating the Alternate Asset Purchase Agreement and provide written evidence reasonably acceptable to the Seller demonstrating appropriate corporate authorization to consummate the proposed Alternate Transaction; *provided, however*, that, if the Potential Bidder is an entity specially formed for the purpose of the Alternate Transaction, then the

Potential Bidder must furnish written evidence reasonably acceptable to the Seller of the approval of the Alternate Transaction by the equity holder(s) of such Potential Bidder.

10. Disclosure of Identity of Bidder: A Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Transferred Assets, including the equity holders, if the Potential Bidder is specially formed in connection with the Bid, or otherwise participating in connection with such Bid (including any co-bidder or team bidder), and the complete terms of any such participation, including any agreements, arrangements or understandings concerning a collaborative or joint bid or any other combination concerning the Bid. A Bid must fully disclose any connections or agreements with the Seller, the Stalking Horse Bidder, any known Potential Bidder, and any officer, director or equity security holder of the Seller.
11. Proof of Financial Ability to Perform: A Bid must include detailed, written evidence sufficient to the Seller demonstrating that the Potential Bidder has and will continue to have the necessary financial ability to close the Alternate Transaction and comply with section 365 of the Bankruptcy Code, including providing adequate assurance of future performance under all contracts to be assumed and assigned in such Alternate Transaction. Such information must include, *inter alia*, the following:
 - (a) contact names and numbers for verification of financing sources;
 - (b) sufficient information as requested by the Seller and its advisors (including, without limitation, agreement to such terms and conditions as may be required by the Seller's advisors), to allow them to determine, in their sole discretion, that such Potential Bidder has the financial wherewithal to consummate a Sale; and
 - (c) the Potential Bidder's current financial statements (audited, if existing) or other similar financial information reasonably acceptable to the Seller.
12. Regulatory and Third Party Approvals: A Bid must set forth each regulatory and third-party approval required for the Bidder to consummate the Alternate Transaction.
13. Contact Information and Affiliates: A Bid must provide the identity and contact information for the Potential Bidder and if newly-formed, any affiliates of the Potential Bidder.
14. Contingencies: Each Bid must not (a) contain representations and warranties, covenants, or termination rights materially more onerous in the aggregate to the Seller than those set forth in the Stalking Horse Agreement, as determined by the Seller, and (b) be conditioned on obtaining financing, any internal approvals or credit committee approvals, or on the outcome or review of due diligence, including with respect to any environmental, employee, labor, health or safety matters.
15. Irrevocable: Each Bid must be irrevocable until two (2) business days after the conclusion of the Sale Hearing; *provided* that if such Bid is accepted as the Successful Bid or the Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable until the earlier of the closing of the Sale or [●] (the "**Outside Date**").
16. Compliance with Diligence Requests: The Potential Bidder must have complied with the Seller's reasonable requests for additional information and due diligence.

17. Diligence Complete: Each Bid must include a written acknowledgement and representation that the Bidder: (i) had an opportunity to conduct due diligence regarding the Transferred Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and inspection of any documents and the Transferred Assets in making its Bid and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Transferred Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly provided in the Stalking Horse Agreement.
18. Confidentiality Agreement: To the extent not already executed, the Bid must include an executed confidentiality agreement substantially in the form attached to the Sale Motion.
19. Termination Fees: The Bid (other than the Bid pursuant to the Stalking Horse Agreement) shall not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement and, by submitting the Bid, the Potential Bidder waives the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code that in any way relates to the submission of its Bid or its participation in any Auction.
20. Adherence to Bid Procedures: By submitting its Bid, each Bidder is deemed to agree (i) to abide by and honor the terms of these Bidding Procedures, and (ii) not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
21. No Late Bids: Unless otherwise ordered by the Bankruptcy Court, the Seller shall not consider any Bids submitted after the conclusion of the Auction, and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
22. Bid Notice: Any Bid must be in writing (in both PDF and Word format) and submitted on or before the Bid Deadline to the following parties:
 - (a) financial advisor to the Seller, [●], Attention: [●];
 - (b) counsel to the Official Committee of Unsecured Creditors (the "Committee"), if any, and
 - (c) financial advisor to the Committee, if any.

A Bid received from a Potential Bidder before the Bid Deadline and that meets all of the above requirements shall constitute a "**Qualified Bid**" and such Potential Bidder shall constitute a "**Qualified Bidder**"; *provided*, however, that, for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence requests from the Seller, Seller may disqualify any Qualified Bidder or Qualified Bid, in the Seller's discretion and such Qualified Bidder shall not be entitled to attend or participate in the Auction.

Any amendments, supplements or other modifications to any Bids (including pursuant to this paragraph) shall be delivered to the parties listed above as provided therein. All Qualified Bids will be considered, but the Seller reserves its right to reject any or all bids. Notwithstanding anything herein to the contrary, the Stalking Horse Agreement shall be deemed to be a Qualified Bid, and the Stalking Horse Bidder, a Qualified Bidder, and is authorized to participate in the Auction.

Within **[three (3) business days]** after a Potential Bidder delivers a Bid, the Seller will determine and notify that Potential Bidder and the Stalking Horse Bidder whether such Potential Bidder is a Qualified Bidder and whether such Bid is a Qualified Bid.

V. AUCTION

A. Auction

If one or more Qualified Bids (other than the Stalking Horse Agreement) are submitted by the Bid Deadline, the Seller will conduct the Auction to determine the highest or otherwise best Qualified Bid with respect to the Transferred Assets.

B. Bid Assessment Criteria

The Seller's determination of the highest or otherwise best Qualified Bid with respect to the Transferred Assets shall take into account any factors that the Seller, in consultation with the Consultation Parties, reasonably deems relevant to the value of the Qualified Bid to the estates and may include, but are not limited to, the following (collectively, the "**Bid Assessment Criteria**"):

1. the amount and nature of the consideration, including any assumed liabilities;
2. the type and nature of any modifications to the Stalking Horse Agreement, as applicable, provided in the Alternate Asset Purchase Agreement;
3. the total consideration to be received by the Seller and the net consideration to be received by the Seller after taking into account the Stalking Horse Bidder's Buyer Protections;
4. the likelihood of the Qualified Bidder's ability to close the proposed transaction;
5. the net benefit to the Seller's estate.

C. Cancellation of the Auction

If no timely Qualified Bids (other than the Stalking Horse Agreement) are received, the Auction for the Transferred Assets shall be canceled and the Stalking Horse Agreement shall be deemed to be the Successful Bid and the Stalking Horse Bidder shall be the Successful Bidder.

VI. PROCEDURES FOR THE AUCTION

If one or more Qualified Bids (other than the Stalking Horse Agreement) are submitted by the Bid Deadline, the Seller shall commence the Auction on **[●] [March] [●], 2017 at 10:00 a.m.** (EST) at the offices of Wilson Sonsini in New York or such other place and time as the Seller shall notify all Qualified Bidders and the Consultation Parties.

The Seller reserves the right, in its reasonable business judgment, and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things (i) facilitate discussions between the Seller and the Qualified Bidders, (ii) allow the Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide additional evidence, as the Seller, in its reasonable business judgment, may require, that it has sufficient

internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate its proposed Bid at then applicable purchase price.

The Auction shall be conducted according to the following procedures:

A. Participation

The Seller, the Consultation Parties, the Stalking Horse Bidder and any other Qualified Bidder, along with their representatives and counsel, may attend the Auction (such attendance to be in person). Only the Stalking Horse Bidder and Potential Bidders that satisfy the requirements to become Qualified Bidders will be entitled to make any Bids at the Auction.

B. The Seller Shall Conduct the Auction

The Seller and its advisors shall direct and preside over the Auction, which shall be transcribed. Other than as expressly set forth herein, the Seller (in consultation with the Consultation Parties) may conduct the Auction in the manner it reasonably determines will result in the highest or otherwise best Qualified Bid(s).

Prior to commencement of the Auction, the Seller shall provide each Qualified Bidder participating in the Auction with a copy of the Alternate Asset Purchase Agreement that Seller designates as the highest or otherwise best Qualified Bid (such highest or otherwise best Qualified Bid, the “**Auction Baseline Bid**”).

In addition, at the start of the Auction, the Seller shall describe the terms of the Auction Baseline Bid. Each Qualified Bidder participating in the Auction must confirm that it (1) has not engaged in any collusion with respect to the bidding or sale of any of the assets described herein, (2) has reviewed, understands and accepts the Bidding Procedures, (3) has consented to the core jurisdiction of the Bankruptcy Court and (4) has waived the right to a jury trial in connection with any disputes relating to the Auction, the interpretation of the Bidding Procedures and/or the selection of the Successful Bidder (as defined below).

Before submitting any Bid with co-bidding or team bidding arrangements, whether formal or informal, among a Qualified Bidder and any third party (including a Potential Bidder that did not qualify as a Qualified Bidder) (such a Bid, a “**Joint Bid**”), each Qualified Bidder must disclose such Joint Bid to the Seller, and the Seller shall determine, in its discretion, whether the Joint Bid constitutes a Qualified Bid for purposes of participating in the Auction. The identity of any and all co-bidders or team bidders involved in submitting any Joint Bid that the Seller determines to be a Qualified Bid shall be disclosed on the record at the Auction.

The Seller shall consult in good faith with the Consultation Parties throughout the Auction process to the extent reasonably practicable.

C. Terms of Overbids

All Bids after the announcement of the Auction Baseline Bid must satisfy the requirements for Overbids (defined below) and will be made and received on an open basis, subject to the Seller’s right to require that last and final Bids be submitted on a “blind” basis. All material terms of each Overbid (as defined below) will be fully disclosed to all other Qualified Bidders.

An “**Overbid**” is any bid made at the Auction subsequent to the Seller’s announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

1. Minimum Overbid Increments: Any Overbid for all or substantially all of the Transferred Assets after and above the Auction Baseline Bid shall be made in increments valued at not less than \$[100,000] (or such other amount as shall be announced at the Auction) in cash or in cash equivalents.
2. Remaining Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above, *provided, however*, that the Bid Deadline shall not apply. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Stalking Horse Agreement or Alternate Asset Purchase Agreement, as the case may be, in connection therewith. Any Overbid must remain open and binding on the Bidder as provided herein.
3. Additional Bids; Modifications: All Qualified Bidders, including the Stalking Horse Bidder, shall have the right to submit additional bids and make additional modifications to the Stalking Horse Agreement or the Alternate Asset Purchase Agreement at the Auction, as applicable, provided that any such modifications to the Stalking Horse Agreement or Alternate Asset Purchase Agreement on an aggregate basis and viewed in whole, shall not, in the Seller’s business judgment, be less favorable to the Seller than the terms of the Stalking Horse Agreement.
4. Conclusion of Each Overbid Round: Upon the solicitation of each round of Overbids, the Seller may announce a deadline (as the Seller may, in its business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Seller.
5. Announcement and Consideration of Overbids: Subsequent to each Overbid Round Deadline, the Seller will announce whether it has identified an Overbid as being higher or otherwise better than the Auction Baseline Bid (in the initial Overbid round) or the Overbid previously designated by the Seller as the prevailing highest or otherwise best Bid (in subsequent rounds). Such Bid shall be referred to herein as the Prevailing Highest Bid. The Seller will describe to all Qualified Bidders the material terms of any Prevailing Highest Bid as well as the value attributable by the Seller based on, among other things, the Bid Assessment Criteria.

D. Additional Procedures

The Seller (after consulting with the Consultation Parties) may announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not inconsistent in any material respect with the Bidding Procedures or the Stalking Horse Agreement. Any Auction rules adopted by the Seller will not modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Bidder thereunder without the consent of the Stalking Horse Bidder.

E. Concluding the Auction

The Auction shall continue in additional rounds of bidding until the Seller selects the Prevailing Highest Bid that is the highest or otherwise best offer for all or substantially all of the Transferred Assets (a “**Successful Bid**,” and the Bidder submitting such Successful Bid, a “**Successful Bidder**”). The Successful Bidder shall have the rights and responsibilities of the purchaser as set forth in the Stalking Horse Agreement or Alternate Asset Purchase Agreement, as applicable. In selecting the Successful Bid, the Seller, in consultation with the Consultation Parties, shall consider the Bid Assessment Criteria.

The Auction for the Transferred Assets shall conclude when the Successful Bidder submits fully executed sale and transaction documents memorializing the terms of its Successful Bid.

Promptly following the conclusion of the Auction, the Seller shall announce the Successful Bid and the Successful Bidder, and shall file with the Bankruptcy Court a notice of the Successful Bid and the Successful Bidder.

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

F. Return of Deposit

The Deposit of the Successful Bidder will be applied to the purchase price at the closing. The Deposits for each Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder will be returned within three (3) business days after the close of the Auction.

G. Backup Bidder

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Bid at the Auction with respect to all or substantially all of the Transferred Assets, as determined by the Seller, will be designated as the backup bidder (the “**Backup Bidder**”). The Backup Bidder shall be required to keep its last submitted Bid (the “**Backup Bid**”) open and irrevocable until the earlier of the closing of the transaction with the Successful Bidder or the Outside Date.

