

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

In re:

DELIVERY AGENT, INC. et al.,¹

Debtors.

Chapter 11

Case No. 16-12051 (LSS)

(Jointly Administered)

DEBTORS' MOTION FOR ORDERS (I)(A) AUTHORIZING DEBTORS' ENTRY INTO THE ASSET SALE AGREEMENT WITH RESPECT TO THE SALE OF THE CLEAN FUN BUSINESS AND RELATED ASSETS, (B) AUTHORIZING AND APPROVING THE BIDDING PROCEDURES, (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) AUTHORIZING AND APPROVING A BREAK-UP FEE, AND (E) APPROVING THE SALE NOTICE PROCEDURES; (II) 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 (III) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, "Delivery Agent" or the "Debtors") move 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)(a) approving the Debtors' entry into that certain Asset Purchase Agreement dated as of September 25, 2016, by and among

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's U.S. tax identification number are as follows: Delivery Agent, Inc. (8744), Musictoday, LLC (7995), Clean Fun Promotional Marketing, Inc. (6635), and Shop the Shows, LLC (n/a). The notice address for all of the Debtors is: 300 California Street, 3rd Floor, San Francisco, California 94104.

Delivery Agent, Inc. (the “Company”) and Clean Fun Promotional Marketing, Inc. (“Clean Fun”) as sellers (collectively, the “Selling Debtors”), and HALO Branded Solutions, Inc. (attached as Exhibit B hereto, the “Agreement”), (b) authorizing and approving the bidding procedures (as appended to the Bidding Procedures Order (as defined herein) as Exhibit 1, the “Bidding Procedures”), (c) approving procedures related to the assumption of certain executory contracts and unexpired leases, (d) authorizing and approving the terms and conditions of the Break-Up Fee (as defined below), including granting administrative expense status to the Break-Up Fee to be paid by the Selling Debtors to the Buyer, and (e) approving the sale notices and the manner of their service (the “Sale Notice Procedures”), and (ii) authorizing and approving (a) the sale of the Debtors’ right, title and interest in the assets (the “Assets”), free and clear of all Liens, claims, encumbrances, and interests (each as described below), pursuant to section 363 of the Bankruptcy Code, except as set forth in the Agreement and (b) the assumption and assignment of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code; and (iii) granting them such other and further relief as the Court deems just and proper.

JURISDICTION AND VENUE

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

2. Venue for this matter is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The bases for the relief requested herein are (i) sections 105, 363 and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002, 6004, 6006, 9014 and 9018; and (iii) Local Rule 6004-1 and 9018-1.

BACKGROUND

4. On September 15, 2016 (the "Petition Date"), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code with this Court.

5. The Debtors continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or official committee of unsecured creditors has been appointed in the Debtors' cases.

General Background and the Clean Fun Business

6. Delivery Agent has developed one of the leading and most advanced platforms to monetize entertainment content (TV, movies, music, and sports) through an integrated suite of solutions built to help increase fan engagement and drive direct revenue generation. In business for over a decade, the Company's solutions serve some of the world's largest media companies and consumer brands. The Company is headquartered in San Francisco, CA, with offices in Denver, CO; Costa Mesa, CA; Crozet, VA; and New York, NY.

7. The Company engages in three related businesses: (1) e-commerce, (2) promotional marketing (Clean Fun), and (3) television commerce or "t-commerce" (ShopTV).

8. Relevant to this Motion, the Debtors operate a merchandising and promotional marketing company, under the name Clean Fun (the "Clean Fun Business"), which enables major entertainment, media, and consumer brands to address their business and marketing needs. The services offered by the Clean Fun Business include product design, product development, and account management. The Clean Fun Business operates out of, and is the only business of the Debtors operating out of, the Debtors' Costa Mesa offices.

9. In the ordinary course of business, the Clean Fun Business uses the services of approximately twenty-eight sales agents, who are independent contractors and paid entirely for commissions earned (collectively, the “Account Executives”). As of the Petition Date, the amount owed to these Account Executives on account of prepetition commissions earned was approximately \$458,700 in total. On September 16, 2016, pursuant to the first-day wages and benefits order [D.I. 36], the Court approved payment to the Account Executives of the accrued pre-petition commissions up to a maximum of \$12,850 per individual, which amounts the Debtors have paid or expect to pay shortly (the “Paid Pre-Petition Commission Amounts”).

Clean Fun Marketing Process

10. On May 18, 2016, Delivery Agent retained Houlihan Lokey Capital, Inc. (“Houlihan”) to evaluate strategic alternatives and to engage in a marketing process of all of the Company’s business segments. Houlihan entered into discussions with various strategic and financial buyers in early June 2016 and continues to lead a robust marketing process that has been underway for more than three months. As of the Petition Date, Houlihan had contacted over 150 potential interested parties, entered into confidentiality agreements and engaged in deeper discussions with a number of parties that expressed interest in all or parts of the business, including the Clean Fun Business. Although Houlihan was able to identify a number of interested parties, who provided both formal and informal indications of that interest, by early August 2016, no purchaser had emerged with a commitment to acquire some or all of the Company’s business units.

11. By August 2016, with liquidity pressure increasing, it was projected that obtaining a firm purchase or financing commitment prior to exhausting the Debtors’ remaining liquidity was unlikely. The Debtors, in consultation with Houlihan and their other advisors,

ultimately concluded that a sale of substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code would most likely maximize the value of the Debtors' assets. As no buyer or lender had yet emerged from the process run by Houlihan and the Debtors, the Debtors requested that its prepetition secured lender, Hillair Capital Investments L.P. ("Hillair," or the "DIP Lender"), agree to become a stalking horse bidder and proposed DIP lender for the purposes of continuing the sale process in the context of a chapter 11 filing.

12. In order to provide the Debtors with the liquidity needed to accomplish a sale of substantially all of their assets under Section 363 of the Bankruptcy Code, the DIP Lender agreed to provide debtor-in-possession financing to the Debtors in an amount up to \$5,425,000 (the "DIP Financing") pursuant to the terms and conditions in that certain *Senior Secured, Super-priority Debtor-In-Possession Loan and Security Agreement* (as it may be amended from time to time, the "DIP Agreement"). A motion to approve the DIP Financing and the DIP Agreement was filed with the Court on the Petition Date [D.I. 13], which the Court approved on an interim basis on September 16, 2016 [D.I. 38]. A hearing to consider approval of the DIP Financing on a final basis will be held on October 11, 2016.

13. As part of the negotiations of the DIP Agreement, the DIP Lender agreed to fund some of the operations of the Clean Fun Business for a period of 30 days post-petition while the Debtors pursued a sale of the Clean Fun Business and related assets. The DIP Agreement requires that, by October 14, 2016, the Debtors will have sold, pursuant to terms acceptable to the DIP Lender, or closed the Clean Fun Business. In other words, the Clean Fun Business must be shuttered – a scenario that would have a negative impact on stakeholders' recoveries – after October 14, 2016, unless an interested party purchases the assets by such date.

14. The Debtors also negotiated and entered into a “stalking horse” Asset Purchase Agreement with the DIP Lender, pursuant to which Hillair would acquire substantially all of the Debtors’ assets, subject to higher and better offers (the “Primary Sale”). A hearing to consider approval of the bidding procedures with respect to the Primary Sale will be held on October 11, 2016. Although the Primary Sale is for substantially all of the Debtors’ assets, the DIP Lender did not agree to purchase the Clean Fun Business as a going concern. Rather, Hillair and the Debtors contemplated that the Clean Fun Business, if not sold through a separate sale, would be discontinued prior to closing the Primary Sale and any remaining assets of the discontinued business would be included in the Primary Sale.

Negotiations with HALO

15. During the marketing process led by Houlihan, the Debtors and Houlihan engaged in discussions with HALO Branded Solutions, Inc. (the “Buyer” or “HALO”) regarding a possible sale of the Clean Fun Business. Those discussions continued through and following the Petition Date.

16. Shortly before the filing the chapter 11 petitions, it became clear to the Debtors that they did not have working capital sufficient to continue to support the Clean Fun Business through a closing of a sale of the Clean Fun Business. Specifically, as described in the Hagan Declaration, the Debtors engaged in the Clean Fun Business generally pay suppliers on a purchase order basis within 15 days of placing the order, which is typically invoiced to the customer upon delivery or shortly thereafter, with revenue recognized upon collection of cash to satisfy the invoice, usually about 45 days after the order is fulfilled. Because cash collections occur weeks after payment to vendors, the Debtors require working capital to support orders.

The DIP Lender did not agree to a budget that included sufficient working capital for such operations.

17. Therefore, on September 13, 2016, in order to preserve business continuity of the Clean Fun Business while the parties continued to work in good faith in negotiating the Agreement, HALO and the Debtors agreed (the “Interim Contract”) that HALO would process those customer orders identified by Clean Fun and authorized by the Company (the “Identified Orders”), and perform all necessary interim services with respect to such Identified Orders, including providing the working capital to make related vendor payments and pay commissions to Delivery Agent’s Account Executives. The Interim Contract will allow Clean Fun to continue in business pending closing of the sale that is the subject of this Motion.

THE AGREEMENT

18. After extensive arm’s length, good faith negotiations among the Selling Debtors, the Buyer, and the DIP Lender and their respective advisors, the parties have reached an agreement pursuant to which the Clean Fun Business and related assets will be excluded from the Primary Sale, and the Buyer will acquire the Clean Fun Business and related assets as a going concern. Because the proposed Sale would permit the Clean Fun Business to continue to operate as a going concern, the Debtors determined that the Agreement represents the best opportunity for the Debtors to maximize the value of their assets and serve as a basis for conducting an auction to seek higher and/or better offers.

19. The Debtors have negotiated and entered into the Agreement,² pursuant to which the Buyer will acquire the Assets on the terms and conditions specified therein. A Word version

² Capitalized terms used but not defined in this Motion have the definitions ascribed to them in the Agreement. To the extent that there are inconsistencies between the summary description of the Agreement contained herein and the terms and conditions of the Agreement, the terms and conditions of the Agreement control.

of the stalking horse Agreement will be placed in the data room set up by the Debtors for prospective bidders promptly after the date of this Motion.

20. The sale transaction pursuant to the Agreement is subject to competitive bidding as set forth herein and in the Bidding Procedures. Pursuant to the terms of the Agreement, the Buyer has agreed to purchase the Assets for a purchase price equal to the Assumed Liabilities plus a cash payment of (i) \$1,000,000 plus (ii) the value at Closing of the uncollected accounts receivable relating to the Clean Fun Business plus (iii) the Paid Pre-Petition Commission Amounts plus (iv) the Identified Orders Payment Amount (as described below), less certain adjustments.

21. The Interim Contract, which is a pre-petition executory contract, is incorporated and amended under the Agreement. To compensate Debtors for any profit received by the Buyer as a result of collection of the Identified Orders, and to cover the overhead expenses incurred by the Debtors in maintaining the Clean Fun Business post-petition, the Buyer will pay the Selling Debtors 7.5% of the aggregate gross proceeds expected to be received from the Identified Orders processed as of Closing (the "Identified Orders Payment Amount"), payable upon (a) the Closing or (b) termination (i) by the Selling Debtors for the Buyer's material breach or (ii) by the Buyer before the Diligence Deadline.

22. The Buyer, in making this offer, has relied on promises by the Debtors to seek the Court's approval of a fee of two hundred fifty thousand dollars (\$250,000) (the "Break-Up Fee"), which is approximately 4% of the estimated aggregate Purchase Price to compensate the Buyer for its time, effort, costs, and expenses incurred in examining the Debtors' business, conducting due diligence, providing the services under the Interim Contract, and the loss of opportunity that such time and effort has caused should another bidder be the Successful Bidder (as defined

below). The Debtors, in the exercise of their business judgment, believe that the Break-Up Fee is a necessary inducement for the Buyer, and thus, necessary to establish a “floor” for the sale of the Assets and ultimately encourage competitive bidding and promote the realization of the highest value for the Assets.

23. Because an official committee of unsecured creditors has not yet been formed in these cases, and because the Office of the United States Trustee has scheduled a formation meeting on September 29, 2016, it was the Debtors’ view that in order to ensure that a creditors’ committee has opportunity to review the Agreement and the Break-Up Fee, while preserving the ability of the Debtors to close the sale transaction by the DIP Agreement’s milestone date of October 14, 2016, as required under the DIP Agreement, the Bidding Procedures, including the Break-Up Fee, and the Sale should be considered for approval at the same hearing on October 11, 2016.

RELIEF REQUESTED³

24. First, by this Motion, the Debtors seek entry of the Bidding Procedures Order: (a) authorizing the Debtors’ to enter into the Agreement and take other such steps as are necessary to consummate the transactions contemplated thereunder, (b) authorizing and approving the Bidding Procedures, (c) approving procedures related to the assumption of certain executory contracts and unexpired leases, (d) authorizing and approving the Break-Up Fee, and (e) approving the Sale Notice Procedures (such order, substantially in the form attached hereto as Exhibit C, the “Bidding Procedures Order”).

25. Second, the Debtors request entry of an order (the “Sale Order”), pursuant to sections 105, 363, and 365 of the Bankruptcy Code: authorizing and approving (a) the sale of

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

the Assets, free and clear of all Liens, claims, encumbrances, and interests, to the Successful Bidder (the “Sale”); and (b) the assumption and assignment of certain contracts and leases; and (iii) granting them such other and further relief as the Court deems just and proper.

I. PROPOSED BID AND SALE PROCEDURES

A. Assets to be Sold

26. As described in further detail in the Agreement, the Assets to be acquired by the Buyer, subject to higher or better offers, comprise of substantially all of the assets, properties, rights and claims located and used at the Selling Debtors’ Costa Mesa facilities, or otherwise directly and exclusively used in the Clean Fun Business, whether owned or held by the Selling Debtors or any Affiliate thereof, but excluding the Shared Corporate Services. The Assets include, among other things, (i) Accounts Receivable, (ii) inventory, (iii) prepaid and/or advanced commissions paid to any employee, Account Executive or other independent contractor engaged in the Clean Fun Business, (iv) rights in open purchase orders, (v) intellectual property used in the Clean Fun Business, (vi) customer files, and (vii) causes of action, including Avoidance Actions against customers or Account Executives.

B. The Bidding Procedures

27. In order to ensure that the Debtors receive the maximum value for the Assets, the Agreement will serve as the “stalking-horse” bid for the Assets.

28. The key provisions of the Bidding Procedures to be employed with respect to the proposed sale of the Assets and assumption of Assumed Liabilities as set forth in the Agreement are as follows:⁴

- a. Bid Deadline. A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the “Notice Parties”): (i)

⁴ Capitalized terms used but not defined in this section only have the meanings ascribed to them in the Bidding Procedures.

Delivery Agent, Inc. and the other Debtors, Attn: Jeff Hagan, CFO, 300 California Street, Suite 300, San Francisco, CA 94104, jhagan@deliveryagent.com; (ii) Debtors' counsel: Keller & Benvenuti LLP, Attn: Tobias S. Keller, Esq. and Jane Kim, Esq., 650 California Street, Suite 1900, San Francisco, CA 93108, tkeller@kellerbenvenuti.com, jkim@kellerbenvenuti.com; (iii) Debtors' counsel: Pachulski Stang Ziehl & Jones LLP, Attn: Laura Davis Jones, Esq., 919 North Market Street, 17th Floor, Wilmington, DE 19801, ljones@pszjlaw.com; (iv) Debtors' financial advisors: Arch & Beam, LLC, 2500 Camino Diablo, Suite 110, Walnut Creek, CA 94597, hbailey@arch-beam.com; and (v) Debtor's investment bankers: Houlihan Lokey, Attn: Ryan Sandahl, 111 South Wacker Drive, 37th Floor, Chicago, IL 60606, rsandahl@hl.com; so as to be received not later than October 7, 2016, at 12:00 p.m. (PT) by the Debtors by electronic mail or hard copy (as may be extended as set out below, the "Bid Deadline"). The Debtors may extend the Bid Deadline once or successively, but they are not obligated to do so; provided that for any such extension beyond two (2) Business Days, the Debtors have obtained the written consent of the Buyer, which consent will not be unreasonably withheld. If the Debtors extend the Bid Deadline, they will promptly notify all Qualified Bidders (including the Buyer) and the parties listed above of such extension.

- b. Provisions Governing Qualifications of Bidders. Unless otherwise ordered by the Court, for cause shown, or as otherwise determined by the Debtors, in order to participate in the Bidding Process, prior to the Bid Deadline (as defined below), each person other than the Buyer who wishes to participate in the Bidding Process (a "Potential Bidder") must deliver to the Notice Parties at the addresses provided above:

(i) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors. In the event that the Potential Bidder has already entered into an acceptable confidentiality agreement with the Debtors, it must provide a statement waiving any of its rights under such confidentiality agreement that are in conflict with the Bidding Procedures or that would otherwise prohibit disclosures regarding the Potential Bidder, or any Transactions it may enter into, to the Notice Parties;

(ii) sufficient information, as determined by the Debtors, which may include current audited financial statements and latest unaudited financial statements of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets (or any portion thereof), current audited financial statements and latest unaudited financial statements of the equity holders of the Potential Bidder who will guarantee the obligations of the Potential Bidder, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtors and their financial advisors to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the Transactions; and

(iii) a statement demonstrating to the Debtors' satisfaction, a bona fide interest

in purchasing the Assets from the Debtors for consideration in excess of the Buyer's purchase price, plus the amount of the Break-Up Fee, plus the amount of the minimum bid increment.