Following the Sale Hearing, if the Successful Bidder fails to consummate the purchase of the Transferred Assets, the Seller may deem the Backup Bidder to be the new Successful Bidder, and the Seller will be authorized, but not directed, without further order of the Bankruptcy Court, to consummate the transaction with such Backup Bidder at the price of its last bid. All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Seller on and as of the date that the Bankruptcy Court approves a Sale to the Successful Bid.

VII. BUYER PROTECTIONS

Pursuant to the Bidding Procedures Order, the Stalking Horse Bidder is entitled to the Buyer Protections in the amounts set forth in, and in accordance with the terms of, the Stalking Horse Agreement and the Bidding Procedures Order.

Pursuant to the Bidding Procedures Order, except for the Stalking Horse Bidder, no other party submitting an offer or Bid (including a Qualified Bid) shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment.

The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, the Sale, and related matters, including the right to object to the sale of the Transferred Assets or any portion thereof (including the conduct of the Auction and interpretation of this Bidding Procedures Order), unless and until such time as another Bidder is selected as the Successful Bidder.

VIII. SALE HEARING

A hearing to consider approval of the Successful Bid (or to approve the Stalking Horse Asset Purchase Agreement if no Auction is held) (the “**Sale Hearing**”) is currently scheduled to take place on [____], 2017 at [10:00 a.m. (EST)], or as soon thereafter as counsel may be heard before the Honorable [____] in in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 5th Floor, Courtroom [____], Wilmington Delaware 19801.

The Sale Hearing may be continued to a later date by the Seller by sending notice to the Notice Parties prior to the Sale Hearing or by making an announcement at the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder).

Exhibit D

FORM OF ORDER FOR APPROVAL OF STALKING HORSE AGREEMENT

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

IN RE: _____) Case No.: 17 - _____
ATOPTECH, INC., Chapter 11
*Debtor.*¹

ORDER (A) APPROVING THE ASSET PURCHASE AGREEMENT; (B) APPROVING THE SALE TO THE PURCHASER OF SUBSTANTIALLY ALL OF THE ASSETS OF THE DEBTOR PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES; (C) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES PURSUANT TO SECTION 365 OF THE BANKRUPTCY CODE; (D) AUTHORIZING THE DEBTORS TO CONSUMMATE TRANSACTIONS RELATED TO THE ABOVE; AND (E) GRANTING OTHER RELIEF

Upon the motion (the “**Motion**”)² of the above-captioned debtor and debtor in possession (the “**Debtor**”) pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) for entry of an order (this “**Sale Order**”) (a) authorizing and approving that certain Asset Purchase Agreement (the “**Purchase Agreement**”), dated as of January 10, 2017, between the Debtor, as seller, and [Draper Athena], as purchaser (the “**Purchaser**”), (b) approving the sale of the Debtor’s assets pursuant to the Asset Purchase Agreement (the “**Transferred Assets**”), (c) approving the assumption and assignment of certain

¹ The last four digits of the Debtor’s federal tax identification number are: 14-1881945. The Debtor’s headquarters and mailing address is 2111 Tasman Drive, Santa Clara, CA 95054.

² Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as defined herein).

executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code, (d) authorizing the Debtor to consummate transactions related to the Asset Purchase Agreement, and (e) granting other relief, all as more fully described in the Motion; and the Court having entered on [INSERT], 2017, the *Order (I)(A) Establishing Bidding Procedures For The Sale Of All, Or Substantially All, Of The Debtor's Assets; (B) Approving Buyer Protections; (C) Establishing Procedures Relating To The Assumption And Assignment Of Executory Contracts And Unexpired Leases; (D) Approving Form And Manner Of The Sale, Cure And Other Notices; (E) Scheduling An Auction And (F) Scheduling A Hearing To Consider (1) Approval Of The Sale Of The Debtor's Assets Free And Clear Of Claims, Liens And Encumbrances And (2) Approving The Assumption And Assignment Of Executory* [Docket No. __] (the “**Bidding Procedures Order**”); and the Debtor having determined that the highest and otherwise best offer for the Transferred Assets was made by the Purchaser pursuant to the Purchase Agreement; and the Court having conducted a hearing on [INSERT], 2017 (the “**Sale Hearing**”), at which time all parties in interest were offered an opportunity to be heard with respect to the proposed sale of the Transferred Assets (the “**Sale**”), to consider the approval of the Sale pursuant to the terms and conditions of the Purchase Agreement, and the Court having considered: (i) the Motion and any objections thereto; (ii) the proposed Sale by Debtor to the Purchaser pursuant to the Purchase Agreement; (iii) the arguments of counsel made, and evidence adduced, related thereto; and (iv) the full record in this Bankruptcy Case, including the record related to the hearing to consider the Bidding Procedures Order and the Sale Hearing held before the Court; all parties in interest having been heard, or having had the opportunity to be heard, regarding the approval of the Purchase Agreement and sale of the Transferred Assets and other transactions contemplated by the Purchase Agreement; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate,

its creditors, and other parties in interest; it is hereby **FOUND, CONCLUDED, AND DETERMINED THAT**.³

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

B. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction over the Motion and over the property of the Debtor, including the Transferred Assets to be sold, transferred, and conveyed pursuant to the Purchase Agreement, pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the Cases and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

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

E. The Transferred Assets constitute property of the Debtor's estate and title thereto is vested in Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code.

³ All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Motion are hereby incorporated herein to the extent not inconsistent herewith.

F. The statutory bases for the relief requested in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014 and Local Rule 6004-1.

G. On [January___], 2017 (the “**Petition Date**”), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) commencing this Bankruptcy Case.

H. The Debtor is continuing in the management and operation of its business and property as debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in this Bankruptcy Case.

I. [On [INSERT], the Office of the United States Trustee (the “**U.S. Trustee**”) appointed an official committee of unsecured creditors in this Bankruptcy Case pursuant to Section 1102 of the Bankruptcy Code (the “**Committee**”).]

J. This Court entered the Bidding Procedures Order on [INSERT], 2017: (1) establishing bidding and auction procedures for the sale of the Transferred Assets; (2) approving proposed bid protections to the Purchaser in accordance with the Purchase Agreement; (3) establishing procedures relating to the assumption and assignment of executory contracts and unexpired leases; (4) approving the form and manner of the sale, cure and other notices; and (5) scheduling the Auction and the Sale Hearing to consider the sale of the Transferred Assets.

K. As evidenced by the affidavits of service and publication previously filed with the Bankruptcy Court [Docket Nos. [INSERT]], and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate, and sufficient notice of the Motion, the Sale Hearing, the Auction, the Sale, and the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned to the Purchaser at Closing pursuant to this

Sale Order has been provided in accordance with sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 9007, and 9014 and in compliance with the Bidding Procedures Order, to each party entitled to such notice, including, as applicable: (a) all entities known to have expressed a *bona fide* interest in a transaction with respect to the Transferred Assets within the past two years; (b) all entities known to have asserted any lien, claim or encumbrance in or upon any of the Transferred Assets; (c) all federal, state and local environmental, regulatory or taxing authorities or recording offices that have a reasonably known interest in the relief requested by the Motion; (d) the U.S. Trustee; (e) counsel to the proposed Purchaser; (f) the Internal Revenue Service; (g) the Securities and Exchange Commission; (h) the U.S. Attorney for the District of Delaware; and (i) all persons and entities that have filed a request for service of filings in this Bankruptcy Case pursuant to Bankruptcy Rule 2002. With respect to entities whose identities are not reasonably ascertained by the Debtor, publication of the Sale Notice in the [*The Wall Street Journal*, National Edition], on [INSERT], 2017, as evidenced by the affidavit of service filed by the Debtor's notice and claims agent on [INSERT], 2017, [Docket No. ____], was, and is deemed, sufficient, and reasonably calculated under the circumstances to reach such entities. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the Auction, the Sale, and the Sale Hearing is, or shall be, required.

L. The Debtor and its professionals marketed the Transferred Assets and conducted the marketing and sale process in compliance with the Bidding Procedures and the Bidding Procedures Order. Based upon the record of these proceedings, creditors and other parties in interest and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Transferred Assets.

M. At the conclusion of the Auction and after reviewing all Qualified Bids (as defined in the Bidding Procedures), the Debtor determined in a valid and sound exercise of its business judgment that the highest or otherwise best Qualified Bid for the Transferred Assets was that of the Purchaser as set forth in the Purchase Agreement.

N. The Debtor has articulated good and sufficient reasons for this Court to grant the relief requested in the Motion regarding the sale process.

O. The Sale Notice provided all interested parties with timely and proper notice of the Sale contemplated by the Purchase Agreement, the Sale Hearing, and the Auction.

P. The disclosures made by the Debtor in the Motion, the Sale Notice, and related documents filed with the Bankruptcy Court concerning the Purchase Agreement, the Auction, the Sale and the Sale Hearing were good, complete and adequate.

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

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

S. The terms contained in the Purchase Agreement constitute the highest and best offer for the Transferred Assets and will provide a greater recovery for the Debtor's estate than would be provided by any other available alternative.

T. The Purchase Agreement and the Sale contemplated thereby represent a fair and reasonable offer to purchase the Transferred Assets under the circumstances of the Bankruptcy

Case. No other entity or group of entities has presented a higher or otherwise better offer to Debtor to purchase the Transferred Assets for greater economic value to the Debtor's estate than the Purchaser.

U. Approval of the Motion and the Purchase Agreement and the consummation of the Sale contemplated thereby are in the best interests of the Debtor, its creditors and estate, and other parties in interest.

V. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the Sale because, among other reasons: (1) the Purchase Agreement constitutes the highest and best offer for the Transferred Assets; (2) the Purchase Agreement and the closing thereon will present the best opportunity to realize the value of the Transferred Assets on a going-concern basis and avoid decline and devaluation of the Transferred Assets; and (3) any other transaction would not have yielded as favorable an economic result.

W. The Purchaser is purchasing the Transferred Assets in good faith and is a good-faith buyer within the meaning of section 363(m) of the Bankruptcy Code and is not an "insider" of the Debtor (as defined under section 101(31) of the Bankruptcy Code). The Purchaser has proceeded in good faith in all respects in connection with this Bankruptcy Case in that: (1) the Purchaser recognized that the Debtor was free to deal with any other party interested in acquiring the Transferred Assets; (2) the Purchaser complied with the provisions in the Bidding Procedures Order; (3) the Purchaser agreed to subject its bid to the competitive bidding procedures set forth in the Bidding Procedures Order; (4) all payments to be made by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the Sale have been disclosed; (5) the Purchaser has not violated section 363(n) of the

Bankruptcy Code by any action or inaction; and (6) the negotiation and execution of the Purchase Agreement, including the Sale contemplated thereby, were at arms' length and in good faith. The Purchaser, therefore, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

X. The Purchase Agreement and the transactions contemplated thereby cannot be avoided under section 363(n) of the Bankruptcy Code. The Debtor and the Purchaser have not engaged in any conduct that would cause or permit the Purchase Agreement or the consummation of the transactions contemplated thereby to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

Y. The consideration provided by the Purchaser pursuant to the Purchase Agreement: (1) is fair and adequate and constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia (including the Uniform Fraudulent Transfer Act); (2) is fair consideration under the Uniform Fraudulent Transfer Act; (3) is reasonably equivalent value, fair consideration, and fair value under any other applicable laws of the United States, any state, territory, or possession thereof, or the District of Columbia; and (4) will provide a greater recovery for the Debtor's creditors than would be provided by any other reasonably practicable available alternative.

Z. The Purchase Agreement, which constitutes reasonably equivalent value and fair consideration, was not entered into, and the Sale is not consummated, for the purpose of hindering, delaying or defrauding creditors of the Debtor under the Bankruptcy Code or under any other law of the United States, any state, territory, possession thereof, or the District of Columbia, or any other applicable law. Neither the Debtor, nor the Purchaser has entered into

the Purchase Agreement or is consummating the Sale with any fraudulent or otherwise improper purpose.

AA. By consummating the Sale, the Purchaser is not a mere continuation of Debtor or Debtor's estate, and there is no continuity between the Purchaser and the Debtor. The Purchaser is not holding itself out to the public as a continuation of the Debtor. The Purchaser is not a successor to the Debtor or the Debtor's estate by reason of any theory of law or equity, and the Sale does not amount to a consolidation, merger, or *de facto* merger of the Purchaser and the Debtor. Except as provided in the Purchase Agreement, neither the Purchaser nor any of its Affiliates shall assume any obligation or liability of Debtor or Debtor's estate, including any obligation under any collective bargaining agreement or labor practice agreement.

BB. The Sale neither impermissibly restructures the rights of the Debtor's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization of the Debtor. The Sale does not constitute a *sub rosa* plan.

CC. The Sale of the Transferred Assets is consistent with the Debtor's policy concerning the transfer of personally identifiable information and the Debtor has, to the extent necessary, satisfied section 363(b)(1) of the Bankruptcy Code. Accordingly, appointment of a consumer ombudsman pursuant to section 363(b)(1) or section 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.

DD. The Debtor, acting by and through its existing agents, representatives, and officers, has full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, and no further consents or approvals are required for the Debtor to consummate the Sale contemplated by the Purchase Agreement, except as otherwise set forth in the Purchase Agreement.

EE. The transfer of each of the Transferred Assets to the Purchaser will be, as of the Closing Date, a legal, valid, and effective transfer of such assets, and vests or will vest the Purchaser with all right, title, and interest of Seller to the Transferred Assets free and clear of all Interests or Claims (as defined below) accruing, arising or relating thereto any time prior to the Closing Date, unless otherwise specifically assumed pursuant to the Purchase Agreement.

FF. The Debtor may sell the Transferred Assets free and clear of all Interests or Claims against Debtor, its estate, or any of the Transferred Assets (unless otherwise assumed in 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 holders of Interests or Claims against the Debtor, its estate, or any of the Transferred Assets who did not object, or who withdrew their objections, to the Sale or the Motion are deemed to have consented thereto pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of such Interests or Claims that did object fall within one or more of the other subsections of section 363(f) and are adequately protected by having their Interests or Claims, if any, in each instance against Debtor, its estate, or any of the Transferred Assets, attach to the cash proceeds of the Sale ultimately attributable to the Transferred Assets in which such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that such creditor had prior to the Sale, subject to any claims and defenses that Debtor may possess with respect thereto.

GG. If the Sale were not free and clear of all Interests or Claims (except as otherwise assumed in the Purchase Agreement), or if the Purchaser would, or in the future could, be liable for any of the Interests or Claims (except as otherwise assumed in the Purchase Agreement), the Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale, thus adversely affecting the Debtor and its estate and creditors.

HH. Debtor has demonstrated that it is an exercise of its sound business judgment for Debtor to assume and assign the Designated Contracts to the Purchaser, in each case in connection with the consummation of the Sale, and the assumption and assignment of the Designated Contracts is in the best interests of Debtor, its estate, and its creditors and other parties in interest. The Designated Contracts being assigned to the Purchaser under the Purchase Agreement are an integral part of the Purchase Agreement and the Sale and, accordingly, such assumptions and assignments are reasonable and enhance the value of the Debtor's estate. Any non-Debtor counterparty to any Designated Contract that has not actually filed with the Court an objection to such assumption as of the date hereof is deemed to have consented to such assumption and assignment.

II. Debtor and the Purchaser have, to the extent necessary, satisfied the requirements of section 365 of the Bankruptcy Code, including sections 365(b)(1)(A), 365(b)(1)(B), and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Designated Contracts to the extent provided under the Purchase Agreement and have: (1) cured any default existing prior to the date hereof under any of the Designated Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code; and (2) provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Designated Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code, and the Purchaser has provided adequate assurance of future performance of and under the Designated Contracts, within the meaning of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code. Each provision of the Designated Contracts or applicable non-bankruptcy law that purports to prohibit, restrict or condition, or could be construed as prohibiting, restricting or conditioning, assignment of any

Designated Contract, has been satisfied or is otherwise unenforceable under Bankruptcy Code section 365.

JJ. The Purchase Agreement and Sale must be approved and the Closing must occur promptly to preserve the value of the Debtor's assets.

KK. The Sale constitutes a reasonable and sound exercise of Debtor's business judgment, is in the best interests of Debtor, its estate, creditors, and other parties in interest, and should be approved.

LL. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Sale.

Based upon the foregoing findings and conclusions, the Motion and the record before the Court with respect to the Motion, and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED that:

1. The relief requested in the Motion is granted as set forth herein.
2. Any and all objections and responses to the Motion that have not been withdrawn, waived, settled, or resolved, and all reservations of rights included therein, are hereby overruled and denied on the merits.
3. Notice of the Motion, the Auction, the Sale Hearing, and the Sale was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.

Approval of the Sale of Transferred Assets

4. Pursuant to section 363(b) of the Bankruptcy Code, the Debtor and the Purchaser, acting by and through their existing agents, representatives and officers, are authorized, empowered, and directed to take any and all actions necessary or appropriate to: (a) consummate the Sale 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 Sale Order; (c) transfer and assign all right, title, and interest to all property, licenses, and rights to be conveyed in accordance with the terms and conditions of the Purchase Agreement and (d) execute and deliver, perform under, consummate, and implement the Purchase Agreement and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale, including any other ancillary documents, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such other ancillary documents. The Purchaser and the Debtor shall have no obligation to close the Sale except as provided for in the Purchase Agreement.

5. This Sale Order shall be binding in all respects upon the Debtor, its estate, all creditors (including the Committee), all holders of equity interests in the Debtor, all holders of any Interests or Claims (whether known or unknown) against the Debtor, any holders of Interests or Claims against or on all or any portion of the Transferred Assets, all counterparties to any executory contract or unexpired lease of the Debtor (including any collective bargaining agreement or labor practice agreement), the Purchaser and all successors and assigns of the Purchaser, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in this Bankruptcy Case or upon a conversion of this Bankruptcy Case to chapter 7 under the Bankruptcy Code.

6. The terms and provisions of the Purchase Agreement and this Sale Order shall inure to the benefit of the Debtor, its estate and creditors, the Purchaser, and their respective Affiliates, successors and assigns, and any other affected third parties, including all persons asserting any Interests or Claims in the Transferred Assets to be sold to the Purchaser pursuant to the Purchase Agreement, notwithstanding any subsequent appointment of any trustee, party, entity, or other fiduciary under any section of any chapter of the Bankruptcy Code, as to which trustee, party, entity, or other fiduciary such terms and provisions likewise shall be binding.

Sale and Transfer of Transferred Assets

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, upon the Closing Date and pursuant to and except as otherwise set forth in the Purchase Agreement, the Transferred Assets shall be transferred to the Purchaser free and clear of all encumbrances, claims, interests, and liens, including the Excluded Liabilities, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, including any pension liabilities, retiree medical benefit liabilities, liabilities related to the Employee Retirement Income Security Act of

1974, liabilities related to the Internal Revenue Code, or any other liability relating to Debtor's current and former employees, including any withdrawal liabilities or liabilities under any collective bargaining agreement or labor practice agreement (to the extent not assumed under the Purchase Agreement), of the Debtor or any of the Debtor's predecessors or Affiliates, claims, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this Bankruptcy Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (other than Assumed Liabilities) (collectively, the "**Interests or Claims**"), with all such Interests or Claims to attach to the cash proceeds of the Sale in the order of their priority, with the same validity, force, and effect that they had against the Transferred Assets, subject to any claims and defenses the Debtor may possess with respect thereto. Furthermore, except as otherwise provided in the Purchase Agreement, the Purchaser and its Affiliates shall not have any liabilities for the prepetition and pre-Closing Date conduct of the Debtor or any of its officers, directors, employees, or agents, including any conduct which may be the subject of ongoing investigations by the federal government, and the federal government will not seek to set off or recoup any such investigation liabilities against payment obligations for post-Closing shipments of goods to the federal government.

8. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of all of the Transferred Assets and shall constitute a bill of sale transferring good and marketable title in

such Transferred Assets to the Purchaser pursuant to the terms and allocations set forth in the Purchase Agreement. For the avoidance of doubt, the Excluded Assets set forth in the Purchase Agreement are not included in the Transferred Assets.

9. Subject to the terms and conditions of this Sale Order, the transfer of Transferred Assets to the Purchaser pursuant to the Purchase Agreement and the consummation of the Sale and any related actions contemplated thereby do not require any consents other than as specifically provided for in the Purchase Agreement, constitute a legal, valid, and effective transfer of the Transferred Assets, and shall vest Purchaser with right, title, and interest of the Debtor in and to the Transferred Assets as set forth in the Purchase Agreement, as applicable, free and clear of all Interests or Claims of any kind or nature whatsoever (except as otherwise specifically assumed in the Purchase Agreement).

10. To the greatest extent available under applicable law and except as provided in the Purchase Agreement, the Purchaser, as provided by the Purchase Agreement, shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtor with respect to the Transferred Assets, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date as provided by the Purchase Agreement. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Transferred Assets sold, transferred, assigned, or conveyed to the Purchaser on account of the filing or pendency of this Bankruptcy Case or the consummation of the Sale.

11. All entities that presently are, or on the Closing may be, in possession of some or all of the Transferred Assets to be sold, transferred, or conveyed (wherever located) to the Purchaser pursuant to the Purchase Agreement hereby are directed to surrender possession of the Transferred Assets to the Purchaser on the Closing Date.

12. Upon consummation of the Sale set forth in the Purchase Agreement, if any person or entity that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Interests or Claims against or in the Transferred Assets shall not have delivered to the Debtor prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfactions, releases of all Interests or Claims that the person or entity has with respect to the Transferred Assets (unless otherwise assumed in the Purchase Agreement), or otherwise, then: (a) the Debtor hereby is authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Transferred Assets and (b) the Purchaser hereby is authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Interests or Claims in the Transferred Assets of any kind or nature (except as otherwise assumed in the Purchase Agreement). For the avoidance of doubt, to the extent necessary, upon consummation of the Sale set forth in the Purchase Agreement, the Purchaser is authorized to file, with respect to the Transferred Assets, termination statements, lien terminations, or other amendments in any required jurisdiction to remove and record, notice filings or financing statements recorded to attach, perfect or otherwise notice any lien or encumbrance that is extinguished or otherwise released pursuant to this Sale Order under section 363 and the related provisions of the Bankruptcy Code.

13. All entities, including all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities, parties to executory contracts and unexpired leases, customers, employees and former employees, dealers and sale representatives, and trade or other creditors holding Claims or Interests of any kind or nature whatsoever in or against the Debtor or the Transferred Assets arising under or out of, in connection with, or in any way relating to, the Debtor, the Transferred Assets, the operation of the Debtor's business prior to the Closing, or the transfer of the Transferred Assets to the Purchaser, hereby are forever barred, estopped, and permanently enjoined from asserting any Claims or Interests of any kind or nature whatsoever (except to the extent such Claims or Interests are assumed by the Purchaser pursuant to the Purchase Agreement) against the Purchaser and its successors, designees, permitted assigns, or property, or the Transferred Assets conveyed in accordance with the Purchase Agreement.

14. The Purchaser (and any assignee of the Purchaser's rights under the Purchase Agreement) and its respective owners, members, shareholders, managers, directors, officers, partners, employees, agents, attorneys, investment bankers and financial advisors are hereby generally released by the Debtor, its Affiliates, their respective estates and their respective owners, members, shareholders, managers, directors, officers, partners, employees, agents, attorneys, investment bankers and financial advisors from any and all claims that the Debtor and its Affiliates or estates or any party claiming derivatively through the Debtor may have against the Purchaser, other than claims against the Purchaser arising under the Purchase Agreement or as otherwise provided in this Sale Order; provided however that such release will not be in effect until the later of the Closing or all obligations under the Purchase Agreement have been fulfilled.

15. As of and after the Closing: (a) each of the Debtor's creditors is hereby authorized and directed to execute such documents and take all other actions as may be necessary to release their Claims or Interests in the Transferred Assets (if any) as such Claims or Interests may have been recorded or may otherwise exist; and (b) any Transferred Assets that may be subject to a statutory or mechanic's lien shall be turned over and such liens shall attach to the sale proceeds in the same priority they currently enjoy with respect to the Transferred Assets.

Contracts to be Assumed and Assigned

16. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, Debtor's assumption and assignment to the Purchaser, and the Purchaser's assumption on the terms set forth in the Purchase Agreement of the Designated Contracts is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied.

17. The Debtor hereby is authorized in accordance with sections 105(a), 363, and 365 of the Bankruptcy Code to assume and assign to the Purchaser, effective upon the Closing Date of the sale of the Transferred Assets, the Designated Contracts free and clear of all Interests or Claims of any kind or nature whatsoever and execute and deliver to the Purchaser such documents or other instruments as may be necessary to assign and transfer the Designated Contracts to the Purchaser.

18. To the extent that an objection by a counterparty to any Designated Contract, including all objections related to Cure Costs, is not resolved prior to the Closing Date, the Debtor, in consultation with the Purchaser, may elect to reserve the disputed Cure Cost and assume the Designated Contract on the Closing Date. So long as the Debtor holds the claimed Cure Cost in reserve, and there are no other unresolved objections to the assumption and

assignment of the applicable Designated Contract, the Debtor can, without further delay, assume and assign the Designated Contract that is the subject of the objection. Under such circumstances, the respective objecting counterparty's recourse is limited to the funds held in reserve.

19. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall fully and irrevocably be vested in all right, title, and interest of each Designated Contract. To the extent provided in the Purchase Agreement, the Debtor shall cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

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

21. Pursuant to sections 365(b)(1)(A) and (B) of the Bankruptcy Code, any and all Cure Costs necessary to assume and assign a Designated Contract or Additional Designated Contract shall be paid by the Debtor.