A Potential Bidder that has executed a confidentiality agreement and has otherwise complied with the requirements described above, and that the Debtors determine in their reasonable business judgment, after consultation with their counsel and financial advisors, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Transactions, will be deemed a "Qualified Bidder."

c. Provisions Governing Qualified Bids. A bid submitted will be considered a "Qualified Bid" only if the bid is submitted by a Qualified Bidder, pursuant to the previous paragraph and complies with all of the following:

(i) it states that the applicable Qualified Bidder offers to purchase the Assets upon the terms and conditions substantially as set forth in the Asset Purchase Agreement, including without limitation, with respect to certainty and timing of closing, or pursuant to an alternative structure (including without limitation, an offer conditioned upon confirmation of a plan of reorganization proposed by the Debtors either individually or in collaboration with such Qualified Bidder), or upon alternative terms and conditions that the Debtors reasonably determine are no less favorable than the terms and conditions of the Asset Purchase Agreement.

(ii) it includes a signed letter stating that the bidder's offer is irrevocable until the selection of the Successful Bidder and, if applicable, the Back-Up Bidder (as defined below), provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the earlier of (i) closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (ii) (x) with respect to the Successful Bidder only, 25 days from the Sale Hearing, subject to further extensions as may be agreed to under the applicable purchase agreement and (y) with respect to the Back-Up Bidder only, the Back-Up Bid Expiration Date (as defined below);

(iii) it includes duly authorized and executed Asset Purchase Agreement, including the purchase price for the Assets expressed in U.S. Dollars (the "Purchase Price"), together with all exhibits and schedules thereto and such additional ancillary agreements as may be required by the bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), as well as copies of such materials marked to show those amendments and modifications to the Asset Purchase Agreement ("Marked Agreement") and the proposed order to approve the Sale by the Court proposed by the bidder;

(iv) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination as to the Qualified

Bidder's financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;

(v) it is not conditioned on (i) the outcome of unperformed due diligence by the bidder and/or (ii) obtaining financing;

(vi) it fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring or participating in connection with such bid, and the complete terms of any such participation;

(vii) it has a value to the Debtors, in the Debtors' reasonable business judgment, after consultation with their financial advisors, that either individually or, when evaluated in conjunction with any other Qualified Bid for the Assets, is greater than or equal to the sum of the Purchase Price offered under the Asset Purchase Agreement, plus the amount of the Break-Up Fee, plus \$50,000;

(viii) it includes an acknowledgment and representation that the bidder will assume the Selling Debtors' obligations under the executory contracts and unexpired leases proposed to be assigned pursuant to the Asset Purchase Agreement (or identifies with particularity which of such contracts and leases the bidder wishes not to assume, or alternatively which additional executory contracts or unexpired leases the bidder wishes to assume), contains full details of the bidder's proposal for the treatment of related cure costs; and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;

(ix) it includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (iv) is not entitled to any expense reimbursement or break-up fee in connection with its bid;

(x) it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Marked Agreement;

(xi) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the purchase price, to be dealt with as provided for under "Good Faith Deposits"

herein;

(xii) it (i) contains full details of the proposed number of employees of the Selling Debtors who will become employees of the Qualified Bidder and any proposed measures associated with their continued employment and associated with the employment of all employees who will become employees of the Qualified Bidder, and (ii) identifies any Employee Liabilities of any employees who will become employees of the Qualified Bidder that the Qualified Bidder intends to assume or purchase;

(xiii) it includes evidence of the Potential Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Potential Bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Selling Debtors and assigned or subleased to the Potential Bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such contracts and leases;

(xiv) it contains other information reasonably requested by the Debtors; and

(xv) it is received by the Bid Deadline.

The Debtors will determine, in their reasonable business judgment, whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be Qualified Bids. Notwithstanding the foregoing, the Buyer will be deemed a Qualified Bidder, and the Asset Purchase Agreement will be deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

- d. Evaluation of Competing Bids. A Qualified Bid will be valued based upon several factors including, without limitation, items such as the purchase price and the net value (including assumed liabilities and the other obligations to be performed or assumed by the bidder) provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such Transactions, the proposed revisions to the relevant Transaction documents, the effect of the Transactions on the value of the ongoing businesses of the Debtors (including ongoing relationships with partners, customers and suppliers), other factors affecting the speed, certainty and value of the Transactions (including any regulatory approvals required to close the Transactions), the assets included or excluded from the bid, the estimated number of the Debtors' employees to be offered post-closing employment by the Qualified Bidder and any proposed measures associated with their continued employment, the transition services required from the Selling Debtors post-closing and any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Debtors, in consultation with their advisors.
- e. No Qualified Bids. If the Debtors do not receive any Qualified Bids other than the Asset Purchase Agreement received from the Buyer, the Auction shall be cancelled

and the Debtors shall report the same to the Court, and subject to requiring and obtaining approvals of the Court and satisfaction of the conditions set forth in the Asset Purchase Agreement, the Debtors shall promptly proceed to seek entry of the appropriate order approving the Transactions with the Buyer pursuant to the terms and conditions set forth in the Asset Purchase Agreement. In addition, if no Qualified Bid is received, the Debtors reserve the right to, and will, if requested by the Buyer, use reasonable commercial efforts to, request that the Court advance the date of the Sale Hearing (as defined below) and, in such case, provide notice of such new date to those parties in interest entitled to notice thereof.

- f. Auction Process. If the Debtors receive one or more Qualified Bids in addition to the Asset Purchase Agreement, the Debtors will conduct an auction (the "Auction") of the Assets, which shall be transcribed or recorded on video to the extent required under Delaware local practice, at **10:00 a.m. on October 10, 2016**, at the offices of Pachulski Stang Ziehl & Jones LLP, located at 919 North Market Street, 17th Floor, Wilmington, DE 19801, or such other location as shall be timely communicated to all entities entitled to attend the Auction, which Auction may be cancelled or adjourned, subject to the terms of the Asset Purchase Agreement. The Auction shall run in accordance with the following procedures:

(i) The Debtors, the Buyer, (and the advisors to each of the foregoing), any official committee appointed in these cases, and any other Qualified Bidder that has timely submitted a Qualified Bid, and each of their respective advisors, shall attend the Auction in person, and only the Buyer and such other Qualified Bidders will be entitled to make any subsequent bids at the Auction.

(ii) Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Transactions.

(iii) At least two (2) days prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until (i) the date of the selection of the Successful Bidder at the conclusion of the Auction and (ii) if such bidder is selected as a Back-Up Bidder (as defined below), the Back-Up Bid Expiration Date. At least one (1) day prior to the Auction, the Debtors will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtors believe, in their reasonable business judgment, is the highest or otherwise best offer (the "Starting Bid") to the Buyer and all other Qualified Bidders which have informed the Debtors of their intent to participate in the Auction.

(iv) All Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction with the understanding that the true identity of each Qualified Bidder at the Auction will be fully disclosed to all other Qualified Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other

bidders throughout the entire Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attend the Auction in person.

(v) The Debtors, after consultation with their counsel and financial advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Local Rules, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction.

(vi) Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder that (i) improves upon such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Debtors determine, in consultation with their advisors, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each incremental bid at the Auction shall provide net value to the estate of at least \$100,000 over the Starting Bid or the Leading Bid, as the case may be, provided that the Debtors shall retain the right to modify the increment requirements at the Auction after informing each participating Qualified Bidder. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid or combination of bids (and the value of such bid(s)) that it believes to be the highest or otherwise better offer (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.

(vii) Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids (including any Subsequent Bid by the Buyer), the Debtors will, at each round of bidding, give effect to the Break-Up Fee that may be payable to the Buyer under the Asset Purchase Agreement as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors.

- g. Selection of Successful Bid. Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors, will (a) review each Qualified Bid and evaluate each Qualified Bid as set forth in the section titled "Evaluation of Competing Bids" herein, (b) identify the highest or otherwise best offer or offers for the Assets received at the Auction (one or more such bids, collectively the "Successful Bid" and the bidder(s) making such bid, collectively, the "Successful Bidder") and (c) communicate to the Buyer and the other Qualified Bidders the identity of the Successful Bidder, the Back-Up Bidder (as defined below), if any, and the details of the Successful Bid and Back-Up Bid (as defined below), if any. The determination of the Successful Bid and Back-

Up Bid by the Debtors, at the conclusion of the Auction, shall be final subject to approval by the Court.

The Selling Debtors will sell the Assets to the Successful Bidder pursuant to the terms of the Successful Bid (or, under certain circumstances described herein, the Back-Up Bidder) upon the approval of such Successful Bid (or Back-Up Bidder if applicable) by the Court at the Sale Hearing.

- h. Closing with Back-Up Bidders. If the Debtors receive one or more additional Qualified Bid(s), then, at the Sale Hearing, the Debtors will seek approval of the Successful Bid, and, at the Debtors' election, the next highest or best Qualified Bid (the "Back-Up Bid" and, such bidder, the "Back-Up Bidder"). The Debtors' presentation to the Court of the Successful Bid and, if applicable, the Back-Up Bid will not constitute the Debtors' acceptance of either of such bids, which acceptance will only occur upon the approval of such bids by the Court at the Sale Hearing. Following approval of the Sale to the Successful Bidder, if the Successful Bidder fails to consummate the Sale for any reason, then the Back-Up Bid will be deemed to be the Successful Bid and the Debtors will be authorized, but not directed, to effectuate a Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid of such Back-Up Bidder without further order of the Court. The Back-Up Bid shall remain open until the earlier of (a) the thirtieth (30th) calendar day following the conclusion of the Auction, unless, prior to such date, the Debtors have delivered written notice to the Back-Up Bidder that the transaction contemplated by the Successful Bid will not occur and the Debtors intend to consummate the transaction contemplated by the Back-Up Bid, in which case the terms of the Back-Up Bid shall be enforceable and shall govern or (b) the consummation of the Sale to the Successful Bidder (the "Back-Up Bid Expiration Date"). All the Qualified Bids other than the Successful Bid and the Back-Up Bid shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and the Back-Up Bid by the Court.
- i. Break-Up Fee. In recognition of the Buyer's expenditure of time, energy, and resources, the Selling Debtors have agreed that, if the Buyer is not the Successful Bidder or if the Agreement is otherwise terminated under certain provisions of the Agreement as set forth in section 6.2 of the Agreement, they will pay the Buyer the Break-Up Fee. Such Break-Up Fee will not be payable unless the Selling Debtors consummate an Alternative Transaction for all or substantially all of the Assets. If payable, the Break-Up Fee will be paid on the date of the closing of the Alternative Transaction.
- j. Good Faith Deposits. Other than with respect to the Buyer, whose Good Faith Deposit shall be treated in accordance with the terms and conditions of the Asset Purchase Agreement, the Good Faith Deposit of any Back-Up Bidder shall be retained by the Debtors until the Back-Up Bid Expiration Date and returned to the Back-Up Bidder within five (5) Business Days thereafter or, if the Back-Up Bid becomes the Successful Bid, shall be applied to the purchase price to be paid by the Back-Up Bidder in accordance with the terms of the Back-Up Bid. The Good Faith Deposits of Qualified Bidders not selected as either the Successful Bidder or Back-Up

Bidder shall be returned to such bidders within five (5) Business Days of the date of the selection of the Successful Bidder and the Back-Up Bidder. The Good Faith Deposit of the Successful Bidder will be dealt with in accordance with the terms of the Successful Bid.

- k. Sale Hearing. The Debtors will seek entry of the Sale Order from the Court at the Sale Hearing to begin on or before **October 11, 2016** (or at another date and time convenient to the Court) to approve and authorize the sale transaction to the Successful Bidder(s) on terms and conditions determined in accordance with the Bidding Procedures.

C. The Sale Notice Procedures

29. As stated above, the Debtors request that the Court hold the Sale Hearing on the same date as the hearing to approve the Bidding Procedures Order, October 11, 2016. The Debtors propose that any objections to the Sale (other than an Assumption Objection (defined herein)), which shall be governed by the procedures set forth below) (a "Sale Objection"), must (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) set forth the specific basis for the Sale Objection; (iv) be filed with the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, together with proof of service, **on or before 4:00 p.m. (prevailing Eastern Time) on October 6, 2016** (the "Sale Objection Deadline") and (v) be served, so as to be actually received on or before the Sale Objection Deadline, upon the following parties (collectively, the "Objection Notice Parties"): (i) Debtors' counsel: Keller & Benvenuti LLP, Attn: Tobias S. Keller, Esq. and Jane Kim, Esq., 650 California Street, Suite 1900, San Francisco, CA 93108, tkeller@kellerbenvenuti.com, jkim@kellerbenvenuti.com; (ii) Debtors' counsel: Pachulski Stang Ziehl & Jones LLP, Attn: Laura Davis Jones, Esq., 919 North Market Street, 17th Floor, Wilmington, DE 19801, ljones@pszjlaw.com; (iii) counsel to Buyer: Kirkland & Ellis LLP, Attn: Gregory F. Pesce, 300 North LaSalle, Chicago, Illinois 60601, gregory.pesce@kirkland.com; and Klehr Harrison Harvey Branzburg LLP, Attn. Domenic E. Pacitti, 919 North Market Street, Suite 1000, Wilmington, DE 19801, dpacitti@klehr.com; (iv)

counsel to DIP Lender: Olshan Frome Wolosky LLP, Attn: Adam H. Friedman, Esq. and Jonathan H. Deblinger, Esq., 1325 Avenue of the Americas, New York, New York 10019, afriedman@olshanlaw.com, jdeblinger@olshanlaw.com, (v) 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 (vi) counsel to any Official Committee. If a Sale Objection is not filed and served on or before the Sale Objection Deadline, the Debtors request that the objecting party be barred from objecting to the Sale and not be heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

30. The Debtors also request that the Court approve the form of the Procedures Notice, substantially in the form of Exhibit 2 to the Bidding Procedures Order. The Debtors will serve a copy of the Procedures Notice on (a) all taxing authorities having jurisdiction over the Debtors, including the IRS, (b) all known lien holders of the Assets, (c) all current and former employees of the Clean Fun Business, (d) all Account Executives of the Clean Fun Business, (e) all known creditors of the Clean Fun Business, and (f) all contract counterparties and entities and persons on the Clean Fun Business’s accounts payable system (collectively, the “Procedures Notice Parties”).

31. The Debtors propose to file with the Court and serve the Procedures Notice promptly upon the filing of the Sale Motion, by first-class mail, postage prepaid on the Procedures Notice Parties. The Procedures Notice provides that any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to Keller & Benvenuti LLP, Attn: Jane Kim, Esq., 650 California Street, Suite 1900, San Francisco, CA 93108, or by e-mailing jkim@kellerbenvenuti.com.

32. In addition, Houlihan will engage with those persons and entities that expressed an interest in any of the Assets during the pre-petition marketing process that Houlihan conducted, as described above, and notify them of the Motion and the Bidding Procedures.

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

II. SALE AND ASSUMPTION AND ASSIGNMENT OF CONTRACTS

A. Sale Free and Clear of All Liens, Claims, Encumbrances, and Interests

34. The Debtors seek Court 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 Sale Proceeds with the same validity and in the same order of priority as they attached to the Assets prior to the Sale, including the assumption by the Debtors and assignment to the Successful Bidder(s) of the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code. The Debtors also seek 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 Buyer under section 363(f) of the Bankruptcy Code. The Debtors 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 Debtors' estates and all interested parties, and satisfies the standards necessary to approve a sale of substantially all of a debtor's assets

articulated by the Court of Appeals for the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986).

B. Procedures for Assumption and Assignment of the Assumed Contracts

35. To facilitate and effect the sale of their Assets, the Debtors also seek authorization to assume certain pre-petition executory contracts and leases (the “Assumed Contracts”) of the Debtors related to the Assets, and to assign such executory contracts to the Buyer or the Successful Bidder.

36. The Agreement provides that the Buyer will pay all Cure Amounts, as determined by the Court, if any, necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Assumed Contracts assumed at Closing, up to the amounts set forth on a Schedule to the Agreement that will be prepared by the Selling Debtors.

37. All contracts that may be assumed and assigned will be set forth in a Schedule to the Agreement (the “Scheduled Contracts”), which will be provided under the Agreement within seven days of the date thereof. Subject to the Buyer’s right to exclude any contract from the Assumed Contracts list at any time up to three (3) business days prior to Closing, and subject to section 365 of the Bankruptcy Code, the Agreement provides that all Assumed Contracts will be assumed and assigned to the Buyer at Closing.

38. The Debtors will serve the Cure Notice, substantially in the form of Exhibit 3 to the Bid Procedures Order (along with a copy of this Motion) upon each counterparty to a Scheduled Contract by no later than **October 1, 2016**.

39. The Cure Notice will state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assumed Contracts (including the Cure Amount (defined below)) must be filed and served. The Cure Notice also

will identify the amounts, if any, that the Debtors believe are owed to each counterparty to an Assumed Contract in order to cure any defaults that exist under such contract (the “Cure Amounts”). To the extent there is a contract added to the list of contracts to be assumed by the Successful Bidder pursuant to the Successful Bidder’s Purchase Agreement selected at the Auction, this Motion constitutes a separate motion to assume and assign that contract to the Successful Bidder pursuant to section 365 of the Bankruptcy Code; each such contract will be listed on an exhibit to the Successful Bidder’s Purchase Agreement, and will be given a separate Cure Notice filed and served by overnight delivery within five (5) business days of the conclusion of the Auction and announcement of the Successful Bidder.

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

41. If a Contract is assumed and assigned pursuant to Court Order, then unless the Assumed Contract counterparty properly files and serves an objection to the Cure Amount contained in the Cure Notice by the Assumption Objection Deadline (defined below), the Assumed Contract counterparty will receive at the time of the assumption and assignment (as specified below) the Cure Amount as set forth in the Cure Notice, if any. If an objection is filed by a counterparty to an Assumed Contract, the Debtors propose that such objection must set forth a specific default in the executory contract or unexpired lease, claim a specific monetary amount that differs from the amount, if any, specified by the Debtors in the Cure Notice, and set forth

any reason why the counterparty believes the executory contract or unexpired lease cannot be assumed and assigned to the Successful Bidder.