22. The Cure Costs to which no objections have been filed are hereby fixed at the amounts set forth in the Cure Notice filed by the Debtor, or as otherwise agreed, in writing and with the consent of the Purchaser, which shall not be unreasonably withheld, between the Debtor and the non-Debtor third parties to such Designated Contracts, and the non-Debtor parties to such Designated Contracts are forever bound by such Cure Costs and, upon payment of such

Cure Costs, are hereby enjoined from taking any action against the Purchaser or the Transferred Assets with respect to any claim for cure under any assumed Designated Contract.

23. The payment of the Cure Costs (if any) shall effect a cure of all defaults existing as of the date that such executory contracts or unexpired leases are assumed and compensate for any actual pecuniary loss to such non-Debtor party resulting from such default. No other amounts will be owed by the Debtor, its estate or the Purchaser with respect to amounts first arising or accruing during, or attributable or related to, the period before Closing with respect to the Designated Contracts, and any and all persons or entities shall be forever barred and estopped from asserting a claim against the Debtor, its estate, or the Purchaser that any additional amounts are due or defaults exist under the Designated Contracts that arose or accrued, or relate to or are attributable to the period before the Closing.

24. The Purchaser shall have assumed the Designated Contracts, and pursuant to section 365(f) of the Bankruptcy Code, the assignment by the Debtor of such Designated Contracts shall not be a default thereunder. After the payment of the relevant Cure Costs by the Debtor, neither the Debtor nor the Purchaser shall have any further liabilities to the counterparties to the Designated Contracts, other than the Purchaser's obligations under the Designated Contracts that accrue and become due and payable on or after the date that such Designated Contracts are assumed.

25. Any provisions in any Designated Contract that prohibit or condition the assignment of such Designated Contract or allow the party to such assumed Designated Contract to terminate, recapture, impose any penalty, condition on renewal or extension or modify any term or condition upon the assignment of such Designated Contract constitute unenforceable anti-assignment provisions that are void and of no force and effect. All other requirements and

conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to the Purchaser of the Designated Contracts have been satisfied.

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

27. The Purchaser shall be deemed to be substituted for the Debtor as a party to the applicable Designated Contracts and the Debtor shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Designated Contracts.

28. The Purchaser has provided adequate assurance of future performance under the relevant Designated Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable) and 365(f)(2)(B) of the Bankruptcy Code.

29. There shall be no assignment fees, increases, rent-acceleration, or any other fees charged to the Purchaser or the Debtor as a result of the assumption and assignment of the Designated Contracts. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Designated Contracts are forever barred and permanently enjoined from raising or asserting against the Debtor or the Purchaser, with respect to the assignment of the Designated Contracts to the Purchaser, any assignment fee, default, breach, claim, pecuniary loss, or condition to assignment, that arise under or related to the Designated Contracts, existing as of the date that such Designated Contracts.

30. All counterparties to the Designated Contracts shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and without any cost or charges, any instruments, applications, consents or other documents that may be required or

requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale.

31. Neither the Purchaser, nor any successor of the Purchaser, shall be responsible for or have any Interests or Claims or obligations arising out of any of the contracts, agreements, or understandings that have not been assumed or assigned to the Purchaser (except as specifically provided by the Purchase Agreement).

No Successorship

32. Neither the Purchaser nor any of its Affiliates are successors to the Debtor or its estate by reason of any theory of law or equity, and neither the Purchaser nor any of its Affiliates shall assume or in any way be responsible for any liability or obligation of the Debtor or its estate, except as otherwise provided in the Purchase Agreement.

Time is of the Essence

33. Time is of the essence in consummating the Sale. In order to maximize the value of the Transferred Assets, it is essential that the sale and assignment of the Transferred Assets occur within the time constraints set forth in the Purchase Agreement.

Modification of the Automatic Stay

34. The automatic stay provisions of section 362 of the Bankruptcy Code are lifted and modified to the extent necessary to implement the terms and conditions of the Purchase Agreement and the provisions of this Sale Order.

Additional Provisions

35. Effective upon the Closing Date and except as otherwise provided in this Sale Order or the Purchase Agreement, all entities are forever prohibited and permanently enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or

equity, in any judicial, administrative, arbitral, or other proceeding against the Purchaser, its successors and assigns, or the Transferred Assets, with respect to any: (a) Interests or Claims arising under, out of, in connection with, or in any way relating to the Debtor, the Purchaser, the Transferred Assets, or the operation of the Debtor's business or the Transferred Assets prior to the closing of the Sale; or (b) successor liability (except to the extent the Purchaser specifically assumed successor liability pursuant to the Purchase Agreement), including the following actions: (i) commencing or continuing in any manner any action or other proceeding against the Purchaser, its successors or assigns, assets, or properties, including with respect to the Interests or Claims; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its successors, assigns, assets, or properties; (iii) creating, perfecting, or enforcing any Interests or Claims against the Purchaser, its successors, assigns, assets, or properties; (iv) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due the Purchaser or its successors or assigns; (v) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of this Court, or the agreements or actions contemplated or taken in respect thereof, or (vi) revoking, terminating, or failing or refusing to issue or renew any license, permit, or authorization to operate any of the Transferred Assets or conduct any of the businesses operated with the Transferred Assets.

36. Except as otherwise provided in the Purchase Agreement, the Purchaser shall have no obligation, as successor or otherwise (including with respect to successor or vicarious liabilities of any kind or character), to pay wages, bonuses, severance pay, benefits (including contributions or payments on account of any under-funding with respect to any and all pension plans) or any other payment to employees of the Debtor or its Affiliates. Except as otherwise

provided in the Purchase Agreement, the Purchaser shall have no liability, as successor or otherwise (including with respect to successor or vicarious liabilities of any kind or character), with respect to any collective bargaining agreement, labor practice agreement, employee pension plan, employee welfare or retention, benefit, and/or incentive plan to which the Debtor or its Affiliates are a party and relating to the Debtor's business (including arising from or related to the rejection or other termination of any such agreement), and the Purchaser shall in no way, as successor or otherwise (including with respect to successor or vicarious liabilities of any kind or character), be deemed a party to or assignee of any such agreement, and no employee of the Purchaser shall be deemed in any way covered by or a party to any such agreement, and all parties to any such agreement are hereby enjoined from asserting against the Purchaser any and all Interests or Claims arising from or relating to such agreement.

37. Except as provided in the Purchase Agreement and without limiting other applicable provisions of this Sale Order, the Purchaser is not, by virtue of the consummation of the Sale, assuming, nor shall it be liable or responsible for, as a successor or otherwise (including with respect to successor or vicarious liabilities of any kind or character), under any theory of law or equity, including any theory of antitrust, environmental successor or transferee liability, labor law, *de facto* merger, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter raised, which may be asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtor, or any of its predecessors or Affiliates or any obligations of the Debtor or its predecessors or Affiliates arising prior to the Closing Date, for any liabilities, debts, commitments, or obligations (whether known or unknown, disclosed or undisclosed, absolute, contingent, inchoate, fixed or otherwise) in any way whatsoever relating to or arising from the Transferred Assets or the Debtor's operation of its

business or use of the Transferred Assets on or prior to the Closing Date or any such liabilities, debts, commitments, or obligations that in any way whatsoever relate to periods on or prior to the Closing Date or are to be observed, paid, discharged, or performed on or prior to the Closing Date (in each case, including any liabilities that result from, relate to or arise out of tort or other product liability claims), or any liabilities calculable by reference to the Debtor or its assets or operations, or relating to continuing conditions existing on or prior to the Closing Date, including with respect to any of Debtor's predecessors or Affiliates, which liabilities, debts, commitments, and obligations are hereby extinguished insofar as they may give rise to successor liability, without regard to whether the claimant asserting any such liabilities, debts, commitments, or obligations has delivered to the Purchaser a release thereof. Without limiting the generality of the foregoing and except as provided in the Purchase Agreement, by virtue of the consummation of the Sale contemplated by the Purchase Agreement, the Purchaser shall not be liable or responsible, as a successor or otherwise, including with respect to successor or vicarious liabilities of any kind or character, for the Debtor's liabilities, debts, commitments, or obligations, whether calculable by reference to the Debtor, arising on or prior to the Closing and under or in connection with: (a) any employment or labor agreements (including any collective bargaining agreements or labor practice agreements), consulting agreements, severance arrangements, change-in-control agreements or other similar agreement to which the Debtor is a party; (b) any pension, welfare, compensation or other employee benefit plans, agreements, practices, and programs, including any pension plan of the Debtor; (c) the cessation of the Debtor's operations, dismissal of employees, or termination (including rejection) of employment or labor agreements (including any collective bargaining agreements or labor practice agreements) or pension, welfare, compensation or other employee benefit plans, agreements,

practices, and programs, obligations that might otherwise arise from or pursuant to the Employee Retirement Income Security Act of 1974, as amended, the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964, the Age Discrimination and Employment Act of 1967, the Federal Rehabilitation Act of 1973, the National Labor Relations Act, the Consolidated Omnibus Budget Reconciliation Act of 1985, the Consolidated Omnibus Budget Reconciliation Act, or the Worker Adjustment and Retraining Notification Act; (d) workmen's compensation, occupational disease or unemployment or temporary disability insurance claims, (e) environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to Closing (including the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including under the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 *et seq.*; (f) any bulk sales, bulk transfer, or similar law; (g) any liabilities, debts, commitments, or obligations of, or required to be paid by, the Debtor for any Taxes of any kind for any period; (h) any liabilities, debts, commitments, or obligations relating to the business of the Debtor or the Transferred Assets for or applicable to the pre-Closing period; (i) any litigation; (j) any liability, whether pursuant to any state or any federal laws that arise from products manufactured or distributed by or on behalf of Debtor; and (k) any Excluded Liabilities as set forth in the Purchase Agreement. The Purchaser has given substantial consideration under the Purchase Agreement for the benefit of the holders of any Interests or Claims. The consideration given by the Purchaser shall constitute valid and valuable consideration for the releases of any potential claims of successor liability of the Purchaser, which releases shall be deemed to have been given in favor of the Purchaser by all holders of Interests or Claims in or against the Debtor or any of the Transferred Assets.

38. The recitation, in the immediately preceding paragraph of this Sale Order, of specific agreements, plans, or statutes is not intended, and shall not be construed, to limit the generality of the categories of liabilities, debts, commitments, or obligations referred to therein.

39. [The Sale may include the transfer of “personally identifiable information” within the meaning of section 101(41A) of the Bankruptcy Code. No consumer privacy ombudsman need be appointed under section 363(b)(1) of the Bankruptcy Code because the Purchaser has agreed to adhere to any such privacy policies applicable to the Debtor.]

40. Seller and the Purchaser hereby waive, and shall be deemed to waive, any requirement of compliance with, and any claims related to non-compliance with, the provisions of any bulk sales, bulk transfer, or similar law of any jurisdiction that may be applicable.

41. Following the Closing, no holder of a Claim or Interest in or against the Debtor or the Transferred Assets shall interfere with the Purchaser’s title to or use and enjoyment of the Transferred Assets based on or related to such Claim or Interest or any actions that the Debtor may take in this Bankruptcy Case or any successor cases.

42. The Debtor shall be, and it hereby is, authorized to take all such actions as may be necessary to effectuate the terms of this Sale Order.

43. The Sale contemplated by the Purchase Agreement is undertaken by the Purchaser without collusion and in good faith, as that term is defined in section 363(m) of the Bankruptcy Code, and accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Designated Contracts by the Purchaser, if any, and the sale free and clear of all Interests or Claims (unless otherwise assumed in the Purchase Agreement)), unless such authorization and consummation of such Sale are duly stayed pending such appeal. The

Purchaser is a good-faith buyer within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections of section 363(m) of the Bankruptcy Code.

44. As a good-faith purchaser of the Transferred Assets, the Purchaser has not colluded with any of the other bidders, potential bidders, or any other parties interested in the Transferred Assets, and therefore neither the Debtor nor any successor in interest to the Debtor's estate nor any other party in interest shall be entitled to bring an action against the Purchaser or any of its Affiliates, and the sale of the Transferred Assets may not be avoided pursuant to section 363(n) of the Bankruptcy Code.

45. Nothing contained in any plan of reorganization or liquidation, or order of any type or kind entered in this Bankruptcy Case, any subsequent chapter 7 or chapter 11 case of the Debtor, or any related proceeding subsequent to entry of this Sale Order, shall directly conflict with or directly derogate from the provisions of the Purchase Agreement or the terms of this Sale Order.

46. The failure specifically to include any particular provisions of the Purchase Agreement including any of the documents, agreements, or instruments executed in connection therewith in this Sale Order shall not diminish or impair the efficacy of such provision, document, agreement, or instrument, it being the intent of this Court that the Purchase Agreement and each document, agreement or instrument be authorized and approved in its entirety.

47. To the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in this Bankruptcy Case, the terms of this Sale Order shall govern.

48. To the extent there are any inconsistencies between the terms of this Sale Order and the Purchase Agreement (including all ancillary documents executed in connection therewith), the terms of this Sale Order shall govern.