42. If any counterparty objects for any reason to the assumption and assignment of an Assumed Contract (including to a Cure Amount) (an “Assumption Objection”), the Debtors propose that the counterparty must file the objection and serve it so as to be actually received on or before the Assumption Objection Deadline (defined below), upon the Notice Parties by no later than (i) **4:00 p.m. (prevailing Eastern Time) on October 6, 2016** or (ii) the date otherwise specified in the Cure Notice (the “Assumption Objection Deadline”), provided, however, as to any Successful Bidder who is not the Buyer, any counterparty may raise at the Sale Hearing an objection to the assumption and assignment of the Assumed Contract solely with respect to the Successful Bidder’s ability to provide adequate assurance of future performance under the Assumed Contract. After receipt of an Assumption Objection, the Debtors will attempt to reconcile any differences in the Cure Amount or otherwise resolve the objection with the counterparty. In the event that the Debtors and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, such Assumed Contract will not be assumed and assigned until the Court’s determination as to Cure Amount, as further set forth below.

43. The Successful Bidder(s) shall be responsible, as and solely to the extent set forth in the Agreement, for paying any Cure Amount for an Assumed Contract that is assumed and assigned and for satisfying any requirements regarding adequate assurance of future performance that may be imposed under section 365(b) of the Bankruptcy Code in connection with the proposed assignment of any Assumed Contract, and the failure to provide adequate assurance of future performance to any counterparty to any Assumed Contract shall not excuse the Successful

Bidder(s) from performance of any and all of its obligations pursuant to the Successful Bidder's Purchase Agreement. The Debtors propose that the Court make its determinations concerning adequate assurance of future performance under the Assumed Contracts pursuant to section 365(b) of the Bankruptcy Code at the Sale Hearing. Cure Amounts disputed by any counterparty will be resolved by the Court at the Sale Hearing or such later date as may be agreed to or ordered by the Court.

BASIS FOR RELIEF REQUESTED

A. Sale of the Assets Is a Product of the Debtors' Reasonable Business Judgment

44. 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 Debtors have determined that the Sale of the Assets by public auction will enable them to obtain the highest and best offer for these assets (thereby maximizing the value of the estate) and is in the best interests of the Debtors' creditors. In particular, the Agreement is the result of comprehensive arms' length negotiations for the Sale of the Assets, and the Sale, subject to higher or otherwise better offers at the Auction, will provide a greater recovery for the Debtors' creditors than would be provided by any other existing alternative.

45. 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: "The Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

46. Virtually all courts have held that approval of a proposed sale of assets of a debtor under section 363 of the Bankruptcy Code outside the ordinary course of business and prior to

the 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 the following non-exclusive list of factors may be considered by a court 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”); *In re Stroud Ford, Inc.*, 164 B.R. 730, 732 (Bankr. M.D. Pa 1993); *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); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a chapter 11 case are “that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith”).

47. 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) 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 1071.⁵

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

49. The Debtors submit that the Agreement is a sound exercise of the Selling Debtors’ business judgment because: (a) it maintains the ability of the Clean Fun Business to operate as a going concern through the Closing – which the Debtors would not have sufficient working capital to support absent the Interim Contract with the Buyer – and therefore preserves its value pending the sale of the Assets, (b) it provides for the sale of the Clean Fun Business as a

⁵ Lionel’s “sound business purpose test” replaces an older rule that held that sales of substantially all of a debtor’s assets prior to the confirmation of a plan of reorganization could only be made in emergencies, *i.e.*, when the assets to be sold were “wasting” or perishable. *Lionel*, 722 F.2d at 1071.

going concern, and thereby maximizes recoveries to the estate through its sale, as compared to the sale of its liquidated assets under the Primary Sale process, and (c) it permits the Debtors to sell the Clean Fun Business and related assets by the milestone date set forth in the DIP Agreement.

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

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

51. 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).

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

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

54. At the same time, a prompt sale process is necessary because DIP Agreement requires that the Clean Fun Business be sold or closed down by thirty days after the Petition Date, and the Debtors do not have adequate working capital to support the Clean Fun Business, and pay all attendant post-petition operating expenses, if the Sale is not closed by that date. Accordingly, if the Debtors are not permitted to sell the Assets through the process and in the time frame contemplated by the Bid Procedures, the Debtors will have no choice but to shut

down the Clean Fun Business, which would result in irreparable harm to the value of the business.

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

C. The Proposed Break-Up Fee Is Reasonable and Appropriate, and Will Maximize Value for Stakeholders by Providing an Incentive for the Buyer to Submitted a Committed Bid

56. The Debtors have formulated a bidding process that the Debtors believe will induce prospective competing bidders to expend the time, energy and resources necessary to submit a bid, and which the Debtors believe is fair and reasonable and provide a benefit to the Debtors' estates and creditors. The Bidding Procedures and, in particular, the proposed Break Up Fee, are reasonable and supported by applicable case law.

57. The use of bid protections such as these has become an established practice in chapter 11 asset sales involving the sale of significant assets because such bid protections enable a debtor to ensure a sale to a contractually committed bidder at a price the debtor believes is fair, while providing the debtor with the potential of obtaining an enhanced recovery through an auction process. Historically, bankruptcy courts have approved bidding incentives (including bid protections) solely by reference to the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See, e.g., In re 995 Fifth Ave. Assocs.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (holding that bidding incentives may "be legitimately necessary to convince a "white knight to enter the bidding by providing some form of compensation for the risks it is undertaking") (citation omitted); *In re Marrose Corp.*, Nos. 89 B 12171-12179 (CB), 1992 WL

33848, at *5 (Bankr. S.D.N.Y. 1992) (“bidding incentives are meant to compensate the potential acquirer who serves as a catalyst or ‘stalking horse’ which attracts more favorable offers”). *See also In re Integrated Res.*, 147 B.R. 650, 657-58 (S.D.N.Y. 1992).

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 Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999), the Third Circuit 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 in the bankruptcy context. Accordingly, to be approved, bidding incentives such as the Break-Up Fee must provide benefit to a debtor's estate. *Id.* at 533.

59. The *O’Brien* opinion identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if “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.” *Id.* at 537. Second, where the availability of bidding incentives induced a bidder to research the value of the debtor and submit a bid that serves as a minimum or floor bid on which other bidders can rely, “the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

60. The Break-Up Fee proposed by the Debtors is consistent with the “business judgment rule” and satisfy the Third Circuit’s “administrative expense” standard. At the inception of the marketing process, potential purchasers will be provided with the Agreement and will be afforded an opportunity to submit their own adaptation of that agreement, marked to show changes necessary to consummate a sale which must be acceptable to the Debtors. Under

the “administrative expense” standard enunciated in O’Brien, as well as the “sound business judgment” standard followed in other jurisdictions, the Break-Up Fee proposed by the Debtors should be approved as fair and reasonable. The proposed bid protections are reasonable and generally consistent with the range of bidding protections typically approved by bankruptcy courts in this district. *See, e.g., In re Hipcricket, Inc.*, Case No. 15-10104 (LSS) (Bankr. D. Del., Feb. 11, 2015) (court approved break-up fee, which together with expense reimbursement, was 4.3% of the purchase price under stalking horse agreement); *In re Point Blank Solutions, Inc.*, Case No. 10-11255 (PJW) (Bankr. D. Del, Oct. 5, 2011) (court approved break-up and expense reimbursement of 3.75% or \$750,000 in connection with sale of debtor’s assets for purchase price of \$20,000,000); *In re Western Nonwovens, Inc.*, Case No. 08-11435 (PJW) (Bankr. D. Del., July 28, 2009) (court approved break-up fee and expense reimbursement of \$250,000 in connection with sale of debtor’s assets for purchase price of \$4,000,000 to \$6,500,000 purchase price); *In re Filene’s Basement, Inc.*, Case No. 09-11525 (MFW) (Bankr. D. Del., May 15, 2009) (court approved break-up fee and expense reimbursement of 3.68%, or \$810,000 in connection with sale of debtor’s assets for purchase price of \$22,000,000); *In re Global Motorsport Group, Inc.*, (Case No. 08-10192 (KJC) (Bankr. D. Del. Feb. 14, 2008) (court approved a break-up fee of approximately 4%, or \$500,000 in connection with sale).

61. In this case, bid protections are particularly warranted because the Buyer, by incurring the expense and providing the services prior to and following the Petition Date under the Interim Contract, allowed the Debtors to continue to operate the Clean Fun Business throughout the sale process. Therefore, the Debtors’ payment of the Break-Up Fee under the conditions set forth in this Motion is (a) an actual and necessary cost of preserving the Debtors’ estates, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit

to the Debtors' estates and creditors and all parties in interest herein, (c) reasonable and appropriate, and (d) necessary to ensure that the Buyer will continue to pursue the proposed Agreement to undertake the sale of the Assets, and therefore constitute administrative expenses with priority pursuant to Bankruptcy Code sections 503(b).

D. Notice of the Proposed Sale Is Reasonable Under the Circumstances

62. The Debtors submit that the Procedures Notice as set forth above is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction (if necessary) and the Sale Hearing.

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

64. Although the Debtors seek to shorten time with respect to the Motion, and the process proposed under the Bidding Procedures is relatively short, given the extensive marketing process Houlihan engaged in during the months leading up to the Petition Date and the fact that Houlihan will engage promptly with those persons that had expressed interest in the Assets during that pre-petition process, as well as the Debtors' financial inability to support the Clean Fun Business after mid-October, the proposed time frame between the filing of this Motion, the Debtors submit that the commencement of the bidding process and the Auction will provide interested purchasers sufficient time to participate in the Auction.

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

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

66. Specifically, Bankruptcy Code section 363 (m) provides that:

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

11 U.S.C. S 363(m).

67. While the Bankruptcy Code does not define “good faith,” the Third Circuit in *In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986), has held that:

the requirement that a purchaser act in good faith . . . speaks to the integrity of his conduct in the course of the sale proceedings. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between Buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.

788 F.2d at 147 (citations omitted); *see generally Marin v. Coated Sales, Inc.*, (*In re Coated Sales, Inc.*), Case No. 89-3704 (KMW), 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990) (holding that party, to show lack of good faith, must demonstrate “fraud, collusion, or an attempt to take grossly unfair advantage of other bidders”); *see also In re Sasson Jeans, Inc.*, 90 B.R. 608, 610 (S.D.N.Y. 1988) (quoting *In re Bel Air Assocs., Ltd.*, 706 F.2d 301, 305 (10th Cir. 1983)); *In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining facts of each case, concentrating on “integrity of [an actor’s] conduct during the sale proceedings” (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

68. As the Debtors will demonstrate at the Sale Hearing, over the weeks leading up to, and the days following, the filing of these chapter 11 proceedings, the Debtors spent a considerable amount of time and resources negotiating the Agreement at arm's length, with give and take on both sides. Under the circumstances, this Court should find that the Successful Bidder is entitled to all of the protections of section 363(m) of the Bankruptcy Code.

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

69. As set forth above, the Debtors have been negotiating with the Buyer at arm's length and in good faith regarding the sale of the Assets. Moreover, the Debtors do not believe that any sale pursuant to the Bidding Procedures will be the result of collusion or other bad faith between bidders or that the purchase price under the Agreement has been or will be controlled by an agreement between potential or actual bidders within the meaning of Bankruptcy Code section 363(n).

70. As will be set forth in further detail at the Sale Hearing, the Sale has been negotiated, proposed, and entered into without collusion, in good faith, and from arm's-length bargaining positions. Neither the Debtors nor the Buyer, nor, as will be demonstrated at the Sale Hearing, any Successful Bidder, have engaged in any conduct that would cause or permit the Agreement to be avoided under section 363(n) of the Bankruptcy Code.

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

71. Pursuant to section 363(f) of the Bankruptcy Code, the Debtors seek authority to sell and transfer the Debtors' right, interest and title in the Assets to the Buyer or the Successful Bidder 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 Assets, subject to any rights and defenses of the Debtors and other parties in interest with respect thereto.

72. Section 363(f) of the Bankruptcy Code provides, in pertinent part:

The trustee may sell property under subsection (b) or (c) of this Section free and clear of any interest in such property of an entity other than the estate, only if –

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

11 U.S.C. § 363(f). *See also In re Elliot*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the requirements is met).

73. With respect to each creditor asserting a Lien, claim, encumbrance, or interest, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of Liens, claims, encumbrances, or interests who did not object or who withdraw their objections to the sale or the Motion are deemed to have consented to the Motion and sale pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens, claims, encumbrances, or interests who do object fall within one or more of the other subsections of Bankruptcy Code Section 363(f).

74. A sale free and clear of Liens, claims, encumbrances, or interests is necessary to maximize the value of the Assets. The Buyer would not have entered into the Agreement and would not consummate the Transaction if the sale of the Assets to the Buyer were not free and

clear of all Liens, claims, encumbrances, or interests, or if the Buyer would, or in the future could, be liable for any of such Lien, claim, encumbrance, or interest. A sale of the Assets other than one free and clear of all Liens, claims, encumbrances, or interests would yield substantially less value for the Debtors' estates, with less certainty than the transaction contemplated in the Agreement. Therefore, the transaction contemplated by the Agreement is in the best interests of the Debtors, their estates and creditors, and all other parties in interest. A sale free and clear of Liens, claims, encumbrances, or interests is particularly appropriate under the circumstances because any lien, claim, encumbrance, or interest in, to or against the Debtors' right, interest and title in the Assets that exists immediately prior to the closing of any sales will attach to the sale proceeds allocated to the Debtors with the same validity, priority, force and effect as it had at such time, subject to the rights and defenses of the Debtors or any party in interest. The Debtors submit that holders of Liens, claims, encumbrances, or interests, if any, will be adequately protected by the availability of the proceeds of the sale to satisfy their Liens, claims, encumbrances, or interests.

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

75. Under section 365(a) of the Bankruptcy Code, a debtor, "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). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an executory contract of a debtor. This subsection provides:

(b) (1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume Such contract or lease unless, at the time of assumption of Such contract or lease, the trustee -

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default. . . ;

(B) compensates, or provides adequate assurance that the trustee will promptly

compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. S 365(b)(1). Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

The trustee may assign an executory contract or unexpired lease of the debtor only if

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

(B) adequate assurance of future performance by

the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. S 365(f)(2).

76. The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *EBG Midtown S. Corp. v. McLaren/Hart Env'tl. Eng'g Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992); *In re Prime Motor Inns Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

77. Among other things, adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

78. To the extent any defaults exist under any Assumed Contract, any such default will be promptly cured or adequate assurance that such default will be cured will be provided prior to the assumption and assignment. If necessary, the Debtors will submit facts prior to or at the Sale Hearing to show the financial credibility of the Successful Bidder and willingness and ability to perform under the Assumed Contracts. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Successful Bidder to provide adequate assurance of future performance under the Assumed Contracts, as required under section 365(b)(1)(C) of the Bankruptcy Code.

79. In addition, the Debtors submit that it is an exercise of their sound business judgment to assume and assign the Assumed Contracts to the Buyer in connection with the consummation of the transactions contemplated in the Agreement, and the assumption, assignment, and sale of the Assumed Contracts to the Buyer are in the best interests of the Debtors, their estates, their creditors, and all parties in interest. The Assumed Contracts being assigned to the Buyer are an integral part of the Assets being purchased by the Buyer, and accordingly, such assumption, assignment, and sale of the Purchased are reasonable and enhance the value of the Debtors' estates. The Court should therefore authorize the Debtors to assume and assign the Assumed Contracts as set forth herein.

80. The Debtors submit that the cure procedures set forth herein are appropriate, reasonably calculated to provide notice to any affected party, and afford the affected party to opportunity to exercise any rights affected by the Motion, and consistent with Section 365 of the Bankruptcy Code. To the extent that any defaults exist under any Assumed Contracts, any such defaults will be cured pursuant to the Successful Bidder's Purchase Agreement. Accordingly,

the Debtors submit that the cure procedures for effectuating the assumption and assignment of the Assumed Contracts as set forth herein are appropriate and should be approved.

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

81. 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).

82. Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the 14-day stay period, commentators agree that the 14-day stay period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally Collier on Bankruptcy* P 6004.11 (Alan N. Resnick & Henry J. Sommer eds., 16th ed.). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. Id.

83. Pursuant to the Agreement, and because of the potentially diminishing value of the Assets, the Debtors must close this sale promptly after all closing conditions have been met or waived. Thus, waiver of any applicable stays is appropriate in this circumstance.

NOTICE

84. 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 Debtors' estates; (c) counsel for Western Alliance Bank dba Bridge Bank; (d) counsel for Hillair Capital Investments, L.P.; (e) counsel for HALO Branded Solutions, Inc., and (f) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that no other or further notice need be provided.

NO PRIOR REQUEST

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

WHEREFORE, the Debtors respectfully requests entry of the Bidding Procedures Order attached to hereto as **Exhibit C**, and the Sale Order attached hereto as **Exhibit D**, granting the relief requested herein, and granting such other and further relief as is just and proper.

Dated: September 26, 2016
Wilmington, Delaware

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

Exhibit A

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

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

- (1) **Sale to an Insider**: The Debtors are not aware of a prospective buyer that is an insider of the Debtors.
- (2) **Agreements with Management**: No proposed or prospective buyer has discussed or entered into any agreements with management or key employees regarding compensation or future employment. The Agreement provides for the Selling Debtors to deliver Independent Contractor Acknowledgements (as defined in the Agreement) from Account Executives who, in the aggregate, represent 75% of the dollar volume of orders of the Clean Fun Business. The form of acknowledgement provides for the Buyer to pay such Account Executives all unpaid pre-petition commissions, subject to the Account Executive agreeing to join the Buyer and deliver purchase orders with HALO for at least 90 days post-Closing. **Agreement § 4.2(g).**
- (3) **Releases**: In the event the Buyer (that is, the stalking horse purchaser) is paid the Break-Up Fee under the Agreement, such Break-Up Fee will be the Buyer's sole and exclusive remedy against the Selling Debtors with respect to all claims of any nature whatsoever relating to this Agreement or the transactions contemplated hereunder.
- (4) **Private Sale/No Competitive Bidding**: The Sale is subject to higher or better competing bids and is being conducted pursuant to the competitive bidding process detailed in the Motion. **Agreement § 5.10.**
- (5) **Closing and Other Deadlines**: It is an event of default under the DIP Agreement if the Debtors not have sold, pursuant to terms acceptable to the DIP Lender, in its sole discretion, or closed, the Clean Fun Business within 30 days of the Petition Date. In addition, The Agreement provides that the Closing will occur in no event later than 45 days after the date of the Agreement. **Agreement § 6.1(n).**
- (6) **Good Faith Deposit**: The Bidding Procedures provide that all bidders will be required to post a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the purchase price. Under the Agreement, the Buyer will also post a good faith deposit in the form of a wire transfer in an amount equal to ten percent (10%) of the purchase price on the Diligence Deadline (as defined in the Agreement).
- (7) **Interim Arrangements with Proposed Buyer**: On September 13, 2016, in order to preserve business continuity of the Clean Fun Business while the parties continued to work in good faith in negotiating the Agreement, HALO and the Debtors agreed that HALO would process and perform all necessary interim services with respect to certain identified Post-Petition POs, including making vendor payments, paying commissions to the Company's Account Executives, and billing and collection.
- (8) **Use of Proceeds**: Upon Closing, the net sale proceeds will be used to pay the Break-Up Fee if the Successful Bidder is not the Buyer, and, under the DIP Agreement, prepay the outstanding amount of the obligations under the DIP Facility and pre-petition debenture with Hillair in an amount equal to 100% of the net cash proceeds received by the Selling Debtors less the Break-Up Fee, if any, within two (2) days after the Closing. The Agreement does not provide for a definitive allocation of sale proceeds between or among the Selling Debtors or collateral.

- (9) **Tax Exemption**: No tax exemptions under section 1146(a) of the Bankruptcy Code are contemplated in connection with the Sale.
- (10) **Record Retention**: The Assets include the Selling Debtors' Documents, which the Buyer agrees to retain and make available to the Selling Debtors for a period of a minimum of three (3) years following the Closing Date. *Agreement* § 1.2(i).
- (11) **Sale of Avoidance Actions**: The Agreement includes the sale of the Debtors' chapter 5 causes of action against the customers and Account Executives of the Business. *Agreement* § 1.2(m).
- (12) **Requested Findings as to Successor Liability**: The Buyer will be undertaking certain Assumed Liabilities pursuant to the Agreement. The Buyer would be assuming only those liabilities, and all other liabilities not expressly assumed by the Buyer under the Agreement, whether or not incurred or accrued on or after the date on which the contemplated transaction is closed, shall be retained by the Debtors.
- (13) **Sale Free and Clear of Unexpired Leases**: The Debtors are seeking to sell the Assets free and clear of all Liens, claims, encumbrances, and other interests pursuant to Section 363(f) of the Bankruptcy Code, unless otherwise provided in the Successful Bidder's purchase agreement.
- (14) **Credit Bid**: The Agreement does not provide for a credit bid.
- (15) **Relief from Bankruptcy Rule 6004(h)**: As noted in the Motion, the Debtors are requesting relief from the 14-day stay imposed by Rules 6004(h) and 6006(d).

Exhibit B

(Agreement)

ASSET PURCHASE AGREEMENT
DATED AS OF SEPTEMBER 25, 2016
BY AND AMONG
HALO BRANDED SOLUTIONS, INC.,
DELIVERY AGENT, INC., and
CLEAN FUN PROMOTIONAL MARKETING, INC.

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "**Agreement**"), dated as of September 25, 2016, is by and between **HALO BRANDED SOLUTIONS, INC.**, a Delaware corporation ("**Buyer**"), and **DELIVERY AGENT, INC.**, a Delaware corporation (the "**Company**") and **CLEAN FUN PROMOTIONAL MARKETING, INC.**, a California corporation (together with the Company, "**Sellers**"). Capitalized terms used but not defined throughout this Agreement are defined in **Article VIII**.

In consideration of the mutual promises and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

ARTICLE I

PURCHASE AND SALE; ASSUMPTION OF CERTAIN LIABILITIES

1.1 **Purchase and Sale of Assets**. At the Closing, Sellers shall sell, transfer, assign, and deliver to Buyer, and Buyer shall purchase, accept, assume and receive, all right, title and interest in and to the Purchased Assets free and clear of all Liens, whether arising prior to, on or subsequent to the Petition Date.

1.2 **Purchased Assets**. The "**Purchased Assets**" are substantially all of the assets, properties, rights and claims located and used at the Costa Mesa Facilities, or otherwise directly and exclusively used in the Business, whether owned or held by the Sellers or any Affiliate thereof, but excluding the Shared Corporate Services. Without limiting the generality of the foregoing, the Purchased Assets shall include the following, if any, subject to **Section 5.19** to the extent applicable thereto:

(a) all accounts receivable as of the Closing Date to the extent relating to the Business, and any payments from Account Obligor of the Business in respect of such accounts receivable;

(b) all inventory (including raw materials, work in process, samples, supplies and finished goods of the Business) located or which would ordinarily be located at the Costa Mesa Facilities, in transit to or from the Costa Mesa Facilities, or held by the Sellers, their contractors, or third-party warehouses or vendors or otherwise primarily used in the Business and possession of and the Sellers' rights with respect to all inventory of customers of the Business held by the Business;

(c) all prepaid and/or advanced commissions paid to any employee, Account Executive or other independent contractor engaged in the Business;

(d) all rights in, to and under any of the open purchase orders, any unbilled orders and unshipped orders (including, without limitation, advance calendar orders), and all prepaid expenses or advances paid to trade vendors with respect to such open purchase orders of the Business;

(e) all performance and other bonds, security and other deposits, and advances maintained for use directly and exclusively in the conduct of the Business;

(f) all rights to the use of the name of "**Clean Fun**" and any variations thereof and all of Sellers' other Intellectual Property (or rights thereto) used primarily in the Business and not in any of the other businesses of the Sellers and their Affiliates (other than in an immaterial or inadvertent manner), and all technical, design, processing, manufacturing or marketing information (including new developments), technology, inventions, know-how, processes, ideas and trade secrets and documentation thereof (including related papers, drawings, diaries, notebooks, specifications, designs, methods of manufacture and software), customer artwork (whether for proposed, in process or completed projects) research and data and other similar information and all claims and rights related thereto used in the Business and not in any of the other businesses of the Sellers and their Affiliates (other than in an immaterial or inadvertent manner), including, but not limited to, the domain names set forth on **Schedule 1.2(f)** and the program customer websites of the Business (the "**Program Customer Websites**");

(g) all customer files, lists of customers, suppliers and vendors, rights and claims under sales contracts, customer orders, service agreements, purchase orders (whether open or closed), dealer and distributorship agreements and other similar commitments of the Business at the Costa Mesa Facilities;

(h) all rights in, to and under (i) all Material Contracts, (ii) all other contracts made and entered into in the ordinary course of, and directly relating to, the Business and not in any of the other businesses of the Sellers and their Affiliates, and (iii) all confidentiality, noncompetition, nonsolicitation, assignment of intellectual property or other agreements entered into by any of the employees or consultants engaging in the Business with respect to the Business (collectively, the "**Assumed Contracts**");

(i) all books, records, files, papers and documents primarily relating to the Purchased Assets, the Assumed Liabilities or the operations of the Business, including all accounting books, records, ledgers and electronic data processing software and materials primarily related to the Business and not any of the other businesses of the Sellers and their Affiliates (other than in an immaterial or inadvertent manner) (the "**Books and Records**"); provided, that, following the Closing, Buyer shall (i) retain and maintain the Books and Records as they existed on the Closing Date for the greater of (x) three (3) years or (y) the period(s) of time required by applicable local, state and federal law, and (ii) during such period(s), provide Sellers with access to the Books and Records retained by the Buyer upon Sellers' commercially reasonable request(s) and upon reasonable prior written notice during normal business hours;

(j) all telephone numbers, web sites, domain names, e-mail addresses and other technologies and communication systems, if any (including related computer hardware and software) primarily used in the conduct of the Business;

(k) all prepaid expenses, including prepaid transaction privilege tax (sales tax) and other prepaids for Cost of Goods Sold (other than with respect to Excluded Liabilities and Obligations) and deferred charges of the Business;

(l) all Permits, if any, and pending applications therefor to conduct the operations of the Business and to own, manufacture, construct, operate and maintain any product, fixture, facility, equipment, vehicle, machinery or installation of the Business;

(m) all claims, causes of action, choses in action, rights of recovery, defenses or counterclaims and rights of set-off of any kind (including rights under and pursuant to all warranties, representations and guarantees made by suppliers of products, materials or equipment or components thereof) against third parties arising out of events occurring prior to the Closing Date (including, for the avoidance of doubt, those arising out of events occurring prior to the Petition Date), including all Avoidance Actions against any customers or Account Executives of the Business, only as any of the foregoing relate directly to the Business and not to any of the other businesses of the Sellers and their Affiliates, any Purchased Assets or Assumed Liabilities and the right to make claims under and other benefits of all contracts of insurance primarily with respect to the Business, any of the Purchased Assets or Assumed Liabilities;

(n) all furniture, fixtures and equipment located at the Costa Mesa Facilities;
and

(o) all computer hardware (including desktop and laptop computers and other systems hardware and networking hardware) and all off-the-shelf operating systems and software programs used in connection therewith (in each case, other than computer hardware and software related to Sellers' communication systems) and all manuals, forms, guides and other materials used in connection therewith, in each case to the extent primarily used in the Business and located at the Costa Mesa Facilities;

provided, however, that the definition of the Purchased Assets shall not include any items defined as Excluded Assets in **Section 1.3** below.

1.3 **Excluded Assets**. Notwithstanding anything to the contrary in this Agreement, the following assets of the Sellers shall be retained by the Sellers and are not being sold or assigned to the Buyer hereunder (collectively, the "**Excluded Assets**"):

(a) all Avoidance Actions, other than Avoidance Actions against customers or Account Executives of the Business;

(b) all cash, cash equivalents and marketable securities;

(c) all capital stock of Sellers;

(d) Company Benefit Plans;

(e) all Company Real Property (other than with respect to the rights granted to Buyer pursuant to Section 5.18 of this Agreement);

(f) all Shared Corporate Services;

(g) the organizational documents, seals, minute books and other documents of the Sellers relating exclusively to the organization, maintenance and existence of the Sellers as a

legal entity, including taxpayer and other identification numbers, Tax information and Tax records; provided, however, that copies of such materials shall be Purchased Assets.

(h) prepaid Taxes and prepaid expenses to the extent pertaining to Excluded Liabilities and Obligations;

(i) Tax Refunds to Sellers and deposits to the extent pertaining to Tax obligations of Sellers;

(j) all rights, liabilities or obligations arising out of or related to the Company Real Property; and

(k) all rights of Sellers under this Agreement.

1.4 **Assignment and Assumption of Liabilities.**

(a) At the Closing, the Buyer shall assume from the Sellers and thereafter be responsible for the payment, performance or discharge of only the following Liabilities of the Sellers (collectively, the "**Assumed Liabilities**"):

(i) except as may arise from a breach by Sellers of **Section 5.12**, administrative expense claims of Sellers solely with respect to trade payable obligations for orders relating to the Business which are shipped and billed after the Petition Date, to the extent such administrative expense claims arise following the Petition Date and prior to the Closing, and relate solely to the Purchased Assets (the "**Assumed Payables**") and are allowed or, but for the filing of the appropriate papers in the Bankruptcy Court, would be allowed pursuant to Section 503(b)(1) of the Bankruptcy Code (the "**503 Liabilities**");

(ii) any obligations arising after the Closing in the ordinary course of business under the Assumed Contracts (other than any obligations related to a breach thereof that occurred prior to Closing);

(iii) any obligations arising after the Closing in the ordinary course of business under any unbilled orders and unshipped orders (other than any obligations related to a breach thereof or failure to perform thereunder that occurred prior to Closing);

(iv) any Cure Amounts specifically set forth on **Schedule 1.4(a)(iv)** or which arise from an Excluded Contract that becomes an Assumed Contract pursuant to **Section 1.6(b)** (the "**Assumed Cure Amounts**");

(v) any liabilities for amounts owed and payable to the Sellers' customers relating to or arising out of royalty agreements and rebate programs ("**Assumed Customer Royalties and Rebates**");

(vi) deferred commissions payable owing to Account Executives that have been earned prior to the Petition Date but not paid and only to the extent set forth on **Schedule 1.4(a)(vi)** plus any deferred commissions payable owing to Account Executives that

have been earned in the ordinary course of business after the Petition Date and prior to the Closing and relate to the accounts receivable included in the Purchased Assets; and

(vii) customer deposits and prepayments of the Business as of the Closing ("**Assumed Deposits and Prepayments**").

(b) **Section 1.4(a)** shall not limit any claims or defenses Buyer may have against any party. The transactions contemplated by this Agreement shall in no way expand the rights or remedies of any third party against Buyer or the Sellers as compared to the rights and remedies which such third party would have had against the Sellers absent the Chapter 11 Case and had Buyer not assumed the Assumed Liabilities.

1.5 **Excluded Liabilities and Obligations.** The Buyer shall not assume and shall not be liable or responsible for any obligations or liabilities of the Sellers unless specifically set forth in **Section 1.4**, which excluded liabilities include, but are not limited to, the following obligations or liabilities of the Business, the Sellers or any Affiliate thereof, or any claim against any of the foregoing, of any kind, whether known or unknown, contingent, absolute or otherwise (the "**Excluded Liabilities and Obligations**"):

- (a) Indebtedness owing to any Person;
- (b) all Contracts of Sellers other than the Assumed Contracts, including those set forth on **Schedule 1.5(b)** (collectively, the "**Excluded Contracts**");
- (c) Taxes of any kind accrued in, or allocated to, the period prior to the Closing, including federal, state and local Taxes on income, sales and use, ad valorem duties and assessments, worker's compensation Taxes, and FICA contributions;
- (d) any Taxes arising in connection with the transactions contemplated under this Agreement;
- (e) fees or obligations owing to Sellers' Chapter 11 Professionals;
- (f) Taxes of any kind accrued or imposed in connection with the Chapter 11 Case, including Taxes relating to the discharge of debt;
- (g) all accounts payable not specifically included as Assumed Liabilities;
- (h) except for the Pre-Petition Commission Amounts, all liabilities and obligations arising out of the employment of any individual by Sellers or engagement of any individual as an independent contractor by Sellers including (i) liabilities or obligations arising under Company Benefit Plans or any employment contract (including any unfunded pension liabilities and costs associated with termination of any pension plan), (ii) except as provided in **Section 5.16** below, retention bonuses, Severance Payments or other amounts payable solely as a result of the sale of the Business by Sellers to employees under employment contracts or otherwise; and (iii) any claim brought by any employee or former employee arising out of such individual's employment or engagement by Sellers; but excluding any earned vacation, sick leave and holiday pay for employees that accept Buyer's offer of employment;

- (i) the Company Closing Costs;
- (j) all liabilities and obligations to stockholders, officers and directors of the Sellers or any Affiliate of the Sellers, including dividends declared or payable to stockholders of the Sellers;
- (k) all liabilities relating to any Company Benefit Plan, the failure of Sellers to comply with any Environmental and Safety Requirements, or the presence of any Hazardous Materials;
- (l) all liabilities pursuant to the WARN Act relating to any action or inaction of Sellers prior to the Closing;
- (m) all liabilities under any Assumed Contract which arises out of or relates to any breach that occurred or began prior to the Closing;
- (n) any Cure Amounts other than the Assumed Cure Amounts;
- (o) any obligation of Sellers to indemnify any Person by reason of the fact that such Person was a director, officer, stockholder, employee or agent of Sellers or was serving at the request of Sellers as a partner, trustee, director, manager, officer, employee or agent of another entity; and
- (p) all liabilities and obligations for returns, product liability and product warranty for products sold by or on behalf of Sellers prior to the Closing.

1.6 **Sellers' and Buyer's Actions with Respect to Contracts.**

(a) **Sellers' Obligation to Maintain Scheduled Contracts until Closing.** From and after the date of this Agreement, Sellers shall not reject or alter (or attempt to alter) the terms of any material executory contracts or unexpired leases primarily relating to the Business to which any of the Sellers is a party (collectively, the "**Scheduled Contracts**") unless otherwise agreed to in writing by the Buyer or as provided below in **Section 1.6(c)** of this Agreement. Sellers shall provide timely and proper written notice of the Sale Motion seeking entry of the Sale Order to all parties to Scheduled Contracts and take all other actions necessary to cause such Scheduled Contracts to be assumed by Sellers and assigned to Buyer pursuant to Section 365 of the Bankruptcy Code to the extent that such Scheduled Contracts are Assumed Contracts at Closing. For the avoidance of doubt, Sellers' compliance with notice procedures approved by the Bankruptcy Court shall constitute timely and proper written notice of the motion.