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

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

51. Notwithstanding Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, this Sale Order shall be effective immediately upon entry and the Debtor and the Purchaser are authorized to close the Sale immediately upon entry of this Sale Order, in accordance with the Purchase Agreement.

52. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Sale Order.

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

Dated: _____, 2017
Wilmington, Delaware

THE HONORABLE [_____]
UNITED STATES BANKRUPTCY JUDGE

Schedule 1.1(mm) – Designated Employees

Region	Dept	Name	Title
USA	S&M	Bagmar, Deepesh	Staff Applications Engineer
USA	R&D	Bai, Geng	Director, Delay & Crosstalk
USA	S&M	Bailey, Marc	Senior Staff Engineer
USA	S&M	Bennett, Tim	Senior Staff Engineer
USA	R&D	Bian, Fuliang	Senior Engineer
USA	S&M	Chada, Vishnu	Manager I of Applications Engineer
USA	R&D	Chang, Chwen-Cher	Engineer
USA	R&D	Chang, Yu-Hsu H	VP Product Management
USA	R&D	Chao, Nicole	Senior Research & Development Engineer
USA	S&M	Charcos, Ivan	Applications Engineer
USA	G&A	Chen, Claudia	VP Finance
USA	R&D	Chen, Joseph	Director, QoR
USA	R&D	Chen, Lok Sang	Engineer
USA	R&D	Chen, Zhong	Principal Engineer II, RD
USA	S&M	Cheng, Lily	Manager II of Applications Engineer 0
USA	G&A	Chern, Jue-Hsien	Chief Executive Officer
USA	R&D	Chiu, Hsien-Yen (Freeman)	Senior Research & Development Engineer
USA	S&M	Cho, Je	Engineer
USA	S&M	Deng, Stephen	Director
USA	R&D	Fang, Odysseus	Principal Engineer, Research & Development
USA	R&D	Fu, So-Chung	Engineer
USA	R&D	Gee, Thompson	IT Manager
USA	R&D	Geocaris, Thomas	Engineer
USA	R&D	Han,Mingsheng	Fellow, Router/DRC
USA	R&D	Hsieh,Chang-Chao	VP timing/CTS/Optimization
USA	R&D	Hsu, Tien-Chang (Timo)	Senior RD Engineer I
USA	S&M	Kothari,Alpesh	Director of Applications Engineer
USA	S&M	Lemmer,Travis	Director I of Applications Engineer
USA	R&D	Li,Feng	Engineer
USA	R&D	Li,Jingsong	Engineer
USA	G&A	Li,Richard	Accounting manager
USA	R&D	Li,Ying-Meng	Engineer
USA	R&D	Lin, Li-Feng (Pat)	Senior Research & Development Engineer
USA	R&D	Liou,Biing-Horng	Engineer
USA	R&D	Liu, Lungchun	Director, R&D II
USA	R&D	Liu,Tai-Hung	Director, Place/Groute/ RC/Package
USA	S&M	Maung, Daniel	VP applications Engineer

USA	R&D	Mitelman, Yackov	Senior IT Engineer
USA	S&M	Most, Zachary	Sr Staff Engineer
USA	S&M	Noppenberg, Cole	Staff Applications Engineer
USA	S&M	Potter, Phil	Sr. Staff Applications Engineer
USA	S&M	Shumaker, Dennis	Lead Applications Engineer
USA	S&M	Thune, Eric	VP Sales and Marketing
USA	R&D	Tong, Yang-Shan (Sam)	Senior RD Engineer
USA	S&M	Trapp, Mike	Director Application s Engineer
USA	R&D	Tsai, Sung Han	Sr. RD Engineer
USA	R&D	Tseng, Antony	Engineer II
USA	R&D	Tseng, Hsin-Chia	Senior Research & Development Engineer
USA	R&D	Tung, Sara	Senior Engineer, Product Specialist
USA	R&D	Tzeng, Ping-San	VP, R&D
USA	G&A	Wang, Joanna	Senior Account - Part Time
USA	R&D	Wang, Jianjun	Director, Timing
USA	R&D	Wang, Pingang	Principal Engineer, RD
USA	R&D	Wang, Yucheng	Fellow
USA	R&D	Wu, Ping-Chih	Director, Hierarchal Flow
USA	R&D	Wu, Yang	Principal Engineer, RD
USA	G&A	Yi, Terri	Senior Account - Part Time
USA	R&D	Yuan, Lin	Senior Engineer
TW	R&D	Liu, Eugene	Director
TW	R&D	Chen, Shun Tang	Manager
TW	R&D	Wang, Devin	Manager
TW	R&D	Wang, Wei-Shen	Engineer
TW	R&D	Chiang, Winston	Engineer
TW	R&D	Kan, TC	Engineer
TW	R&D	Tsai, Charles	Engineer
TW	R&D	Luan, Jeffy	Engineer
TW	R&D	Chang, Frank	Engineer
TW	R&D	Wang, Louis	Engineer
TW	R&D	Chen, Frank	Engineer
TW	R&D	Li, Mountain	Engineer
TW	R&D	Tsao, Sarah	Engineer
TW	R&D	Lin, Shing-Tung	Engineer
TW	R&D	Chang-Chien, Cynthina	Engineer
TW	R&D	Arton (Hsin-Wei) Chang	Engineer
TW	R&D	Ming-Mo (George) Huang	Engineer
TW	R&D	Wang, Bill	Engineer
TW	R&D	Chen, Sophie	Engineer

TW	R&D	Steven Lin	Engineer
TW	R&D	Ko-Lung Yuan	Engineer
TW	R&D	Antony Chang	Engineer
TW	R&D	Fred Tsai	Engineer
TW	R&D	Lydia Ni	Engineer
TW	Sales	KM Yang	Sales Manager
TW	G&A	Jeffrey Ko	Accounting manager
TW	G&A	Mandy Wang	Office administration
India	S&M	Alpesh Kothari	Director, applications Engineer
India	S&M	Girish Desai	Manager, applications Engineer
India	S&M	Gopinath Agrahara	Manager, applications Engineer
India	S&M	Navateja Mudulla	Applications Engineer
India	S&M	Raghuram Gude	Applications Engineer
India	S&M	Ananth Reddy Gondhi	Applications Engineer
India	S&M	Arshad Mehfooz	Applications Engineer
India	S&M	Nikhil Thumula	Applications Engineer
India	S&M	Arpan Midya	Applications Engineer
India	S&M	Radhika Katkum	Applications Engineer
India	S&M	Amarnadh Akavarapu	Applications Engineer
India	S&M	Venkatrao Gurram	Applications Engineer
India	S&M	Anup Samanta	Applications Engineer
India	S&M	Rajashekar N	Applications Engineer
India	G&A	Visveshwaran R	office administration
India	G&A	Rukmini Sathishkumar	Accountant
Korea	S&M	Chang Ki Baek	Applications Engineer
Korea	S&M	BoSoon Lee	Director of Sales
Korea	S&M	Jeong Guk Choi	Applications Engineer
Japan	S&M	Kaori Mizomichi	Applications Engineer
Japan	Sales	Etsuto Araki	VP of Sales
Japan	S&M	Tokihito Okada	Applications Engineer
Japan	S&M	Nobumoto Muto	Applications Engineer

Schedule 2.1(a)(i) – Designated Contracts

1. Lease dated April 26, 2012 by and between Silicon Valley CA-I, LLC and ATopTech, Inc., for premises located at 2111 Tasman Drive, Santa Clara, CA.
2. Software License Agreement dated May 29, 2009 by and between Acres Software, Inc. (prior name of Flexera Software) and ATopTech, Inc., and all purchase orders thereunder.
3. Software License Agreement renewed for 2016 by and between Atlassian and ATopTech, Inc. (terms of agreement online at <https://www.atlassian.com/legal/customer-agreement>), and all purchase orders thereunder.
4. Patent License Agreement dated March 20, 2015 by and between Golden Gate Technology, Inc. and ATopTech, Inc.
5. LDL Software License Agreement dated April 23, 2010 by and between Timothy A. Davis and ATopTech, Inc., and all purchase orders thereunder.
6. Software License Agreement dated December 24, 2015 by and between Altran Technologies India Pvt. Ltd. and ATopTech, Inc., and all purchase orders thereunder.
7. License Agreement dated November 14, 2007 by and between Broadcom Corporation and ATopTech, Inc., as amended by the Addendum to the License Agreement dated January 29, 2010, and all purchase orders thereunder.
8. Software License Agreement (*software-licenese-keiyakusho*) dated February 10, 2015 by and among CDC Inc., a kabushiki-kaisha incorporated under Companies Act of Japan, user members of CDC Inc., and ATopTech Co., Ltd., and all purchase orders thereunder.
9. Software License Agreement dated April 20, 2010 by and between ClariPhy Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
10. Software License Agreement dated August 24, 2011 by and between Cypress Semiconductor, Inc. and ATopTech, Inc., and all purchase orders thereunder.
11. Software License Agreement (*software-license-keiyakusho*) dated July 1, 2011 by and between Dai Nippon Printing Co., Ltd, a kabushiki-kaisha incorporated under Companies Act of Japan, and ATopTech Co., Ltd., and all purchase orders thereunder.
12. Software License Agreement dated November 24, 2014 by and between eSilicon Corporation and ATopTech, Inc., and all purchase orders thereunder.
13. Software License Agreement (*software-license-keiyakusho*) dated March 15, 2013 by and between Kawasaki Microelectronics, Inc., a kabushiki kaisha incorporated under Companies Act of Japan (which was succeeded by MegaChips Corporation), and ATopTech Co., Ltd., and all purchase orders thereunder.
14. Software License Agreement dated December 1, 2012 by and between M31 Technology Corporation and ATopTech, Inc., and all purchase orders thereunder.
15. Software License Agreement dated May 13, 2013 by and between Mellanox Technologies, Ltd. and ATopTech, Inc., and all purchase orders thereunder.
16. Software License Agreement dated December 20, 2012 by and between Samsung Austin Semiconductor, LLC and ATopTech, Inc., and all purchase orders thereunder.
17. Software License Agreement dated January 1, 2010 by and between Sharp Corporation and ATopTech Co., Ltd., and all purchase orders thereunder.

18. Software License Agreement dated December 12, 2012 by and between Solarflare Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
19. Master EDA Software License Agreement dated December 22, 2011 by and between Xilinx, Inc. and ATopTech, Inc., and all purchase orders thereunder.
20. Services Level Agreement dated May 20, 2013 by and between Aryaka, Inc. and ATopTech, Inc., and all purchase orders thereunder.
21. End User License Agreement for the Intel® Software Development Products (Version March 2016) (Shrink-Wrap).
22. OpenDoor Exchange Agreement dated August 16, 2016 by and between Mentor Graphics Corporation and ATopTech, Inc.
23. Software License Agreement dated March 29, 2012 by and between Avago Technologies U.S. Inc. and ATopTech, Inc, and all purchase orders thereunder.
24. International Distribution Agreement dated May 11, 2016 by and between Huada Emphyrean Software Co., Ltd. and ATopTech, Inc.
25. Consulting Agreement dated May 1, 2015 by and between Sofie Vandeputte and ATopTech, Inc.

Schedule 2.1(a)(ii) – Transferred Technology

1. Aprisa / Apogee Product Documentation for versions 16.05 and 16.12, as well as any version released by the Seller after the signing of this Agreement and prior to the Closing Date.
 - a. User guide
 - b. Technology manual
 - c. Release note
 - d. Reference Manual
 - e. Param Guide
 - f. Error Guide
 - g. Application notes
2. Product build and release system
 - a. Aprisa / Apogee make files
 - b. Release build system
3. QA/testing
 - a. QA test suite (testcases and run scripts) and results
 - b. QA testing system
 - c. QA result monitoring system
4. Aprisa / Apogee JIRA issue tracking and product management system/history
5. Aprisa / Apogee tutorial and training materials
6. Customer test cases, run scripts and results
7. Seller computer/server/network administration system and database
8. Foundry support documentation, technology files and test cases
9. Marketing presentation slides
10. Seller / Product websites/webpage
11. Product white papers and product articles
12. ATopTech, Inc. Press releases
13. DAC and TSMC OIP and other tradeshow designs

Schedule 2.1(a)(iii) – Transferred IPR

1. Aprisa / Apogee Source codes for versions 16.05 and 16.12, as well as any version released by the Seller prior to the Closing Date.
2. The following patents:

Patent Number	Title
9,418,192	Pass eco flow based on reduced timing scope timer
9,342,642	Statistical optimization in place-and-route
9,177,090	In-hierarchy circuit analysis and modification for circuit instances
8,935,639	Natively color-aware double patterning technology (DPT) compliant routing
8,806,412	Statistical optimization in place-and-route
8,793,633	In-hierarchy circuit analysis and modification
8,566,765	In-hierarchy circuit analysis and modification

3. The following domain name: atoptech.com

Schedule 2.1(a)(viii) – Transferred Asset Fees and Expenses

None.