(b) **Excluding or Adding Assumed Contracts Prior to Closing.** At the Closing, Sellers shall, pursuant to the Sale Order and the Assignment and Assumption Agreement and other transfer and assignment documents reasonably requested by the Buyer, assume and sell and assign to the Buyer (the consideration for which is included in the Purchase Price), all Assumed Contracts which may be assigned by Sellers to the Buyer pursuant to Sections 363 and 365 of the Bankruptcy Code and which shall be set forth on the Disclosure Schedules delivered pursuant to the terms of this Agreement. The Buyer shall have the right in its sole and absolute discretion to notify Sellers in writing of any Assumed Contract that it does

not wish to assume or any Scheduled Contract that it wishes to add as an Assumed Contract up to three (3) Business Days prior to the Closing, provided, however, that Sellers may, at their sole discretion, discount the value of any assumption of a contract that Buyer has not designated an Assumed Contract, on a binding basis, by the date of the Auction for purposes of considering the value of Buyer's Bid under the process set forth in the Bidding Procedures Order. At the sole discretion and instruction of Buyer, any such previously considered Assumed Contract that Buyer no longer wishes to assume shall be automatically deemed removed from the Disclosure Schedules related to Assumed Contracts, automatically deemed added to the Disclosure Schedules related to Excluded Contracts, and shall be rejected by Sellers in accordance with **Section 1.6(c)**. At the sole discretion and instruction of Buyer, any such previously considered Excluded Contract that Buyer wishes to assume as an Assumed Contract shall be automatically deemed added to the Disclosure Schedules related to Assumed Contracts, automatically deemed removed from the Disclosure Schedules related to Excluded Contracts, and shall be assumed by Sellers and assigned to the Buyer. For the avoidance of doubt, any such Cure Amounts with respect to such Contract shall be the responsibility of Buyer and shall be treated as an Assumed Liability pursuant to **Section 1.4(a)(vi)**.

(c) **Rejection of Excluded Contracts.** Subject to **Section 5.17**, at any time after the Closing Date, Sellers may reject any or all Excluded Contracts. To the extent that any executory Contract or unexpired lease relating to the Business is not identified prior to the Closing Date or is not an Assumed Contract or an Excluded Contract on the Closing Date, such executory Contract or unexpired lease shall be deemed an Excluded Contract and Sellers may reject any such executory Contract or unexpired lease upon discovery.

(d) **Avoidance Actions.** The Sellers shall not pursue any Avoidance Actions, other litigation or otherwise seek to collect any amounts due from any customers or Account Executives of the Business.

1.7 **Assumed Cure Payments and Adequate Assurance.** Buyer shall be responsible for (a) paying all Assumed Cure Amounts with respect to all Assumed Contracts in connection with the assignment and assumption of the Assumed Contracts, and (b) providing adequate assurance of the future performance of all Assumed Contracts as required by Sections 365(b)(1)(C) and/or 365(f)(2)(B) of the Bankruptcy Code, as applicable.

1.8 **Deemed Consents and Cures.** For all purposes of this Agreement (including all representations and warranties of Sellers contained herein), Sellers shall be deemed to have obtained all required consents in respect of the assignment of any Assumed Contract if, and to the extent that, pursuant to the Sale Order or other Order of the Bankruptcy Court, Sellers are authorized to assume and assign to Buyer, and Buyer is authorized to accept, such Assumed Contracts pursuant to Section 365 of the Bankruptcy Code. If the consent required to effectuate the assignment of any Assumed Contracts to Buyer cannot be obtained pursuant to the Sale Order or other Order of the Bankruptcy Court, then the parties shall endeavor to obtain such consent pursuant to **Sections 5.5** and **5.19**.

1.9 **Closing.** Unless this Agreement is terminated pursuant to **Article VI**, the closing of the transactions that are the subject of this Agreement shall be consummated at a closing (the "**Closing**"), which shall take place (a) by electronic exchange of documents as soon as

practicable but no later than three (3) Business Days after the last of the conditions set forth in **Article IV** are satisfied (other than those conditions that by their nature are normally satisfied at the Closing, but subject to the satisfaction of such conditions at the Closing) or waived by the party having the benefit of such condition or (b) such other manner, place or date that is agreed to in writing by Sellers and the Buyer (the "**Closing Date**").

1.10 **Deposit.**

(a) By no later than the Diligence Deadline, Buyer shall deposit into an escrow, held by an escrow agent that will be identified by Sellers prior to the Diligence Deadline and reasonably acceptable to the Buyer (the "**Escrow Holder**"), an amount equal to \$250,000 (the "**Deposit**") in immediately available, good funds, pursuant to joint escrow instructions to be delivered to the Escrow Holder on or before the Diligence Deadline. In turn, the Escrow Holder shall immediately deposit the Deposit into an interest-bearing account. The Deposit shall become nonrefundable upon the valid termination of this Agreement by Sellers pursuant to **Section 6.1(c)** (a "**Buyer Default Termination**"). At the Closing, the Deposit (and any interest accrued thereon) shall be credited and applied toward payment of the Purchase Price. In the event the Deposit becomes nonrefundable by reason of a Buyer Default Termination, Escrow Holder shall immediately disburse the Deposit and all interest accrued thereon to Sellers to be retained by Sellers for their own account. If the transactions contemplated herein terminate for any other reason, the Escrow Holder shall immediately return to Buyer the Deposit (together with all interest accrued thereon), but less Buyer's one-half share of the Escrow Holder's escrow fees and charges.

(b) LIQUIDATED DAMAGES. BUYER AND SELLERS HEREBY ACKNOWLEDGE THAT, IN THE EVENT OF BUYER'S DEFAULT, IT WOULD BE IMPRACTICABLE AND EXTREMELY DIFFICULT TO ESTIMATE THE DAMAGES SELLERS MAY SUFFER OR INCUR IN THE EVENT THAT THE TRANSACTION CONTEMPLATED HEREIN FAILS TO CLOSE BY REASON OF SUCH DEFAULT. ACCORDINGLY, NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, BUYER AND SELLERS HEREBY AGREE THAT CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING AT THE EXECUTION OF THIS AGREEMENT, A REASONABLE ESTIMATE OF THE TOTAL DETRIMENT THAT SELLERS WOULD SUFFER IN THE EVENT THAT THE TRANSACTION CONTEMPLATED HEREIN FAILS TO CLOSE BY REASON OF BUYER'S DEFAULT IS AND SHALL BE AN AMOUNT EQUAL TO THE AMOUNT OF THE DEPOSIT. EXCEPT AS OTHERWISE PROVIDED IN CLAUSES (i) AND (ii) BELOW, SAID AMOUNT SHALL REPRESENT THE FULL, AGREED, AND LIQUIDATED DAMAGES TO WHICH SELLERS ARE ENTITLED BY REASON OF BUYER'S BREACH AND SELLERS HEREBY EXPRESSLY WAIVE ANY AND ALL OTHER CLAIMS TO DAMAGES OR OTHER REMEDIES (WHETHER AT LAW OR IN EQUITY). THE PAYMENT OF SUCH AMOUNT AS LIQUIDATED DAMAGES IS NOT INTENDED AS A FORFEITURE OR PENALTY WITHIN THE MEANING OF CALIFORNIA CIVIL CODE SECTIONS 3275 OR 3369, BUT RATHER IS INTENDED TO CONSTITUTE LIQUIDATED DAMAGES TO SELLERS PURSUANT TO CALIFORNIA CIVIL CODE SECTIONS 1671, ET. SEQ. UPON A BUYER DEFAULT TERMINATION, THIS AGREEMENT SHALL TERMINATE AND EXCEPT FOR (i) SELLERS' RIGHT TO COLLECT THE AMOUNT OF SUCH LIQUIDATED DAMAGES, AND (ii) THE PARTIES'

RESPECTIVE OBLIGATIONS UNDER SECTIONS 5.2(b) AND 5.3 OF THIS AGREEMENT, THE PARTIES HERETO SHALL BE RELIEVED OF ANY FURTHER LIABILITY OR OBLIGATION UNDER THIS AGREEMENT. BY PLACING THEIR INITIALS IN THE SPACES PROVIDED BELOW, EACH PARTY SPECIFICALLY ACKNOWLEDGES AND CONFIRMS THE ACCURACY OF THE STATEMENTS SET FORTH ABOVE AND THAT THEY WERE REPRESENTED BY COUNSEL OF THEIR CHOICE WHO FULLY EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT THE TIME OF EXECUTION OF THIS AGREEMENT.

Sellers' Initials: _____ Buyer's Initials: _____

1.11 **Cash Amount Calculation.**

(a) Five (5) Business Days prior to Closing, Buyer shall use the Books and Records and other information provided by Sellers to calculate Buyer's good faith estimate of the Cash Amount (the "**Estimated Cash Amount**") and shall deliver a certificate to the Sellers providing such Estimated Cash Amount and the calculations supportive thereof (the "**Estimated Cash Amount Certificate**"). Sellers shall assist Buyer and shall provide information to Buyer as reasonably requested by Buyer in connection with Buyer's preparation of the Estimated Cash Amount Certificate.

(b) Within ten (10) Business Days after the Closing Date, Buyer will prepare in good faith and deliver to the Sellers a certificate (the "**Cash Amount Certificate**") executed by Buyer setting forth Buyer's determination of the actual Closing AR Value and the other components of the Cash Amount based on the Books and Records and other information available on the date of such certificate and (ii) Buyer's calculation of the Cash Amount based thereon.

(c) If Sellers deliver a written notice (the "**Disputed Items Notice**") to Buyer within five (5) Business Days after receipt by Sellers of the Cash Amount Certificate stating that the Sellers object to any items in the Cash Amount Certificate (the "**Disputed Items**"), Buyer and the Sellers will attempt to resolve the Disputed Items as promptly as practicable. If the Sellers do not deliver the Disputed Items Notice to Buyer within five (5) days after receipt of the Cash Amount Certificate, the Cash Amount specified in the Cash Amount Certificate will be final and binding on the parties and will be the Cash Amount for all purposes of this Agreement. If Buyer does not object to a timely-delivered Disputed Items Notice within five (5) days after receipt of the Disputed Items Notice, the Cash Amount specified in the Disputed Items Notice will be final and binding on the parties and will be the Cash Amount for all purposes of this Agreement.

(d) If Sellers timely provide a Disputed Items Notice and the Buyer and Sellers are unable to agree upon all Disputed Items within fourteen (14) Business Days after delivery of the Disputed Items Notice, Buyer and Sellers shall select an independent, nationally recognized accounting firm reasonably acceptable to Buyer and the Sellers (the "**Independent Accounting Firm**") to resolve all Disputed Items not previously resolved by Buyer and Sellers pursuant to **Section 1.11(c)** (the "**Remaining Disputed Items**"). The Independent Accounting Firm shall (i) address only the Remaining Disputed Items and may not assign a value greater

than the greatest value claimed for such item by either party or smaller than the smallest value claimed for such item by either party and (ii) re-calculate the Cash Amount, as modified only by the Buyer and Sellers' mutual resolution of Disputed Items pursuant to **Section 1.11(a)** and the Independent Accounting Firm's resolution of the Remaining Disputed Items. Buyer and the Sellers will each have the same opportunity to present their respective positions and to submit materials regarding the Remaining Disputed Items to the Independent Accounting Firm. The Independent Accounting Firm will make a written determination of each Remaining Disputed Item within thirty (30) days after being selected, based solely on the materials submitted by each party and the applicable definitions included herein and the accounting principles and practices required herein (and not any independent review or determination), and such determination will be final and binding on the parties. The fees, costs and expenses of the Independent Accounting Firm will be borne by Buyer, on the one hand, and Sellers, on the other hand, based upon the percentage that the portion of the contested amount not awarded to each party bears to the amount actually contested by such party. For example, if Sellers claim that the Cash Amount is \$1,000 more than the amount provided in the Cash Amount Certificate, and Buyer contest only \$500 of the amount claimed by Sellers, and if the Independent Accounting Firm ultimately resolves the dispute by awarding Sellers \$300 of the \$500 contested, then the fees and expenses of the Independent Accounting Firm will be allocated 60% (i.e., $300 \div 500$) to Buyer and 40% (i.e., $200 \div 500$) to Sellers.

(e) At such time as the Cash Amount is finally determined in accordance with this **Section 1.11** (the "**Final Cash Amount**"):

(i) if the Final Cash Amount is less than the Estimated Cash Amount and such deficit is less than the Adjustment Holdback, Buyer shall deduct such deficit from the Adjustment Holdback and shall promptly, but no later than five (5) Business Days following the determination of the Final Cash Amount, pay to the Sellers the remaining Adjustment Holdback, if any, by wire transfer of immediately available funds as directed by the Sellers;

(ii) if the Final Cash Amount is less than the Estimated Cash Amount and such deficit is greater than the Adjustment Holdback, (A) Buyer shall retain the Adjustment Holdback and (B) the Sellers shall be liable to Buyer for the amount that such deficit exceeds the Adjustment Holdback;

(iii) if the Final Cash Amount exceeds the Estimated Cash Amount, Buyer shall promptly, but no later than five (5) Business Days following the final determination of the Final Cash Amount, pay to the Sellers an aggregate amount equal to the amount of such excess plus the Adjustment Holdback by wire transfer of immediately available funds as directed by the Sellers; and

(iv) the "**Cash Amount Adjustment**" is the amount, if any, paid by Buyer to the Sellers pursuant to this **Section 1.11(e)**.

1.12 Transactions at the Closing. At the Closing, (a) Buyer shall purchase and be assigned the Purchased Assets, and (b) in consideration of the Purchased Assets, (i) Buyer shall pay to the Sellers the Estimated Cash Amount, less the Adjustment Holdback and the Deposit, by wire transfer of immediately available funds as directed by the Sellers, (ii) Buyer shall cause the

Escrow Holder to deliver the Deposit (together with all accrued interest thereon) to the Sellers, (iii) Buyer shall assume, without duplication, the Assumed Liabilities, and (iv) Buyer shall pay the Assumed Cure Amounts for the Assumed Contracts.

1.13 **Purchase Price.** The aggregate purchase price for the Purchased Assets (the "**Purchase Price**") is equal to the sum of (a) the Buyer's assumption of the Assumed Liabilities plus (b) the Cash Amount. For illustrative purposes only, a sample calculation of the Purchase Price is set forth on **Schedule 1.13**.

ARTICLE II

REPRESENTATIONS AND WARRANTIES OF THE SELLERS

The Sellers represent and warrant to Buyer that each statement contained in this **Article II** (except where otherwise noted) is true and correct as of the date of this Agreement and the Closing Date:

2.1 **Organization; Good Standing.** The Company is a corporation incorporated in the State of Delaware, and Clean Fun Promotional Marketing, Inc. is a corporation incorporated in the State of California, and each is duly organized, validly existing and in good standing under the laws of the State of Delaware and the State of California, respectively, and has all requisite power and authority to own, lease and operate its assets, properties and business and to carry on its business as now being conducted. Each of Clean Fun Promotional Marketing, Inc. and the Company is duly qualified or otherwise authorized as a foreign entity to transact business in each jurisdiction listed on **Schedule 2.1**, which, to the Company's Knowledge, are all of the jurisdictions in which the nature of the Business or the location of the Purchased Assets requires the Company to so qualify if failure to so qualify would be material to the Company. Sellers collect Tax in the states listed on **Schedule 2.1**, which, to the Company's Knowledge, are all of the jurisdictions in which the nature of the Business or the location of the Purchased Assets requires Sellers to collect Tax.

2.2 **Authorization.** Subject to any necessary authorization from the Bankruptcy Court and prior to the Petition Date, Sellers have all requisite power and authority to execute, deliver and perform its obligations under this Agreement and each agreement, document, certificate or instrument executed in connection with this Agreement (collectively the "**Transaction Documents**") to which it is a party. The execution and delivery of this Agreement and the Transaction Documents to which Sellers are party, the performance by Sellers of their obligations hereunder and thereunder and the consummation by Sellers of the transactions contemplated hereby and thereby have been duly authorized by the Board of Directors of Sellers, and no other proceeding on the part of Sellers is necessary. This Agreement and, as of the Closing Date, the Transaction Documents to which Sellers are party have been duly executed and delivered by Sellers and, subject to any necessary authorization form the Bankruptcy Court, constitute the legal, valid and binding obligation of Sellers, enforceable against them in accordance with their respective terms.

2.3 **Subsidiaries.** Other than Clean Fun Promotional Marketing, Inc., the Sellers have no subsidiaries or other partnerships, joint ventures, associations or other entities related to

the Business in which the Sellers own, of record or beneficially, any direct or indirect equity interests or other interest or any right (contingent or otherwise) to acquire the same.

2.4 **Consents and Approvals.** Except as set forth on **Schedule 2.4** and any approvals required by the Bankruptcy Court and, prior to the Petition Date, to the Company's Knowledge, no consent, approval, order or authorization of, or registration, declaration or filing with, or notice to, any multi-national, foreign, national, state, provincial, local, governmental, judicial, public, quasi-public, administrative or self-regulatory authority, agency, commission or organization (collectively, "**Governmental Authority**") or other Person is required to be made or obtained by Sellers in connection with the authorization, execution, delivery and performance of this Agreement and the Transaction Documents, or the consummation of the transactions contemplated hereby and thereby.

2.5 **No Violation.** To the Company's Knowledge, except with respect to any approvals required by the Bankruptcy Court, the execution, delivery and performance by Sellers of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby will not:

(a) result in the material breach of any of the terms or conditions of, or constitute a material default under, or in any manner release any party thereto from any material obligation under, or otherwise materially affect any rights of Sellers under, any mortgage, note, bond, indenture, contract, agreement, license or other instrument or obligation of any kind or nature, in any case whether written or oral, by which any of them may be bound or affected;

(b) violate or conflict with any material law, order, permit, writ, injunction, judgment, rule, regulation, statute, ordinance, treaty, constitution, directive, code, order, decree or other decision of any court, administrative agency, or Governmental Authority (collectively, "**Laws**");

(c) violate any provision of the Organizational Documents of Sellers; or

(d) result in the creation or imposition of any Lien upon any of the Purchased Assets.

2.6 **No Brokers or Finders.** Other than the agents, representatives and professionals (including any financial adviser, investment banker, restructuring adviser, or law firm) of the Sellers or any official committee of unsecured creditors, equity security holders or otherwise that may be appointed by the Bankruptcy Court in the Chapter 11 Case (collectively, the "**Chapter 11 Professionals**"), or as set forth on **Schedule 2.6**, the Sellers have not retained, and are not authorized without prior Bankruptcy Court approval to pay on behalf of any other party (including any official committee of unsecured creditors, equity security holders or otherwise), any broker or finder, or made any statement or representation to any Person that would entitle such Person to, or agreed to pay, any broker's, finder's or similar fees or commissions in connection with the transactions contemplated by this Agreement which is or may be payable by the Buyer.

2.7 Financial Statements and Financial Data.

(a) **Schedule 2.7(a)** contains the unaudited balance sheets and statements of income of the Business for the 8 month period ended August 31, 2016 and the twelve month period ended December 31, 2015 (the "**Financial Statements**"). To the Clean Fun Knowledge Party's Knowledge, each of the Financial Statements is true, complete and correct in all material respects, is consistent with the Books and Records (which, in turn, accurately and fairly reflect in all material respects all the transactions of, acquisitions and dispositions of assets by, and incurrence of liabilities by, the Business), do not include or omit to state any material fact which renders them misleading, and fairly and accurately presents the financial condition, assets and liabilities of the Business as of the respective dates and the results of operations and changes in financial position as of the dates thereof and for the periods covered thereby, and have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby. None of the Financial Statements contains any items of a special or nonrecurring nature, except as expressly stated therein, and such Financial Statements do not reflect any write-up or revaluation increasing the book value of any asset. Except as otherwise stated in the Financial Statements, the Company's internal controls and procedures are adequate and appropriate to provide reasonable assurance regarding the reliability of financial reporting and the preparation of the audited Financial Statements for external purposes. To the Company's Knowledge, all historic audited financial data provided or made available to Buyer and its agents and representatives in connection with their due diligence investigation of the Company has been true, correct and complete.

(b) To the Company's Knowledge, **Schedule 2.7(b)** contains a true, correct and complete list of all inventory (including stock inventory and drop-ship inventory) of Sellers related to the operation of the Business as of the date hereof, including (i) the original purchase price thereof (and in the case of drop ship inventory, Sellers' purchase price therefor), the value at which each such item is currently carried on Sellers' books and (ii) whether such inventory is stock inventory or drop-ship inventory.

(c) To the Company's Knowledge, **Schedule 2.7(c)** contains a true, correct and complete list of all of Sellers' accounts and notes receivable primarily relating to the Business outstanding as of close of business on the Petition Date (together with the accounts receivable arising after such date until the Closing, the "**Accounts Receivable**"), separately identifying each invoice with respect thereto and, with respect to each such invoice, the obligor the, the date of the invoice and the invoice number. **Schedule 2.7(c)** sets forth a description of historical write-off experiences of the Company with respect to its accounts receivable during the year ended December 31, 2015 and the 8-month period ended August 31, 2016.

(d) To the Company's Knowledge, **Schedule 2.7(d)** contains a true, correct and complete list, as of the close of business on the Business Day immediately prior to the date hereof, of all of the prepaid expenses or advances of the Business paid to vendors with respect to open purchase orders that are not subject to any set-off, counterclaim, complaint or other defense.

(e) To the Company's Knowledge, **Schedule 2.7(e)** contains a true, correct and complete list of all of accounts payable of the Business outstanding as of the close of

business on the Business Day immediately prior to the date hereof, separately identifying each invoice with respect thereto, and with respect to each such invoice, the payee, the date of the invoice and the invoice number. To the Company's Knowledge, as of the date hereof, there are no unpaid invoices or bills representing amounts alleged to be owed by the Company with respect to the Business, or other alleged obligations of the Business, which the Company has disputed or determined to dispute or refuse to pay.

(f) To the Company's Knowledge, **Schedule 2.7(f)** contains a true, correct and complete list of all of accrued commissions of the Business as of the close of business on the Business Day immediately prior to the date hereof, owed to its employees and independent contractors and the amount of commissions that Sellers have advanced to the employees and independent contractors of the Business on an individual basis.

2.8 **Absence of Changes or Events.** To the Company's Knowledge, except as set forth on **Schedule 2.8**, since December 31, 2014, Sellers have conducted the Business in the ordinary course of business. Without limiting the generality of the foregoing, since December 31, 2015, except as disclosed on **Schedule 2.8**, there has not been any acquisition or disposition by the Company of any business or line of business or the disposition of a significant amount of assets, whether by merger, purchase or sale of stock, purchase or sale of assets or otherwise (or commitment therefor), in each case related exclusively and directly to the Business.

2.9 **Assets.**

(a) Except as set forth on **Schedule 2.9(a)**, Sellers have good and marketable title to or a valid leasehold or license interest in all of the Purchased Assets, free and clear of any and all Liens.

(b) Subject to Bankruptcy Court approval, Sellers have the power and the right to sell, assign and transfer and Sellers will sell and deliver to Buyer, and upon consummation of the transactions contemplated by this Agreement, Buyer will acquire good and marketable, and indefeasible title to the Purchased Assets, free and clear of all Liens.

(c) The Transaction Documents, when duly executed and delivered by Sellers to Buyer at the Closing, will effectively vest in Buyer good and marketable, and indefeasible title to the Purchased Assets, subject only to the Assumed Liabilities.

(d) To the Clean Fun Knowledge Party's Knowledge, **Schedule 2.9(d)** sets forth a list of each asset used in and material to the Business but which is not included in the Purchased Assets.

2.10 **Proprietary Rights.**

(a) To the Company's Knowledge, **Schedule 2.10(a)** contains a complete list (specifying the owner thereof and the patent, registration or application number and issuance, registration or filing date if applicable) of all patented or registered Intellectual Property owned by Sellers and exclusively and directly used in the Business and all applications therefor, all

material unregistered Trademarks owned by Sellers and exclusively and directly used in the Business, and all proprietary Software exclusively and directly used in the Business.

(b) To the Company's Knowledge, **Schedule 2.10(b)** contains a complete list (including the owner thereof, the patent, registration or application number if applicable, the termination or expiration dates thereof and any license or other agreement relating thereto), of all Intellectual Property licensed to Sellers and exclusively and directly used in the Business (excluding generally commercially available, off the shelf software programs licensed pursuant to shrink-wrap or "click to accept" agreements with a replacement cost and/or annual license fee of less than \$2,000), and all internet IP addresses registered to or used by Sellers exclusively and directly in the Business.

2.11 **Contracts.** To the Clean Fun Knowledge Party's Knowledge, **Schedule 2.11** sets forth a true, correct and complete list of each of the following Contracts, agreements, licenses, commitments, obligations and understandings, in any case whether written or oral (together with the open orders set forth in the Open Order Reports), to which the Company is party and which relate to the Business or by which any Purchased Asset is bound, that:

(a) provides for future potential receipt of, or payment by, the Company of more than \$10,000;

(b) prohibits the Company from freely engaging in any business or competing anywhere in the world, including any nondisclosure or confidentiality agreement, settlement, co-existence or similar contract that restricts the geographic or operational scope of the Company's business or the ability of the Company to enter into any new line of business, any right of first offer or first refusal with respect to the sale, license or other disposition of any asset, any division or any business of the Company, or any contract prohibiting the Company from granting any rights or conducting any business or that otherwise restricts the Company's activities or the use of any Intellectual Property;

(c) relates to Indebtedness, including a Guarantee;

(d) is a license (whether as a licensor or licensee) or similar agreement permitting the use of any Intellectual Property (other than off the shelf software);

(e) involves the sharing of profits, losses, costs or liabilities by the Company with any other Person in a joint venture, partnership or similar agreement;

(f) involves hedging or similar transactions;

(g) grants a power of attorney on behalf of the Company;

(h) involves any investment or capital contribution in any Person or advance or loan to any Person by the Company or requires or obligates the Company to make any investment in, or advance, loan or capital contribution to, any Person (other than the advance or reimbursement of reasonable business expenses incurred or to be incurred in the ordinary course of business);

(i) is an agreement pursuant to which the Company leases, subleases, occupies or otherwise uses any real property;

(j) is an agreement pursuant to which (i) the Company leases, holds or otherwise uses any machinery, equipment, vehicle or other tangible personal property owned by any third Person or (ii) the Company is the lessor of, or makes available for use by any third Person, any tangible personal property owned by it for an annual rent;

(k) provides for the supply of goods or services to a Governmental Authority;

(l) is a sales representative, distributor, dealer, advertising, consultant, independent contractor, lobbying, manufacturer's representative, franchise, agency or similar agreement;

(m) relates to the employment of any officer, individual employee or other Person on a full time, part time, consulting or other basis, including, but not limited to, agreements (i) providing for the payment of any cash or other compensation or benefits upon the consummation of the transactions contemplated hereby; (ii) providing any severance benefits or making any severance arrangements; (iii) restricting its ability to terminate the employment of any employee at any time for any lawful reason or for no reason without penalty or liability or (iv) granting the Sellers any noncompete, non-solicitation or other restrictive covenant;

(n) is a collective bargaining agreement or Contract with any union;

(o) relates to the acquisition or disposition of any business (whether by merger, sale of equity interests, sale of assets or otherwise);

(p) relates to the creation, improvement or development of any Intellectual Property; or

(q) is not of the foregoing type and is material to the conduct of the Business (collectively, the "**Material Contracts**"). To the Clean Fun Knowledge Party's Knowledge, the Company has provided Buyer with true and correct copies of all Material Contracts, including all amendments, waivers and other modifications thereof. Except for defaults that will be cured through payment of the Cure Amounts or arising solely as a consequence of the commencement of the Chapter 11 Case, the Company is not in default in any material respect, nor has any event occurred which with the giving of notice or passage of time or both would constitute a material default, under any Material Contract or any other obligation owed by the Company thereunder. To the Company's Knowledge, no other party to any Material Contract is in default thereunder nor, to the Company's Knowledge, has any event occurred which with the giving of notice or the passage of time or both would constitute a default by any other party to any such Material Contract. Each Material Contract is in full force and effect, is valid and enforceable against the other party thereto in accordance with its terms and, to the Company's Knowledge, is not subject to any claims, charges, set offs or defenses.

2.12 **Litigation.** To the Company's Knowledge, except as set forth in **Schedule 2.12**, since January 1, 2014 there has been no, and there is currently no, suit, action, proceeding, investigation, grievance, claim or order (collectively, "**Proceedings**") pending or, to the

Company's Knowledge, threatened against Sellers, any Stockholder or any of the current or former officers, directors or employees of Sellers with respect to the Business, the Assumed Liabilities, or the Purchased Assets, before any court, or before any Governmental Authority. To the Company's Knowledge, none of the Company or any Affiliate thereof with respect to the Business (a) is subject to any judgment, order or decree of any court or Governmental Authority; (b) has received any opinion or memorandum or legal advice from legal counsel to the effect that it is exposed from a legal standpoint, to any liability that may be material to the Business; or (c) is engaged in any legal action to recover monies due it or for damages sustained by it or to cause a third party to act or refrain from acting in a certain manner.

2.13 **Compliance with Applicable Laws.** To the Company's Knowledge, the Company is and has been since January 1, 2014 in material compliance with all Laws and requirements in connection with the conduct, ownership, use, occupancy or operation of the Business and the Purchased Assets, and to the Company's Knowledge, the Company has not received notice (written or oral) at any time since January 1, 2014 of any violation of any Law or requirement in connection with the conduct, ownership, use, occupancy or operation of the Business or the Assets.

2.14 **Labor Relations.** Set forth on **Schedule 2.14** is a list of each of the employees and independent contractors of Sellers engaged in or providing services to the Business, setting forth each such person's name, title, employment (or consultant, as the case may be) commencement date, current annual rate of compensation and total compensation (including bonuses) for the fiscal year ended December 31, 2015 and for the eight (8) month period ended August 31, 2016.

2.15 **Transactions and Affiliates.** Except as described on **Schedule 2.15**, since January 1, 2014, the Sellers with respect to the Business has not engaged in any Affiliate Transactions. An "**Affiliate Transaction**" is any contract, agreement, arrangement, commitment or transaction between the Company, on the one hand, and (a) any Affiliate of the Company (including the Company's directors, employees and officers), (b) any Stockholder or his, her, or its Affiliates, (c) any family members or any trust for the benefit of any Stockholder or any family members thereof, and (d) any entity controlled by any such Person or Persons or any entity in which any such Person or Persons own, collectively, ten percent (10%) or more of the Company's authorized and outstanding capital stock, on the other hand. Except as set forth on **Schedule 2.15**, all obligations of the Company with respect to all Affiliate Transactions, including, but not limited to, any outstanding accounts payable, have been satisfied, discharged and terminated and the Company has no further liability in respect of any Affiliate Transaction.

2.16 **Real Property.** The facilities and real property located at the Costa Mesa Facilities (the "**Company Real Property**").

2.17 **Product Liability.** To the Company's Knowledge, no product liability or other tort claims have been made, or to the Company's Knowledge threatened, against the Company related to products sold by the Business or the suppliers to the Business since January 1, 2014 or that is otherwise pending.

2.18 Customers, Suppliers and Employees.

(a) To the Company's Knowledge, **Schedule 2.18(a)** sets forth complete and accurate lists by aggregate dollar value of sales made or services provided during each of the periods from January 1, 2015 through December 31, 2015 and January 1, 2016 through August 31, 2016, to the twenty (20) largest customers of the Business during each such period and the aggregate dollar value of sales to each such customer during such period. To the Clean Fun Knowledge Party's Knowledge, except as stated on **Schedule 2.18(a)**, as of the close of business on the Business Day immediately prior to the date hereof, no such customer (i) has canceled or otherwise terminated or materially and adversely modified, or to the Company's Knowledge, threatened to cancel or otherwise terminate or materially and adversely modify, its relationship with the Company or (ii) to the Company's Knowledge, is threatened with bankruptcy or insolvency.

(b) To the Company's Knowledge, **Schedule 2.18(b)** sets forth a complete and accurate list of the twenty (20) largest suppliers to Sellers in connection with the Business (in terms of aggregate dollar value of purchases by Sellers from such suppliers during each of the periods from January 1, 2015 through December 31, 2015 and January 1, 2016 through August 31, 2016, and the aggregate dollar value of purchases from each such supplier during such period. To the Clean Fun Knowledge Party's Knowledge, except as stated on **Schedule 2.18(b)**, as of the close of business on the Business Day immediately prior to the date hereof, no such supplier has canceled or otherwise terminated or materially and adversely modified, or threatened in writing to cancel or terminate, its relationship with the Company. To the Clean Fun Knowledge Party's Knowledge, except as stated on **Schedule 2.18(b)**, as of the close of business on the Business Day immediately prior to the date hereof, the Company has not received any notice, nor does the Company have Knowledge, that any such supplier (i) intends to cancel or otherwise terminate or materially adversely modify its relationship with the Company on account of the transactions contemplated by this Agreement, the Transaction Documents or otherwise, or (ii) is threatened with bankruptcy or insolvency. The Company has not received any discount or other price concession from any such supplier to the Business as a result of, or in connection with, the Company or any of its Affiliates providing any financial accommodation to such supplier.

(c) **Schedule 2.18(c)** sets forth a complete and accurate list of all sales personnel of the Business (collectively, the "**Account Executives**"). To the Company's Knowledge, all of such Account Executives are (i) compensated as set forth on **Schedule 2.18(c)** and (ii) except as set forth on **Schedule 2.18(c)**, personnel classified as independent contractors of Sellers in accordance with applicable Law. To the Company's Knowledge, **Schedule 2.18(c)** sets forth the revenues and commissions of each such Account Executive for each of the fiscal years ended December 31, 2014 and 2015 and for the eight (8) month period ended August 31, 2016. To the Clean Fun Knowledge Party's Knowledge, except as stated on **Schedule 2.18(c)**, as of the close of business on the Business Day immediately prior to the date hereof, the Company has not received any notice, nor does the Company have Knowledge, that any Account Executive intends to terminate or materially adversely modify its relationship with the Company whether on account of the transactions contemplated by this Agreement, the Transaction Documents or otherwise. To the Clean Fun Knowledge Party's Knowledge, except as set forth on **Schedule 2.18(c)**, as of the close of business on the Business Day immediately prior to the

date hereof, the Company does not have any material dispute with any Account Executives of the Company.

(d) **Schedule 2.18(d)** correctly and completely lists all open orders with customers of the Business for sale of product as of the close of business on the Business Day immediately prior to the date hereof and, if applicable, the amount of commissions that Sellers have advanced to its employees and independent contractors in connection with such open orders.

(e) Sellers have delivered a report dated as of the date hereof, representing a snapshot as of such date of Sellers' new orders primarily relating to the Business, including information regarding customers, Account Executives, Cost of Goods Sold, planned shipment dates, and commissions of the Business (the "**Open Order Report**") to Buyer. To the Company's Knowledge, the delivered Open Order Report is complete and accurate in all respects and Sellers have provided notice to Buyer if a change in facts and circumstances rendered the Open Order Report inaccurate or incomplete.

(f) To the Company's Knowledge, no employees are subject to any agreement or obligation with Sellers or any Affiliates of the Company that will be effective on or after the Closing Date relating to confidentiality, noncompetition, nonsolicitation or otherwise that would limit or effect such employees' ability to carry on the Business after the Closing or otherwise be employed by Buyer.