Schedule 2.1(c)(iv) – Other Excluded Assets

1. Bank Accounts:

Name of Foreign Bank	Entity	Bank Accounts	Address
Silicon Valley Bank	Atoptech Inc.	1) 3301207465 (Concentration) 2) 3301207484 (Payable) 3) 3301181101 (Receivable) 4) 6600000761 (Sweep)	3003 Tasman Drive, Santa Clara, CA 95054
Wells Fargo Bank, N.A.	Atoptech Inc.	1) 2374607139 (Checking) 2) 1404900282 (Saving)	PO Box 6995, Portland, OR 97228-6995
E. Sun Bank	Atoptech Inc. (OBU account)	1) 0200957314086 (USD)	No. 69, Ming-Chung Rd, Hsintien, Taipei, Taiwan
E. Sun Bank	美商爾達科技股份有限公司台灣分公司 (Atoptech Taiwan)	1) 0554440010888 (NTD) 2) 055441005099 (USD)	No. 69, Ming-Chung Rd, Hsintien, Taipei, Taiwan
Taiwan Cooperative Bank	美商爾達科技股份有限公司台灣分公司 (Atoptech Taiwan)	1) 3410705300792 (NTD) 2) 3410717202486 (NTD)	No. 259, Dong Sec. 1, Guangming 6th Rd, Jhubei City, Hsinchu County 302, Taiwan
Bank of Hapoalim	Atoptech Design Solutions Israel Limited	337089781	Branch number 781, 39 Montifiori Street, Tel-Aviv, Israel 65201
Korea Exchange Bank	Atoptech Korea	630-008691-106	920 Mok-dong, Yangcheon-gu, Seoul, Korea
Oriental Bank of Commerce	Atoptech Automation Privated Limited	10571011000749	583 9th A Main Indira Nagar 1st Stage Branch, Bangalore, India 560038
SMBC (Sumitomo Mitsui Banking Corp)	Atoptech Co., Limited	0475818	Branch office 322, 3-7-3, Shinyokohama, Kohoku-Ku, Yokohama, Kanagawa, Japan 222-0033

- Any assets of ATopTech, Inc., Taiwan Branch.
- Any retainer or prepayments made to professional service providers related to the Bankruptcy Case, the Synopsys Patent Litigation, and the Synopsys Copyright Litigation.
- Unamortized premiums for commercial and D&O liability insurance
- Unamortized premiums for “keyman” insurance
- Unamortized license fees for Solium stock option management software
- Unamortized property tax payment for Santa Clara County

8. Tax credit from withholding tax related to foreign customer payment not yet utilized prior to Closing Date.
9. Accounts Receivable from Atoptech Co. Ltd.
10. Notes Receivable from Atoptech Co. Ltd.
11. Accrued interest for accounts receivable and notes receivable from Atoptech Co. Ltd.
12. Stock of Atoptech Co. Ltd.
13. Assets of Atoptech Co. Ltd. (except for contracts listed as Designated Contracts)
14. Unamortized deferred commission
15. Stock of ATopTech Korea Ltd.
16. Assets of ATopTech Korea Ltd.
17. Stock of ATopTech Design Automation Private Ltd.
18. Assets of ATopTech Design Automation Private Ltd.
19. Stock of ATopTech Design Solutions Israel Ltd.
20. Assets of ATopTech Design Solutions Israel Ltd.

Schedule 2.1(c)(vi) – Infrastructure Assets

None.

Schedule 5.1 – Conduct of Business

The Seller may take any action with respect to the Synopsys Patent Litigation and Synopsys Copyright Litigation and with respect to the filing of the Bankruptcy Case.

Schedule 5.2 – Restrictions on Business

5.2(a)

Seller shall be allowed to settle, execute, or otherwise perform existing obligations between Seller and any Subsidiary.

Seller is allowed to settle any intercompany balance or debt, including but not limited to the intercompany accounts between its US entity and Japan subsidiary, Atotech, Co. Ltd.

Seller is allowed to dispose any assets of its Japan subsidiary, Atotech, Co. Ltd.; provided, however, that such permission does not apply to contracts entered into by Atotech, Co. Ltd. that are listed as Designated Contracts.

Seller is allowed to dispose any assets of its Taiwan branch, Korean subsidiary, ATopTech Korea Ltd., Indian Subsidiary, ATopTech Design Automation Private Limited, Israeli subsidiary, ATopTech Design Solutions Israel Ltd.; provided, however, that such permission does not apply to contracts listed as Designated Contracts.

Seller is allowed to terminate the office leases or sublet the office leases of its Taiwan branch, Japan subsidiary, Atotech, Co. Ltd., Korean subsidiary, ATopTech Korea Ltd., Indian Subsidiary, ATopTech Design Automation Private Limited, Israeli subsidiary, ATopTech Design Solutions Israel Ltd.; provided, however, that such permission does not apply to contracts listed as Designated Contracts.

5.2(b)(ii)

Seller shall be allowed to modify or terminate the Loan Agreement.

5.2(f)

Seller shall be allowed to agree in writing to modify or terminate the Loan Agreement.

Schedule 7.7 – Cure Costs

None.

Schedule 8.2(f) – Key Employees

Region	Dept	Name	Title
USA	S&M	Bagmar, Deepesh	Staff Applications Engineer
USA	R&D	Bai, Geng	Director, Delay & Crosstalk
USA	S&M	Bailey, Marc	Senior Staff Engineer
USA	S&M	Bennett, Tim	Senior Staff Engineer
USA	R&D	Bian, Fuliang	Senior Engineer
USA	S&M	Chada, Vishnu	Manager I of Applications Engineer
USA	R&D	Chang, Chwen-Cher	Engineer
USA	R&D	Chang, Yu-Hsu H	VP Product Management
USA	R&D	Chao, Nicole	Senior Research & Development Engineer
USA	S&M	Charcos, Ivan	Applications Engineer
USA	G&A	Chen, Claudia	VP Finance
USA	R&D	Chen, Joseph	Director, QoR
USA	R&D	Chen, Lok Sang	Engineer
USA	R&D	Chen, Zhong	Principal Engineer II, RD
USA	S&M	Cheng, Lily	Manager II of Applications Engineer 0
USA	G&A	Chern, Jue-Hsien	Chief Executive Officer
USA	R&D	Chiu, Hsien-Yen (Freeman)	Senior Research & Development Engineer
USA	S&M	Cho, Je	Engineer
USA	S&M	Deng, Stephen	Director
USA	R&D	Fang, Odysseus	Principal Engineer, Research & Development
USA	R&D	Fu, So-Chung	Engineer
USA	R&D	Gee, Thompson	IT Manager
USA	R&D	Geocaris, Thomas	Engineer
USA	R&D	Han,Mingsheng	Fellow, Router/DRC
USA	R&D	Hsieh,Chang-Chao	VP timing/CTS/Optimization
USA	R&D	Hsu, Tien-Chang (Timo)	Senior RD Engineer I
USA	S&M	Kothari,Alpesh	Director of Applications Engineer
USA	S&M	Lemmer,Travis	Director I of Applications Engineer
USA	R&D	Li,Feng	Engineer
USA	R&D	Li,Jingsong	Engineer
USA	G&A	Li,Richard	Accounting manager
USA	R&D	Li,Ying-Meng	Engineer
USA	R&D	Lin, Li-Feng (Pat)	Senior Research & Development Engineer
USA	R&D	Liou,Biing-Horng	Engineer
USA	R&D	Liu, Lungchun	Director, R&D II
USA	R&D	Liu,Tai-Hung	Director, Place/Groute/ RC/Package
USA	S&M	Maung, Daniel	VP applications Engineer
USA	R&D	Mitelman,Yackov	Senior IT Engineer

USA	S&M	Most,Zachary	Sr Staff Engineer
USA	S&M	Noppenberg,Cole	Staff Applications Engineer
USA	S&M	Potter,Phil	Sr. Staff Applications Engineer
USA	S&M	Shumaker,Dennis	Lead Applications Engineer
USA	S&M	Thune,Eric	VP Sales and Marketing
USA	R&D	Tong,Yang-Shan (Sam)	Senior RD Engineer
USA	S&M	Trapp,Mike	Director Application s Engineer
USA	R&D	Tsai, Sung Han	Sr. RD Engineer
USA	R&D	Tseng,Antony	Engineer II
USA	R&D	Tseng,Hsin-Chia	Senior Research & Development Engineer
USA	R&D	Tung,Sara	Senior Engineer, Product Specialist
USA	R&D	Tzeng,Ping-San	VP, R&D
USA	G&A	Wang, Joanna	Senior Account - Part Time
USA	R&D	Wang,Jianjun	Director, Timing
USA	R&D	Wang,Pingang	Principal Engineer, RD
USA	R&D	Wang,Yucheng	Fellow
USA	R&D	Wu,Ping-Chih	Director, Hierarchal Flow
USA	R&D	Wu,Yang	Principal Engineer, RD
USA	G&A	Yi, Terri	Senior Account - Part Time
USA	R&D	Yuan,Lin	Senior Engineer
TW	R&D	Liu, Eugene	Director
TW	R&D	Chen, Shun Tang	Manager
TW	R&D	Wang, Devin	Manager
TW	R&D	Wang, Wei-Shen	Engineer
TW	R&D	Chiang, Winston	Engineer
TW	R&D	Kan, TC	Engineer
TW	R&D	Tsai, Charles	Engineer
TW	R&D	Luan, Jeffy	Engineer
TW	R&D	Chang, Frank	Engineer
TW	R&D	Wang, Louis	Engineer
TW	R&D	Chen, Frank	Engineer
TW	R&D	Li, Mountain	Engineer
TW	R&D	Tsao, Sarah	Engineer
TW	R&D	Lin, Shing-Tung	Engineer
TW	R&D	Chang-Chien, Cynthina	Engineer
TW	R&D	Arton (Hsin-Wei) Chang	Engineer
TW	R&D	Ming-Mo (George)Huang	Engineer
TW	R&D	Wang, Bill	Engineer
TW	R&D	Chen, Sophie	Engineer
TW	R&D	Steven Lin	Engineer
TW	R&D	Ko-Lung Yuan	Engineer

TW	R&D	Antony Chang	Engineer
TW	R&D	Fred Tsai	Engineer
TW	R&D	Lydia Ni	Engineer
TW	Sales	KM Yang	Sales Manager
TW	G&A	Jeffrey Ko	Accounting manager
TW	G&A	Mandy Wang	Office administration
India	S&M	Alpesh Kothari	Director, applications Engineer
India	S&M	Girish Desai	Manager, applications Engineer
India	S&M	Gopinath Agrahara	Manager, applications Engineer
India	S&M	Navateja Mudulla	Applications Engineer
India	S&M	Raghuram Gude	Applications Engineer
India	S&M	Ananth Reddy Gondhi	Applications Engineer
India	S&M	Arshad Mehfooz	Applications Engineer
India	S&M	Nikhil Thumula	Applications Engineer
India	S&M	Arpan Midya	Applications Engineer
India	S&M	Radhika Katkum	Applications Engineer
India	S&M	Amarnadh Akavarapu	Applications Engineer
India	S&M	Venkatrao Gurram	Applications Engineer
India	S&M	Anup Samanta	Applications Engineer
India	S&M	Rajashekar N	Applications Engineer
India	G&A	Visveshwaran R	office administration
India	G&A	Rukmini Sathishkumar	Accountant
Korea	S&M	Chang Ki Baek	Applications Engineer
Korea	S&M	BoSoon Lee	Director of Sales
Korea	S&M	Jeong Guk Choi	Applications Engineer
Japan	S&M	Kaori Mizomichi	Applications Engineer
Japan	Sales	Etsuto Araki	VP of Sales
Japan	S&M	Tokihito Okada	Applications Engineer
Japan	S&M	Nobumoto Muto	Applications Engineer

Schedule 8.2(g) – Designated Contracts (Closing Condition)

1. Lease dated April 26, 2012 by and between Silicon Valley CA-I, LLC and ATopTech, Inc., for premises located at 2111 Tasman Drive, Santa Clara, CA.
2. Software License Agreement dated May 29, 2009 by and between Acreso Software, Inc. (prior name of Flexera Software) and ATopTech, Inc., and all purchase orders thereunder.
3. Software License Agreement renewed for 2016 by and between Atlassian and ATopTech, Inc. (terms of agreement online at <https://www.atlassian.com/legal/customer-agreement>), and all purchase orders thereunder.
4. Patent License Agreement dated March 20, 2015 by and between Golden Gate Technology, Inc. and ATopTech, Inc.
5. LDL Software License Agreement dated April 23, 2010 by and between Timothy A. Davis and ATopTech, Inc., and all purchase orders thereunder.
6. Software License Agreement dated December 24, 2015 by and between Altran Technologies India Pvt. Ltd. and ATopTech, Inc., and all purchase orders thereunder.
7. License Agreement dated November 14, 2007 by and between Broadcom Corporation and ATopTech, Inc., as amended by the Addendum to the License Agreement dated January 29, 2010, and all purchase orders thereunder.
8. Software License Agreement (*software-licenese-keiyakusho*) dated February 10, 2015 by and among CDC Inc., a kabushiki-kaisha incorporated under Companies Act of Japan, user members of CDC Inc., and ATopTech Co., Ltd., and all purchase orders thereunder.
9. Software License Agreement dated April 20, 2010 by and between ClariPhy Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
10. Software License Agreement dated August 24, 2011 by and between Cypress Semiconductor, Inc. and ATopTech, Inc., and all purchase orders thereunder.
11. Software License Agreement (*software-license-keiyakusho*) dated July 1, 2011 by and between Dai Nippon Printing Co., Ltd, a kabushiki-kaisha incorporated under Companies Act of Japan, and ATopTech Co., Ltd., and all purchase orders thereunder.
12. Software License Agreement dated November 24, 2014 by and between eSilicon Corporation and ATopTech, Inc., and all purchase orders thereunder.
13. Software License Agreement (*software-license-keiyakusho*) dated March 15, 2013 by and between Kawasaki Microelectronics, Inc., a kabushiki kaisha incorporated under Companies Act of Japan (which was succeeded by MegaChips Corporation), and ATopTech Co., Ltd., and all purchase orders thereunder.
14. Software License Agreement dated December 1, 2012 by and between M31 Technology Corporation and ATopTech, Inc., and all purchase orders thereunder.
15. Software License Agreement dated May 13, 2013 by and between Mellanox Technologies, Ltd. and ATopTech, Inc., and all purchase orders thereunder.
16. Software License Agreement dated December 20, 2012 by and between Samsung Austin Semiconductor, LLC and ATopTech, Inc., and all purchase orders thereunder.
17. Software License Agreement dated January 1, 2010 by and between Sharp Corporation and ATopTech Co., Ltd., and all purchase orders thereunder.