2.19 **Disclosure Schedules.** The schedules identified in this Agreement (the "**Disclosure Schedules**") are incorporated herein by reference and made a part hereof. Without limiting the generality of the foregoing, the mere listing (or inclusion of a copy) of a document or other item on any of the Disclosure Schedules shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty references the existence of the schedule and the schedule references the document or other item itself). If and to the extent any information required to be furnished in any Disclosure Schedule is contained in any other Disclosure Schedule with such specificity (whether or not specific cross references are given) so that it is reasonably apparent on its face that such information is also applicable to any other Disclosure Schedule, such information shall be deemed to be included in all of the Disclosure Schedules in which such information is required to be included.

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Sellers that as of the date hereof and as of the Closing Date:

3.1 **Buyer Organization.** Buyer is a corporation duly organized and validly existing under the laws of the State of Delaware.

3.2 **Authorization.** The execution and delivery of this Agreement and the Transaction Documents to which Buyer is a party, the performance by Buyer of its obligations

hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary organizational action and no other act or proceeding on the part of Buyer is necessary. Buyer has all requisite power and authority to enter into, execute and deliver this Agreement and the Transaction Documents to which Buyer is a party and to perform its obligations hereunder and thereunder. Assuming the due authorization, execution and delivery hereof by Sellers, this Agreement and the Transaction Documents to which Buyer is a party constitute the valid and legally binding obligations of Buyer, enforceable in accordance with their terms, except as enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally, and the availability of equitable remedies.

3.3 **No Violation.** The execution, delivery and performance by Buyer of this Agreement and the Transaction Documents to which Buyer is a party and the consummation of the transactions contemplated herein and therein by Buyer do not and will not (a) violate any Laws of any court, administrative agency, or Governmental Authority; or (b) violate any provision of the certificate of incorporation or bylaws of Buyer.

3.4 **Consents and Approvals.** No consent, approval or authorization of, or declaration, filing or registration with, any Governmental Authority (other than approval of the Bankruptcy Court) is required to be made or obtained by Buyer in connection with Buyer's authorization, execution and delivery of this Agreement or the Transaction Documents to which Buyer is a party, the performance by Buyer of its obligations hereunder and thereunder, and the consummation by Buyer of the transactions contemplated hereby and thereby.

3.5 **No Brokers or Finders.** Neither Buyer nor any Affiliate thereof has retained any broker or finder, made any statement or representation to any Person that would entitle such Person to, or agreed to pay, any broker's, finder's or similar fees or commissions in connection with the transactions contemplated by this Agreement for which Sellers may be liable.

ARTICLE IV

CONDITIONS TO CLOSING

4.1 **Conditions Precedent to Parties' Obligations.** The obligations of Buyer and Sellers under this Agreement are expressly subject to the fulfillment or express written waiver by the Buyer and the Sellers (provided that no such waiver shall be deemed to have cured any breach of any representation, warranty or covenant made in this Agreement) of the following conditions at the Closing:

(a) **Governmental Approvals.** All authorizations, consents, filings and approvals, in each case from any Governmental Authority, necessary to permit the parties to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall be in form and substance reasonably satisfactory to the parties, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect. All terminations or expirations of waiting periods imposed (and any extension thereof) by any Governmental Authority necessary for the transactions contemplated under this Agreement, if any, shall have occurred.

(b) **No Order.** No Order shall be issued by any Governmental Authority restraining or prohibiting the consummation of the transactions contemplated by this Agreement.

4.2 **Conditions Precedent to Buyer's Obligations.** The obligation of Buyer to consummate the transaction contemplated by this Agreement is expressly subject to the fulfillment or express written waiver by Buyer of the following conditions at the Closing.

(a) **Representations and Warranties.** (i) Each of the Representations in **Sections 2.2, 2.9(a), 2.9(b) and 2.9(c)** shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date as if made on and as of such Closing Date and (ii) each of the other representations and warranties of the Sellers set forth in **Article II** shall be true and correct in all respects, as of the date of this Agreement and as of the Closing Date as if made on and as of such Closing Date (other than in the case of any representation and warranty that is given as of a particular date, in which case such representation and warranty shall be true as of such date), in each case of this clause (ii), without giving effect to any "knowledge," "material," "in all material respects," or "material adverse effect" (or any correlative terms or similar qualifies) contained in such representations and warranties except to the extent such failure to be so true and correct has not had or would not reasonably be expected to have a Material Adverse Effect.

(b) **No Material Adverse Effect.** Since the date of this Agreement, no change, event, occurrence, effect, development, condition, circumstance, matter or state of facts shall have occurred or shall exist or be continuing that has had, or would reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect.

(c) **Bankruptcy Condition.**

(i) The Bid Procedures Order shall have been entered on the docket of the Bankruptcy Court no later than the Bid Procedures Order Deadline Date. The Sale Order shall have been entered on the docket of the Bankruptcy Court no later than the Sale Order Deadline and shall not have been stayed, vacated, modified or supplemented.

(ii) The Sale Order shall approve and authorize the assumption and assignment of the Assumed Contracts, and the Assumed Contracts shall have been actually assumed and assigned to Buyer such that the Assumed Contracts shall be in full force and effect from and after the Closing with non-debtor parties being barred and enjoined from asserting against Buyer, among other things, defaults, breaches or claims of pecuniary losses existing as of the Closing or by reason of the Closing.

(iii) The Bid Procedures Order shall be in form and substance acceptable to Buyer in its reasonable discretion.

(i) Nothing in this Agreement shall preclude Buyer and Sellers from consummating the transactions contemplated herein if Buyer, in its sole discretion, waives the requirement that the Sale Order or any other Order shall have become Final Orders. No notice of such waiver of this or any other condition to Closing need be given except to Sellers, any official committee appointed in the Chapter 11 Case and the United States Trustee, it being the intention

of the parties hereto that Buyer shall be entitled to, and is not waiving, the protection of Section 363(m) of the Bankruptcy Code, the mootness doctrine and any similar statute or body of law if the Closing occurs in the absence of Final Orders.

(d) **Covenant Compliance.** Sellers shall have complied in all material respects, as of the Closing, with all obligations contained in this Agreement that by the terms hereof are required to be complied with by each of them on or before the Closing Date.

(e) **No Injunction.** There shall not be any injunction, writ, temporary restraining order or other order of any court or Governmental Authority restraining or invalidating the transactions contemplated by this Agreement and no Proceeding seeking the foregoing shall be pending.

(f) **Required Consents.** All of the approvals and consents listed on **Schedule 2.4** shall have been obtained, including the Lender Consent.

(g) **Independent Contractor Acknowledgements.** The Sellers shall have delivered duly executed copies of the Independent Contractor Acknowledgements in a form to be mutually agreed to by Buyer and Sellers (the "**IC Acknowledgements**") from Account Executives who in the aggregate represent 75% of the dollar volume of orders of the Business for one eight (8) month period ending August 31, 2016.

(h) **Satisfaction of Closing Deliveries.** The Buyer shall have received or will receive at Closing each of the Closing Deliveries set forth below:

(i) a certificate of good standing of the Sellers issued not earlier than fifteen days prior to the Closing Date by the Secretary of State of the State of Delaware;

(ii) a bill of sale and assignment and assumption agreement (the "**Assignment and Assumption Agreement**"), each duly executed by Sellers;

(iii) a certificate dated as of the Closing Date, sworn under penalties of perjury and in form and substance required under Treasury Regulations issued pursuant to Section 1445 of the Code stating that each Seller is not a "foreign person" within the meaning of Section 1445 of the Code;

(iv) copies of all third party approvals and governmental approvals obtained pursuant to **Section 5.19**;

(v) originals (or, to the extent originals are not available, copies) of all Assumed Contracts (together with all amendments, supplements or modifications thereto);

(vi) such keys, lock and safe combinations and other similar items as Buyer shall require to obtain immediate and full occupation and control of the Purchased Assets and Company Real Property (subject to the terms and conditions of this Agreement); and

(vii) evidence of the assignment and registration of all domain names primarily used in the Business in the name of Buyer.

4.3 **Conditions Precedent to Sellers' Obligations.** The obligation of Sellers to consummate the transactions contemplated by this Agreement is expressly subject to the fulfillment or express written waiver by Sellers of the following conditions as of the Closing.

(a) **Representations and Warranties.** The representations and warranties of Buyer contained in **Article III** shall be true and correct in all respects as of the date of this Agreement and as of the Closing Date as if made on and as of such Closing Date, except to the extent the failure of any such representations and warranties to be true and correct has not resulted in, and would not reasonably be expected to result in, individually or in the aggregate, a material adverse effect on the ability of Buyer to perform its obligations under this Agreement or consummate the transactions contemplated hereby.

(b) **Covenant Compliance.** Buyer shall have complied in all material respects, as of the Closing, with all obligations contained in this Agreement that by the terms hereof are required to be complied with by Buyer on or before the Closing Date.

(c) **No Injunction.** There shall not be any injunction, writ, temporary restraining order or other order of any court or Governmental Authority restraining or invalidating the transactions contemplated by this Agreement and no Proceeding seeking the foregoing shall be pending.

(d) **Bankruptcy Court Approval.** The Bankruptcy Court shall have entered the Sale Order, which order shall approve the assumption of this Agreement by the Sellers and the consummation by the Sellers of the transactions contemplated herein that is not subject to Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure.

(e) **Satisfaction of Closing Deliveries.** Sellers shall have received or will receive at Closing each of the Closing Deliveries set forth below:

(i) a certificate executed and delivered by the Secretary of the Buyer in form and substance reasonably satisfactory to Sellers, attesting and certifying as to copies of resolutions of the board of directors of the Sellers authorizing the transactions contemplated by this Agreement and the Transaction Documents to which the Buyer is a party; and incumbency and specimen signature certificates with respect to the officers of the Sellers;

(ii) the Estimated Cash Amount, less the Adjustment Holdback and Deposit, by wire transfer of immediately available funds, delivered in accordance with this Agreement; and

(iii) the Assignment and Assumption Agreement, duly executed by Buyer.

4.4 **Frustration of Conditions.** Neither Buyer nor Sellers may rely on the failure of any condition set forth in **Section 4.1** or **Section 4.3**, respectively, to be satisfied if such failure was caused solely by such party's failure to act in good faith or a breach of or failure to perform or comply with any of its representations, warranties, covenants or other obligations in accordance with the terms of this Agreement.

ARTICLE V

COVENANTS AND OTHER AGREEMENTS

5.1 **Access to Information.** The Sellers will permit Buyer and their representatives (including its legal counsel, accountants, advisors, financing sources and agents) to have full access, upon reasonable notice and during normal business hours throughout the period prior to the Closing, to (a) the properties, books and records (including tax returns), premises, contracts and documents of Sellers, including all financial and operating data and other information concerning the Business and/or Sellers, as they may reasonably request, and (b) officers and employees of the Sellers. The Sellers will use their commercially reasonable efforts to maximize the amount of information to which they provide Buyer access, whether by obtaining consent of third parties, entering into confidentiality agreements or otherwise.

5.2 **Restrictive Covenants.** The parties agree that Buyer is relying on the covenants and agreements of the Sellers set forth in this **Section 5.2**, that without such covenants Buyer would not enter into this Agreement or the transactions contemplated hereby, and that the Purchase Price is sufficient consideration to make the covenants and agreements set forth herein enforceable.

(a) **Confidentiality.** Sellers recognize and acknowledge that such party has knowledge of confidential and proprietary information concerning Buyer, the Business and Sellers ("**Confidential Information**"). In light of the foregoing, from the date hereof, Sellers shall maintain the confidentiality of, and refrain from using or disclosing to any Person, all Confidential Information, except to the extent disclosure of any such information is required by Law, is necessary to obtain approval of the Bankruptcy Court of the transactions contemplated hereunder, or is in the public domain through no act on the part of Sellers or their Affiliates or agents. In the event that any such party reasonably believes after consultation with counsel that it is required by Law to disclose any Confidential Information, such party will (i) provide Buyer with prompt notice before such disclosure in order that Buyer may attempt to obtain a protective order or other assurance that confidential treatment will be accorded to such Confidential Information and (ii) cooperate with Buyer in attempting to obtain such order or assurance. Buyer acknowledges that Sellers will disclose certain Confidential Information to Qualified Bidders pursuant to and in accordance with the Bid Procedures Order.

(b) **Publicity.** From and after the Closing, each of Sellers and Buyer shall not, and shall cause its Affiliates not to, make any statement or any other expressions on television, radio, the internet or other media or to any third party, including, without limitation, in communications with any customers, vendors, prospects, sales representatives or distributors, which are in any way disparaging of Buyer, Sellers, or any of its Affiliates, the products and services of Sellers or the Business.

5.3 **Protection of Business Relationships.** After the date hereof and following the Closing, the Sellers will reasonably cooperate with Buyer in its efforts to continue and maintain for the benefit of the Buyer and the Business those business relationships of the Sellers existing prior to the Closing and relating to the Business to be operated by Buyer after the Closing, including relationships with lessors, employees, regulatory authorities, licensors, advertisers,

customers, suppliers, distributors, representatives, Account Executives and others. The Sellers will refer to Buyer all inquiries relating to the Business, the Purchased Assets or the Assumed Liabilities and shall permit Buyer to handle all communications whatsoever with respect to the Account Executives. The Sellers acknowledge the importance of these relationships and shall not, and shall instruct their officers, employees, and agents not to, take any action that would diminish the value of the Purchased Assets after the Closing or that would interfere with the Business after the Closing, including disparaging the name or business of Buyer.

5.4 **Name Change.** On or within fourteen (14) days after the Closing Date, Sellers shall have executed and delivered to Buyer such documents and taken such further actions as may be required to terminate any and all of Sellers' assumed name filings containing the name "Clean Fun" (or any derivations or variations thereof), and shall have executed and delivered all necessary filings in, or withdrawals from, all states where Sellers are qualified to do business reflecting the name change. Thereafter and forever, the Sellers and any Affiliates of the Sellers shall cease any use of the name "Clean Fun" or any derivation or variation thereof or any name confusingly similar thereto, except that the foregoing shall not apply solely (i) as required for the Chapter 11 Case or to pursue rights and claims against third parties, (i) in connection with filing of tax returns, insurance claims and any other necessary filings, and (ii) in connection with publishing any notices required by the Bankruptcy Court.

5.5 **Further Assurances; Account Executive Meeting.**

(a) Each of the parties hereto agrees that from the date hereof, upon the reasonable request of any other party hereto, it shall execute and deliver, or cause to be executed and delivered, such further instruments and take such other actions as may be necessary to carry out the transactions contemplated by this Agreement and the Transaction Documents or to vest, perfect or confirm ownership of the Purchased Assets and the Business in Buyer. Sellers shall use their commercially reasonable efforts to promptly obtain any consent, approval or order of any Governmental Authority that is required to be obtained or made by Sellers, or to avoid any action or proceeding by any Governmental Authority, in connection with the authorization, execution and delivery of this Agreement and the Transaction Documents and the consummation of the transactions contemplated hereby and thereby.

(b) Within five (5) Business Days of the date hereof, Sellers shall deliver via electronic mail (i) the communication in a form agreed to by the parties (the "**AE Communication**") to all Account Executives, which such AE Communication shall include notice of a meeting of the Account Executives (the "**Account Executive Meeting**"), with such meeting to occur as soon as practicable but in no event later than one Business Day following the AE Communication, and (ii) the communication in a form agreed to by the parties (the "**Supplier Communication**") to all of Sellers' suppliers, which such Supplier Communication shall include notice of a meeting of the suppliers (the "**Supplier Meeting**" and with the Account Executive Meeting, the "**Stakeholder Meetings**"), with such meeting to occur as soon as practicable but in no event later than one Business Day following the Supplier Communication. At the Stakeholder Meetings, (i) Sellers shall introduce Buyer to describe the transactions contemplated by this Agreement and the Transaction Documents and discuss the strategic plan for the Account Executives and Sellers' suppliers and the benefits to the Account Executives and Sellers' suppliers that will materialize as a result of the transactions contemplated by this

Agreement, and (ii) Buyer's designated representatives will be provided an opportunity to speak with the attendees of the Stakeholder Meetings regarding the transactions contemplated by this Agreement and the benefits thereof. Sellers shall cooperate in all respects with Buyer in preparing for and conducting the Stakeholder Meetings.

5.6 **Conduct of Business.** Promptly after the date hereof, Sellers shall pay the pre-petition commission amounts due to Account Executives, not to exceed \$12,850 per Account Executive (the "**Pre-Petition Commission Amounts**") (such amounts relating to Account Executives who have signed and delivered an IC Acknowledgement prior to Closing, the "**Paid Pre-Petition Commission Amount**"). From the date of this Agreement until the Closing Date or the earlier termination of this Agreement, except as set forth on **Schedule 5.6**, required by Law or the Bankruptcy Court or as consented to prior thereto in writing by Buyer, the Sellers shall comply with the following covenants.

(a) **Required Actions.** The Sellers shall:

- (i) maintain their legal existence;
- (ii) conduct the Business only in the ordinary course consistent with past practice;
- (iii) use commercially reasonable efforts to maintain relationships of the Business (including those with customers, suppliers, contractors and employees) in good standing;
- (iv) maintain Insurance Policies with respect to the Business in full force and effect; and
- (v) comply in all material respects with Laws applicable to the Business.