18. Software License Agreement dated December 12, 2012 by and between Solarflare Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
19. Master EDA Software License Agreement dated December 22, 2011 by and between Xilinx, Inc. and ATopTech, Inc., and all purchase orders thereunder.
20. Services Level Agreement dated May 20, 2013 by and between Aryaka, Inc. and ATopTech, Inc., and all purchase orders thereunder.
21. End User License Agreement for the Intel® Software Development Products (Version March 2016) (Shrink-Wrap).
22. OpenDoor Exchange Agreement dated August 16, 2016 by and between Mentor Graphics Corporation and ATopTech, Inc.
23. Software License Agreement dated March 29, 2012 by and between Avago Technologies U.S. Inc. and ATopTech, Inc., and all purchase orders thereunder.
24. International Distribution Agreement dated May 11, 2016 by and between Huada Emphyrean Software Co., Ltd. and ATopTech, Inc.
25. Consulting Agreement dated May 1, 2015 by and between Sofie Vandeputte and ATopTech, Inc.

Schedule 8.2(h) – Consents

1. Consent from Silicon Valley CA-I, LLC related to the assignment of the Lease Agreement dated April 26, for premises located at 2111 Tasman Drive, Santa Clara, CA.
2. Consent from Flexera Software related to the assignment of the Software License Agreement dated May 29, 2009, and all purchase orders thereunder.

Disclosure Schedules

To

Asset Purchase Agreement

Dated January 10, 2017

The following disclosure schedules (the “**Schedules**”) are provided in connection with that certain Asset Purchase Agreement, dated as of January 10, 2017 (the “**Agreement**”), by and between Frank Chang, for and on behalf of a Delaware corporation to be formed prior to Closing to act as “**Purchaser**” (“**Purchaser**”) Draper Athena Management Co. Ltd, a Chinese limited liability company (“**Guarantor**”), and ATopTech, Inc., a Delaware corporation (“**Seller**”). Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Agreement.

The Schedules are arranged into sections corresponding to the numbered and lettered sections and subsections contained in Article 3 of the Agreement, it being understood that any information set forth in one section or subsection of the disclosure schedule shall be deemed to apply to and qualify any other section or subsection of this Agreement to the extent that it is reasonably clear on its face from a reading of the disclosure item that such information is relevant to such other section or subsection.

The headings contained in these Schedules are for reference purposes only and shall not affect in any way the meaning or interpretation of these Schedules. Inclusion of any item in these Schedules: (a) does not represent a determination that such item is material nor shall it be deemed to establish a standard of materiality, (b) does not represent a determination that such item did not arise in the ordinary course of business and (c) shall not constitute, or be deemed to be, an admission to any third party concerning such item.

Schedule 3.2 – Subsidiaries

The following is a list of all subsidiaries of the Company:

1. ATopTech Co., Ltd.
2. ATopTech Design Automation Private Limited
3. ATopTech Korea Ltd.
4. ATopTech Design Solutions Israel Ltd.

The following is a list of all branch offices of the Company:

1. ATopTech, Inc., Taiwan Branch

Schedule 3.4 – Noncontravention

3.4(a)(ii)

1. Lease dated April 26, 2012 by and between Silicon Valley CA-I, LLC and ATopTech, Inc., for premises located at 2111 Tasman Drive, Santa Clara, CA.
2. Software License and Services Agreement dated May 29, 2009 by and between Acreoso Software, Inc. (prior name of Flexera Software) and Atoptech, Inc. (the “**FlexLM Agreement**”).
3. End User License Agreement for the Intel® Software Development Products (Version March 2016) (Shrink-Wrap) (the “**Intel Math Kernel Library EULA**”).
4. LDL Software License Agreement dated April 23, 2010 by and between Timothy A. Davis and ATopTech, Inc. (the “**LDL License**”).
5. OpenDoor Exchange Agreement dated August 16, 2016 by and between Mentor Graphics Corporation and Atoptech, Inc. (the “**Mentor Graphics License**”).
6. Software License Agreement dated May 13, 2013 by and between Mellanox Technologies, Ltd. and Atoptech, Inc., and Quote dated June 4, 2016.
7. Master EDA Software License Agreement dated December 22, 2011 by and between Xilinx, Inc. and Atoptech, Inc.
8. Software License Agreement dated November 24, 2014 by and between eSilicon Corporation and Atoptech, Inc., and Quote dated October 5, 2015.
9. Software License Agreement dated January 1, 2010 by and between Sharp Corporation and Atoptech Co. Ltd.

3.4(b)

1. Loan Agreement dated September 5, 2014 by and between ATopTech, Inc. and Silicon Valley Bank, as amended by that certain Amendment No. 1 dated November 12, 2015 (as further amended, supplemented or modified from time to time, the “**Loan Agreement**”).
2. Reference is made to Section 3.4(a)(ii) hereof.

Schedule 3.5 – Title to and Condition of Transferred Assets

1. The FlexLM Agreement.
2. The Loan Agreement.

Schedule 3.8 – Material Contracts

3.8(b)(i)

The Loan Agreement.

3.8(b)(iii)

1. Software License Agreement dated May 29, 2009 by and between Acres Software, Inc. (prior name of Flexera Software) and ATopTech, Inc., and all purchase orders thereunder.
2. Software License Agreement renewed for 2016 by and between Atlassian and ATopTech, Inc. (terms of agreement online at <https://www.atlassian.com/legal/customer-agreement>), and all purchase orders thereunder.
3. Patent License Agreement dated March 20, 2015 by and between Golden Gate Technology, Inc. and ATopTech, Inc.
4. LDL Software License Agreement dated April 23, 2010 by and between Timothy A. Davis and ATopTech, Inc., and all purchase orders thereunder.
5. Software License Agreement dated December 24, 2015 by and between Altran Technologies India Pvt. Ltd. and ATopTech, Inc., and all purchase orders thereunder.
6. License Agreement dated November 14, 2007 by and between Broadcom Corporation and ATopTech, Inc., as amended by the Addendum to the License Agreement dated January 29, 2010, and all purchase orders thereunder.
7. Software License Agreement (*software-licenese-keiyakusho*) dated February 10, 2015 by and among CDC Inc., a kabushiki-kaisha incorporated under Companies Act of Japan, user members of CDC Inc., and ATopTech Co., Ltd., and all purchase orders thereunder.
8. Software License Agreement dated April 20, 2010 by and between ClariPhy Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
9. Software License Agreement dated August 24, 2011 by and between Cypress Semiconductor, Inc. and ATopTech, Inc., and all purchase orders thereunder.
10. Software License Agreement (*software-license-keiyakusho*) dated July 1, 2011 by and between Dai Nippon Printing Co., Ltd, a kabushiki-kaisha incorporated under Companies Act of Japan, and ATopTech Co., Ltd., and all purchase orders thereunder.
11. Software License Agreement dated November 24, 2014 by and between eSilicon Corporation and ATopTech, Inc., and all purchase orders thereunder.
12. Software License Agreement (*software-license-keiyakusho*) dated March 15, 2013 by and between Kawasaki Microelectronics, Inc., a kabushiki kaisha incorporated under Companies Act of Japan (which was succeeded by Megachips Corporation), and ATopTech Co., Ltd., and all purchase orders thereunder.
13. Software License Agreement dated December 1, 2012 by and between M31 Technology Corporation and ATopTech, Inc., and all purchase orders thereunder.
14. Software License Agreement dated May 13, 2013 by and between Mellanox Technologies, Ltd. and ATopTech, Inc., and all purchase orders thereunder.
15. Software License Agreement dated December 20, 2012 by and between Samsung Austin Semiconductor, LLC and ATopTech, Inc., and all purchase orders thereunder.

16. Software License Agreement dated January 1, 2010 by and between Sharp Corporation and ATopTech Co., Ltd, and all purchase orders thereunder.
17. Software License Agreement dated December 12, 2012 by and between Solarflare Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
18. Master EDA Software License Agreement dated December 22, 2011 by and between Xilinx, Inc. and ATopTech, Inc., and all purchase orders thereunder.
19. Services Level Agreement dated May 20, 2013 by and between Aryaka, Inc. and ATopTech, Inc., and all purchase orders thereunder.
20. End User License Agreement for the Intel® Software Development Products (Version March 2016) (Shrink-Wrap).
21. OpenDoor Exchange Agreement dated August 16, 2016 by and between Mentor Graphics Corporation and ATopTech, Inc.
22. Software License Agreement dated March 29, 2012 by and between Avago Technologies U.S. Inc. and ATopTech, Inc., and all purchase orders thereunder.

3.8(b)(v)

The Loan Agreement.

3.8(b)(vi)

23. Lease dated April 26, 2012 by and between Silicon Valley CA-I, LLC and ATopTech, Inc., for premises located at 2111 Tasman Drive, Santa Clara, CA.
24. Patent License Agreement dated March 20, 2015 by and between Golden Gate Technology, Inc. and ATopTech, Inc.
25. Software License Agreement dated April 20, 2010 by and between ClariPhy Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
26. License Agreement dated November 14, 2007 by and between Broadcom Corporation and ATopTech, Inc., as amended by the Addendum to the License Agreement dated January 29, 2010, and all purchase orders thereunder.
27. Software License Agreement dated August 24, 2011 by and between Cypress Semiconductor, Inc. and ATopTech, Inc., and all purchase orders thereunder.
28. Software License Agreement (*software-license-keiyakusho*) dated July 1, 2011 by and between Dai Nippon Printing Co., Ltd, a kabushiki-kaisha incorporated under Companies Act of Japan, and ATopTech Co., Ltd., and all purchase orders thereunder.
29. Software License Agreement dated November 24, 2014 by and between eSilicon Corporation and ATopTech, Inc., and all purchase orders thereunder.
30. Software License Agreement (*software-license-keiyakusho*) dated March 15, 2013 by and between Kawasaki Microelectronics, Inc., a kabushiki kaisha incorporated under Companies Act of Japan (which was succeeded by Megachips Corporation), and ATopTech Co., Ltd., and all purchase orders thereunder.
31. Software License Agreement dated December 1, 2012 by and between M31 Technology Corporation and ATopTech, Inc., and all purchase orders thereunder.

32. Software License Agreement dated May 13, 2013 by and between Mellanox Technologies, Ltd. and ATopTech, Inc., and all purchase orders thereunder.
33. Software License Agreement dated December 20, 2012 by and between Samsung Austin Semiconductor, LLC and ATopTech, Inc., and all purchase orders thereunder.
34. Software License Agreement dated January 1, 2010 by and between Sharp Corporation and ATopTech Co., Ltd, and all purchase orders thereunder.
35. Software License Agreement dated December 12, 2012 by and between Solarflare Communications, Inc. and ATopTech, Inc., and all purchase orders thereunder.
36. Master EDA Software License Agreement dated December 22, 2011 by and between Xilinx, Inc. and ATopTech, Inc., and all purchase orders thereunder.
37. Service Agreement dated January 3, 2011 by and between and ATopTech Design Automation Pvt. Ltd. And ATopTech, Inc.
38. Service and Marketing Agreement dated July 1, 2015 by and between ATopTech Korea Ltd. And ATopTech, Inc.
39. Research and Development Services Agreement dated July 1, 2012 by and between ATopTech, Inc. Taiwan Branch and ATopTech, Inc.
40. International Distribution Agreement dated September 3, 2007, by and between ATopTech, Inc. and ATopTech. Co., Ltd.
41. CalChoice Your Health Your Choice Agreement dated November 27, 2013, by and between ATopTech, Inc. and CaliforniaChoice.
42. Client Service Agreement dated December 6, 2013, by and between ATopTech, Inc. and ADP TotalSource, Inc.
43. Software License Agreement dated March 29, 2012 by and between Avago Technologies U.S. Inc. and ATopTech, Inc.
44. International Distribution Agreement dated May 11, 2016 by and between Huada Emphyrean Software Co., Ltd. and ATopTech, Inc

3.8(d)

Reference is made to Schedule 7.7 hereof.

Schedule 3.9 – Intellectual Property

3.9(b)

1. APRISA (Version 16.05 and 16.12) – P&R engine including placement, clock tree synthesis, optimization, global routing, and detailed routing.
2. APOGEE (Version 16.05 and 16.12) – Top-down floor planning and chip assembly tool that complements block level implementation for hierarchical designs.

3.9(c)

The patent-related and copyright-related actions set forth in Case No. 3:13-cv-02965-MMC, before the United States District Court for the Northern District of California, San Francisco Division (together, the “**Synopsys Litigation**”), including without limitation written notices and communications in respect thereof.

3.9(d)

Patents and Patent Applications:

Name	Patent/Application Number	Filing Jurisdiction	Current Registrant or Applicant	Initial Filing Date
In-hierarchy circuit analysis and modification	8,566,765	United States	ATopTech, Inc.	Aug 30, 2010
In-hierarchy circuit analysis and modification	8,793,633	United States	ATopTech, Inc.	Aug 20, 2013
Statistical optimization in place-and-route	8,806,412	United States	ATopTech, Inc.	Jun 26, 2014
Natively color-aware DPT compliant routing	8,935,639	United States	ATopTech, Inc.	Feb 27, 2013
In-hierarchy circuit analysis and modification for circuit instances	9,177,090	United States	ATopTech, Inc.	Sept 10, 2014
Statistical optimization in place-and-route	9,342,642	United States	ATopTech, Inc.	Sept 16, 2013

PASS ECO (Physical-aware Scope-based Signoff Engineering Change Order) Flow Based on Reduced Timing Scope Timer	9,418,192	United States	ATopTech, Inc.	Nov 27, 2013
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Domain Names:

atoptech.com

3.9(e)

1. Certain portions of the source code for Business Product Software have been confidentially disclosed in connection with the Synopsys Litigation.
2. Non-Disclosure Agreement dated March 18, 2016 by and between Zytex Communications Corporation and ATopTech Inc.
3. License Agreement dated November 14, 2007 by and between Broadcom Corporation and ATopTech, Inc., as amended by the Addendum to the License Agreement dated January 29, 2010, and all purchase orders thereunder.

3.9(f)

None.

3.9(g)

None.

3.9(h)(i)

Negative pledge covenants on intellectual property in the Loan Agreement.

(iii)

The FlexLM Agreement.

(iv)

1. Software License Agreement between Mellanox Technologies, Ltd. and ATopTech, Inc. dated May 13, 2013.
2. Quote between eSilicon and ATopTech, Inc. dated October 5, 2015.

(vii)

The FlexLM Agreement.

3.9(j)



Employment
Agmt.pdf



Consulting
Agreement.pdf

3.9(k)

The Synopsys Patent Litigation and Synopsys Copyright Litigation.

Schedule 3.11 – Taxes

3.11(f)

The Company has not completed a 280G analysis and certain Contracts or plans to which Seller or any of its Subsidiaries is a party, including the provisions of the Agreement, may give rise to a payment of an amount that would not be deductible pursuant to Sections 280G or 404 of the Code.

Schedule 3.12 – Litigation

The Synopsys Litigation.

Schedule 3.13 – Employees; Benefits

3.13(b)(ii)

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Henry Chang

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Claudia Chen.

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Jue-hsien Chern.

Change in Control Severance Agreement dated June 16, 2016 by and between the Company and Alpesh Kothari.

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Eric Thune.

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Pingsan Tzeng.

Letter Agreement dated February 28, 2014 by and between the Company and Tammy Liu.

Letter Agreement dated February 2, 2010 by and between the Company and Eric Thune.

Change in Control Agreement dated August 1, 2014 by and between the Company and Wufu Chen.

Change in Control Agreement dated August 14, 2012 by and between the Company and Jackson Hu.

Change in Control Agreement dated August 14, 2012 by and between the Company and Sang Wang.

3.13(f)

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Henry Chang.

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Claudia Chen.

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Jue-hsien Chern.

Change in Control Severance Agreement dated June 16, 2016 by and between the Company and Alpesh Kothari.

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Eric Thune.

Change in Control Severance Agreement dated August 14, 2012 by and between the Company and Pingsan Tzeng.

Schedule 3.14 – Brokers’ and Finders’ Fees

The Company engaged the Cowen Group Inc. in connection with the Transaction.

Exhibit F – Cure Procedures Notice

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

In re:

ATOPTECH, INC.,

Debtor.¹

Chapter 11

Case No. 17-10111(MFW)

**NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED
LEASES OF THE DEBTORS THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on January 17, 2017 the above-captioned Debtor and (the “**Debtor**”), filed the MOTION OF DEBTOR FOR ORDERS (I) AUTHORIZING AND APPROVING (A) BIDDING PROCEDURES, (B) BUYER PROTECTIONS FOR STALKING HORSE, (C) PROCEDURES RELATED TO THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) THE FORM AND MANNER OF NOTICE; (II) SCHEDULING THE BID DEADLINE AND AUCTION (III) AUTHORIZING AND APPROVING (A) THE SALE OF CERTAIN ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS AND (B) THE ASSUMPTION AND ASSIGNMENT OF CERTAIN CONTRACTS AND (IV) GRANTING RELATED RELIEF (the “**Sale Motion**”). The Debtors seek, among other things, to sell substantially all of their assets (the “**Assets**”) to the successful bidder(s) (the “**Successful Bidder**”), at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to Sections 363 and 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on _____, 2017, the Bankruptcy Court entered an order (the “**Bidding Procedures Order**”) approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of substantially all of the Assets of the Debtors and (ii) procedures for the assumption and assignment of certain of the Debtors’ executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that the Motion also seeks Court approval of the sale (the “**Sale**”) of the Assets to the Successful Bidder(s), free and clear of all liens, claims, interests and encumbrances pursuant to Section 363 of the Bankruptcy Code, including the assumption by the Debtors and assignment to the buyer(s) of certain executory contracts and unexpired leases pursuant to Section 365 of the Bankruptcy Code (the “**Designated Contracts**”), with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale with the same priority, validity and enforceability as they had prior to such Sale. Within twenty-four (24) hours following the conclusion of the Auction, the Debtors shall file a notice identifying the Successful Bidder(s) with the Bankruptcy Court, which notice will be made available at the website of the Debtors’ claims and noticing agent, at dm.epiq11.com/ATO. Any counterparty to a Designated Contract that wishes to receive such notice by email or fax, must provide their email address or fax number to Dorsey & Whitney LLP, Attn: Robert Mallard by e-mailing

¹ The last four digits of the Debtor’s federal tax identification number are 1945. The Debtor’s headquarters and mailing address is 2111 Tasman Drive, Santa Clara, CA 95054.

mallard.robert@dorsey.com before the Auction.

PLEASE TAKE FURTHER NOTICE that an evidentiary hearing (the “**Sale Hearing**”) to approve the Sale and authorize the assumption and assignment of the Designated Contracts will be held on **March []**, 2017 at []m (prevailing Eastern Time), before the Honorable Mary F. Walrath, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 5th Floor, Courtroom 4. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, consistent with the Bidding Procedures Order, the Debtors may seek to assume an executory contract or unexpired lease to which you may be a party. The Designated Contract(s)² are described on Exhibit A attached to this Notice. The amount shown on Exhibit A hereto as the “Cure Amount” is the amount, if any, which the Debtor asserts is owed to cure any defaults existing under the Designated Contract.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Designated Contract(s) on Exhibit A to which you are a party, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801, and serve so as to be received by the following parties: (i) Debtor’s counsel: Dorsey & Whitney LLP, Attn: Robert Mallard, Esq. 300 Delaware Avenue, Suite 1010, Wilmington, Delaware 1980, or by email at mallard.robert@dorsey.com; (ii) counsel to the Stalking Horse Purchaser: Shearman & Sterling LLP, Attn: Fredric Sosnick, Foteini Teloni, 599 Lexington Avenue, New York, NY 10022-6069 or by email at fay.teloni@shearman.com or fsosnick@shearman.com; (iii) the Office of the United States Trustee (the “U.S. Trustee”): U.S. Trustee, 844 King Street, Suite 2207, Lockbox #35, Wilmington, Delaware, 19801 (Fax: 302-573-6497), and (iv) counsel to any Official Committee (collectively, the “**Notice Parties**”), an objection (the “**Contract Objection**”) on or before _____, 2017 at 4:00 p.m. (prevailing Eastern Time) (the “**Contract Objection Deadline**”). Any Contract Objection must state (a) the basis for such objection and (b) with specificity what Cure Amount(s) the non-Debtor counterparty to the relevant executory contract(s) or unexpired lease(s) believes is required (in all cases with appropriate documentation in support thereof).

PLEASE TAKE FURTHER NOTICE that the Debtor shall be responsible for paying the Cure Amount of any Designated Contract that is assumed and assigned and for satisfying any requirements regarding adequate assurance of future performance that may be imposed under Sections 365(b) and (f) of the Bankruptcy Code, 11 U.S.C. § 101, *et seq.*, in connection with the proposed assignment of any Designated Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Designated Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

² Designated Contracts” are those Contracts and Leases that the Stalking Horse has designated to be assumed and assigned as part of the orderly transfer of the Assets; however, the Successful Bidder (or the Stalking Horse) may choose to exclude certain of the Debtors’ Contracts or Leases from the list of Designated Contracts as part of their Qualifying Bid or until Closing, causing such Designated Contracts not to be assumed by the Debtors.

PLEASE TAKE FURTHER NOTICE that any Contract Objection solely to the Cure Amount(s) shall not prevent or delay the Debtor's assumption and assignment of Designated Contracts. If a party objects solely to Cure Amount(s), the Debtor may, with the consent of the relevant Successful Bidder, hold the claimed Cure Amount(s) in reserve pending further order of the Court or mutual agreement of the parties. So long as the Cure Amount(s) are held in reserve, and there are no other unresolved objections to assumption and assignment of the applicable Designated Contracts, the Debtor can, without further delay, assume and assign such contract(s) or lease(s) to the Successful Bidder. Under such circumstances, the objecting non-Debtor counterparty's recourse is limited to the funds held in reserve.

PLEASE TAKE FURTHER NOTICE that if no Contract Objection to the Cure Amount(s) is timely received, the Cure Amount(s) set forth in the Cure Notice shall be controlling notwithstanding anything to the contrary in any assigned contract(s) or lease(s) or other document(s) as of the date of the Cure Notice.

PLEASE TAKE FURTHER NOTICE that to the extent that any non-Debtor counterparty wishes to object to the adequate assurance of future performance by a Qualified Bidder other than the Stalking Horse under the applicable Designated Contract (an "**Adequate Assurance Objection**" and together with a Contract Objection, an "**Objection**"), then such non-Debtor counterparty shall file a written Adequate Assurance Objection with the Court and serve such objection on the Notice Parties and the applicable Qualified Bidder(s) so that such Adequate Assurance Objection is filed with the Court and received by the Notice Parties, the Stalking Horse and the applicable Qualified Bidder(s) on or before _____, 2017, at __:__.m. (prevailing eastern time) (the "**Adequate Assurance Objection Deadline**").

PLEASE TAKE FURTHER NOTICE that to the extent that any non-Debtor counterparty does not timely file and serve an Objection as set forth above, such counterparty will be: (i) deemed to have consented to the Cure Amount(s), if any, set forth in the Cure Notice; (ii) barred, estopped and enjoined from asserting any additional Cure Amount(s) under the Designated Contracts; (iii) barred from objecting to the assumption and assignment of the applicable Designated Contracts to the Successful Bidder, and (iv) barred from objecting to adequate assurance of future performance by the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that, except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder(s), pursuant to Section 365(k) of the Bankruptcy Code, the Debtor and its estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Designated Contracts.

PLEASE TAKE FURTHER NOTICE that nothing contained herein shall obligate the Debtors or the Successful Bidder(s) to assume any Designated Contracts or to pay any Cure Amount.

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

ANY COUNTERPARTY TO ANY DESIGNATED CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH DESIGNATED CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

Dated: January ____, 2017

DORSEY & WHITNEY (DELAWARE) LLP

/s/

Eric Lopez Schnabel (DE Bar No. 3672)

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Proposed Attorneys for AToptech, Inc.

Exhibit A – Designated Contracts

[To Come]