(b) **Prohibited Actions.** The Sellers shall not:

- (i) effect any change to the Sellers' Organizational Documents except in accordance with this Agreement;
- (ii) sell or agree to sell any Purchased Assets;
- (iii) file any motion in the Bankruptcy Court to acquire, lease, license, sell, transfer, abandon, permit to lapse, assign or dispose of any properties or assets, tangible or intangible, in each case, that are or would be Purchased Assets;
- (iv) (A) make or declare any dividend or distribution on any of the Sellers' equity interests; (B) issue, repurchase or redeem or agree to issue, repurchase or redeem any equity interests of the Sellers or other rights to acquire any equity interests of the Sellers; or (C) sell, pledge, dispose of, or agree to sell, pledge or dispose of any equity interests of the Sellers;

(v) modify or amend in any material respect or cancel, terminate, assign or waive any material right under any Material Contract (whether pursuant to Section 365 of the Bankruptcy Code or otherwise);

(vi) acquire, invest in or finance any business or Person, whether by merger, consolidation, purchase of assets or equity interests, providing of financing or any other manner; or

(vii) commit to do any of the foregoing.

Notwithstanding the foregoing, Sellers shall retain operational control of the Business at all times prior to Closing and in no manner do the parties to this Agreement intend otherwise.

5.7 **Transfer Taxes.** All sales, use, transfer, documentary, stamp, registration, bulk sales and other similar Taxes that are payable in connection with the transactions contemplated by this Agreement shall be borne equally by the Sellers and Buyer. The party required by applicable Laws to file any Tax returns and other documentation with respect to any such taxes shall prepare and file such tax returns and Buyer and Sellers shall each, and shall each cause its Affiliates to, cooperate in the timely preparation and filing of, and join in the execution of, any such tax returns and other documentation.

5.8 **Interim Services.** Prior to Closing, the Company and the Buyer agree to continue to operate under that certain executory contract entered into by the Company and the Buyer on or around September 13, 2016 (the "**Email Agreement**"), which sets forth the terms under which the Company and the Buyer shall work together in good faith to cooperate in fulfillment of certain customer orders as specifically identified by the Company, as further memorialized below in this **Section 5.8**.

(a) The Chief Financial Officer of the Company (or proxy appointed by the Chief Financial Officer) shall identify and confirm in writing all customer order(s) that the Company requests that the Buyer process (an "**Identified Order**"), and the Buyer shall confirm acceptance therefor in writing within twenty-four (24) hours of receipt, not to be unreasonably withheld. To the extent an order is urgent, and according to an Account Executive cannot reasonably be expected to be timely fulfilled by the Company, the Company shall include such order as an Identified Order.

(b) For such Identified Order(s), the Buyer will process customer orders and perform all necessary interim services as necessary to release orders on reasonable terms including billing and collection, extension of credit, vendor payments, and commission payments to Account Executive(s) for any Identified Order in a timely manner consistent with the operation of its own business. Buyer shall be entitled to retain any proceeds received with respect to an Identified Order, subject to payment by the Buyer to Sellers of the Identified Orders Payment Amount (i) at Closing as a component of the Cash Amount or (ii) if the Agreement is terminated by the Sellers pursuant to **Section 6.1(c)** or by the Buyer pursuant to **Section 6.1(m)**, within ten (10) days of such termination.

(c) This Agreement sets forth the basic parameters agreed to by the Company and the Buyer; the specific terms of any Identified Order will be included in the documentation and accounting related to such Identified Order.

(d) For the avoidance of doubt, Sections 5 and 8 of the Email Agreement are no longer of any effect and are superseded by the terms hereof.

5.9 **Bankruptcy Actions.**

(a) No later than two (2) days after entry of this Agreement, Sellers shall file with the Bankruptcy Court a motion for entry of the Bid Procedures Order and approval of the transaction contemplated hereby in a form consented to by Buyer in its sole discretion (the "**Sale Motion**").

(b) The Sellers shall: (i) obtain entry of the Bid Procedures Order by the Bid Procedures Order Deadline Date, (ii) consistent with the attached form of Bid Procedures Order, solicit Bids from Qualified Bidders for the sale of the Purchased Assets; (iii) ensure that the Auction (to the extent required by the Bankruptcy Court pursuant to the Bid Procedures Order), is held in accordance with the procedures set forth in the Bid Procedures Order, (iv) obtain entry of the Sale Order by no later than the Sale Order Deadline, and (v) consummate the Closing on or before the Closing Date Deadline.

(c) Sellers shall deliver or cause to be delivered to Buyer for review and comment all documents to be filed on behalf of the Sellers with the Bankruptcy Court, including all motions, applications, petitions, schedules and supporting papers prepared by Sellers (including forms of Orders and Notices to interested parties) that relate to the transactions contemplated in this Agreement prior to the filing thereof in the Chapter 11 Case as soon as commercially reasonable and in any event not less than one (1) Business Day prior to filing and, if not practicable under the circumstances, as soon as reasonably practicable under the circumstances. All motions, applications, petitions, notices, pleadings, schedules and supporting papers prepared by Sellers and relating (directly or indirectly) to the transactions contemplated by this Agreement to be filed on behalf of Sellers after the date hereof must be satisfactory in form and substance to Buyer in its own discretion.

(d) Buyer and Sellers each agree that they will promptly take such reasonable actions as are reasonably requested by the other to assist in obtaining entry of the Sale Order and the Bid Procedures Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of providing necessary assurances of performance of their respective obligations under this Agreement and the Transaction Documents and demonstrating that Buyer is a good faith buyer under Section 363(m) of the Bankruptcy Code.

5.10 **Other Bids.** Buyer acknowledges that, prior to entry of the Bid Procedures Order, in accordance with this Agreement, and after entry of the Bid Procedures Order on the Bankruptcy Court's docket, pursuant to the Bid Procedures Order, the Sellers will adhere to and follow the Bid Procedures; provided, however, that, following completion of the Auction until the Closing (in the event that Buyer is selected as the winning bidder), Sellers shall not, directly

or indirectly, through any officer, director, employee, agent, professional or advisor, solicit any Alternative Transaction or participate in any negotiations or discussions with respect to any Alternative Transaction, and Sellers shall not, and shall cause their Affiliates not to, (i) execute an agreement with respect to an Alternative Transaction or, (ii) seek or support Bankruptcy Court approval of a motion or Order inconsistent in any material respect with the transactions contemplated by this Agreement.

5.11 **Bankruptcy Matters.**

(a) Sellers and Buyer acknowledge that this Agreement and the sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts are subject to Bankruptcy Court approval, in accordance with the terms and conditions of this Agreement. The Sellers and Buyer acknowledge that (i) to obtain such approval, the Sellers must demonstrate that it has taken reasonable steps to obtain the highest and otherwise best offer possible for the Purchased Assets in accordance with the Bid Procedures Order, and that such demonstration shall include giving notice of the transactions contemplated by this Agreement to creditors and interested parties as ordered by the Bankruptcy Court to the extent provided in the Bid Procedures Order, and (ii) Buyer must provide adequate assurance of future performance under the to-be-assigned Assumed Contracts to the extent provided in the Bid Procedures Order.

(b) In the event an appeal is taken or a stay pending appeal is requested, from either the Bid Procedures Order or the Sale Order, Sellers shall immediately notify Buyer of such appeal or stay request and shall promptly provide to Buyer a copy of the related Notice of appeal or Order of stay. Sellers shall also provide Buyer with written notice of any motion or application filed in connection with any appeal from either of such Orders.

(c) From and after the date of this Agreement, Sellers shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the reversal, voiding, modification or staying of the Bid Procedures Order or this Agreement. If Buyer is the Successful Bidder at the Auction, Sellers shall not take any action which is intended to (or is reasonably likely to), or fail to take any action the intent (or the reasonably likely result) of which failure to act is to, result in the reversal, voiding, modification or staying of the Sale Order or this Agreement.

5.12 **503 Liabilities.** From and after the date of this Agreement and through the Closing, and subject to the approval of the Bankruptcy Court, Sellers shall pay the 503 Liabilities in the ordinary course of business and in any event in accordance with their applicable terms.

5.13 **"As Is, Where Is"**. Other than the representations and warranties contained in Article II hereof, Sellers are delivering and Buyer is accepting the Purchased Assets "as is, where is", and without representation or warranty with respect to the condition of those assets, the profitability or performance of the Business, or any other matter. Buyer has performed diligence to its satisfaction and, subject to the conditions to Closing contained herein, is not relying on Sellers in connection with its assessment of the suitability or desirability of the Purchased Assets or the Business. Without in any way limiting the foregoing, except as expressly set forth in the representations and warranties contained in Article II hereof, Sellers hereby disclaim any

warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets.

5.14 **Notification of Certain Matters.**

(a) Prior to the Closing, Sellers will promptly notify Buyer of any actions suits, claims or Proceedings in connection with the transactions contemplated by this Agreement or the Transaction Documents commenced or, to the Company's Knowledge, threatened against Sellers.

(b) To the extent not already included, Sellers shall add Buyer, and Buyer's counsel, to Sellers' Rule 2002 notice list and otherwise provide notice to Buyer of all matters that are required to be served on Sellers' creditors pursuant to the Bankruptcy Code and Rules.

(c) Notwithstanding anything herein to the contrary, within seven (7) days of the date hereof, Sellers shall deliver to Buyer the final versions of the Disclosure Schedules referred to in this Agreement.

(d) The Sellers shall give notice to the Buyer of (i) the occurrence or nonoccurrence of any event that would be likely to cause either (A) any representation or warranty of the Sellers contained in this Agreement, or in connection with the transactions contemplated hereunder, to be untrue or inaccurate in any material respect at any time from the date hereof to the Closing or (B) directly or indirectly, any Material Adverse Effect on any of the Sellers or the Acquired Assets, or (ii) any material failure of the Sellers to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by them hereunder.

5.15 **Assistance.** If, after the date hereof, any of the parties to this Agreement reasonably requests the participation of any officers, managers, directors, employees, consultants, independent contractors, representatives or advisors of the other party hereto to aid in any Proceedings, the other party hereto shall use its good faith efforts to make such Persons reasonably available to participate in such Proceedings.

5.16 **Employees.** From the Closing Date until sixty (60) days thereafter, Buyer shall have the option, in its sole discretion, to make offers of employment to any employees of Sellers as of the date hereof, provided, however, that Sellers are under no obligation to continue the employment of any employees for any reason after the Closing Date, except with respect to the Transitional Employees as set forth in **Section 5.17**. If the Buyer elects to make such an offer of employment, Buyer shall notify Sellers of such offer and Sellers shall cause the recipient of such offer to be terminated from employment with Sellers if the recipient of such offer is then-currently employed by Sellers. The Company acknowledges that no employees are subject to any agreement or obligation with Sellers or any Affiliates of the Company that will be effective on or after the Closing Date relating to confidentiality, noncompetition, nonsolicitation or otherwise that would limit or effect such employees' ability to carry on the Business after the Closing or otherwise by employed by Buyer. Except as provided in **Section 5.17** below, Sellers shall be liable and shall hold Buyer harmless from any Severance Payments or other liability (including pursuant to the WARN Act) resulting from such termination.

5.17 Post-Closing Assistance.

(a) For sixty (60) days following the Closing Date or as may be earlier terminated by Buyer (in each case, the "**Transition Period**"), Sellers shall make available to Buyer the services of the employees of Sellers who are employed at the Costa Mesa Facilities, as set forth on **Schedule 5.17(a)** (the "**Transitional Employees**") to the extent still employed by Sellers. Sellers shall make commercially reasonable efforts to maintain the employment of each Transitional Employee during the Transition Period. During a Transitional Employee's Transition Period, such Transitional Employee shall perform services reasonably requested by Buyer consistent with the services provided to Sellers prior to Closing and other services necessary to transition the Business to Buyer (the "**Transition Services**"). Such Transition Services shall be provided by the Transitional Employees on the Company Real Property, unless Buyer has specifically consented otherwise. Buyer shall reimburse Sellers for their out of pocket costs of providing the Transition Services, which costs shall be limited to base salary, payroll taxes, benefit cost (other than (i) benefit costs related to Sellers' self-insured health benefits, and (ii) severance benefits (other than any Transition Bonus described below)) and other ordinary course, out-of-pocket, documented expenses related to the Transitional Employees in an amount consistent with the period prior to Closing (the "**Company Transition Costs**"). It is understood by the Parties that any such Transitional Employee rendering services to Buyer pursuant to this **Section 5.17**, shall be deemed an employee with respect to Sellers, and shall not be an employee or independent contractor with respect to Buyer. Sellers shall use commercially reasonable efforts to continue to employ the Transitional Employees during such Transitional Employee's Transition Period and shall only use such Transitional Employee during the Transition Period to perform Transition Services.

(b) No later than the Closing Date, Buyer shall provide to Sellers a list of Transitional Employees, that will be eligible for individualized transition bonuses (the "**Transition Bonuses**"). The terms and conditions of the Transition Bonuses shall be determined by Buyer in its sole discretion and containing the terms set forth on **Schedule 5.17(b)**; provided, that, in addition to any other terms and conditions the Buyer requires, a Bonus Eligible Employee shall only be eligible to receive the Transition Bonus after executing and delivering an agreement to Sellers in a form to be delivered to Sellers no later than one (1) Business Day prior to the Auction. Sellers shall make all such payments through the Company's payroll system; provided, that Buyer reimburses Sellers for Sellers' portion of any payroll Taxes.

(c) With respect to any litigation or Claims that are Excluded Liabilities, Buyer shall (at Sellers' sole cost and expense) render reasonable assistance to Sellers in Sellers' prosecution or defense of such litigation or claim and shall make available to Sellers for reasonable time periods, their counsel and their other agents, advisors or representatives, Buyer's personnel most knowledgeable about the matter in question. In order to facilitate Sellers' efforts to administer and close the Bankruptcy Cases (including, without limitation, the preparation of filings in the Bankruptcy Cases and state, local and federal tax returns and other filings, reconciliation of claims filed in the Bankruptcy Cases, removal of corporate and other records and information relating or belonging to entities other than Sellers), (i) the Buyer shall permit Sellers' counsel and other professionals and counsel for any successor to Sellers and its respective professionals (collectively, "**Permitted Access Parties**") reasonable access to the financial and other books and records relating to the Property or the Business and the systems

containing such information, books and records, which access shall include (x) the right of such Permitted Access Parties to copy or remove, as applicable, at such Permitted Access Parties' expense, such documents and records as they may request in furtherance of the purposes described above, and (y) Buyer's copying and delivering to the relevant Permitted Access Parties such documents or records as they may request, but only to the extent such Permitted Access Parties furnish Buyer with reasonably detailed written descriptions of the materials to be so copied and the applicable Permitted Access Party reimburses the Buyer for the reasonable costs and expenses thereof, and (ii) Buyer shall provide the Permitted Access Parties (at no cost to the Permitted Access Parties) with reasonable access to Buyer's personnel during regular business hours to assist Sellers and the other Permitted Access Parties in their post-Closing activities (including, without limitation, preparation of tax returns), provided that such access does not unreasonably interfere with the Buyer's business operations.

5.18 Use of Company Facilities.

(a) From the Closing Date until ninety (90) days thereafter (the "**Use Period**"), without further consideration other than what is explicitly provided for in this Agreement, Sellers shall provide Buyer and its Affiliates and representatives with access to and use of the Company Real Property and Company Systems for the operation of the Business in a manner consistent with past practice of Sellers for the twelve months prior to the date hereof and as Buyer may from time to time reasonably request. All Transition Services shall be performed by the Transitional Employees on Company Real Property and Company Systems, to the extent such Transitional Employees regularly provided services on the Company Real Property or Company Systems prior to Closing, unless Buyer has specifically consented otherwise. During the Use Period, Buyer shall pay for the reasonable, ordinary course expenses for utilities and maintenance incurred in connection with the Buyer's use of the Company Real Property and Company Systems (collectively, the "**Use Expenses**"). Buyer shall advance to Sellers the full maximum amount of the Use Expenses for any given month (a) for the first month beginning on the Closing Date, on the Closing Date, and (b) for each month thereafter, no later than fourteen (14) days in advance.

(b) On the Closing Date, Sellers shall provide a report, in consultation with the Buyer, containing all information with respect to the Business that is maintained on the Shared Corporate Services and is reasonably necessary for the continued operation of the Business.

5.19 Consents and Approvals. Sellers shall, at their sole cost and expense, use reasonable best efforts (i) to obtain all necessary consents and approvals, as reasonably requested by Buyer, to consummate the purchase and sale of the Purchased Assets and the assignment of the Assumed Liabilities, together with any other necessary consents and approvals to consummate the transactions contemplated hereby, including obtaining entry of the Bid Procedures Order and Sale Order without modification except as Buyer may consent and (ii) to obtain, as requested by Buyer, all required consents and approvals (if any) necessary to assign and transfer the Assumed Contracts and the Company's Permits to Buyer at Closing and, to the extent that one (1) or more of Sellers' Permits or any Assumed Contracts are not transferable, to assist Buyer, at Buyer's sole cost, in obtaining replacements therefor. In the event that any of the Company's Permits or any Assumed Contracts are not transferable or replacements therefor are

not obtainable on or before the Closing, but such Permits, Assumed Contracts, consents and approvals to transfer, or replacements therefor, are obtainable after the Closing, Sellers shall continue to use reasonable best efforts in cooperation with Buyer after the Closing as may be required to obtain all required consents and approvals to transfer, or obtain replacements for, such Permits or Assumed Contracts after Closing and shall do all things necessary to give Buyer the benefits that would be obtained under such Permits and Assumed Contracts, in each case at Buyer's sole cost and expense. Buyer shall give any other notices to, make any other filings with, and use reasonable best efforts to cooperate with Sellers to obtain, any other authorizations, consents and approvals in connection with the matters contemplated by this **Section 5.19**. Each of the parties shall give any other notices to, make any other required filings with, and use commercially reasonable best efforts to obtain, any other required authorizations, consents and approvals of any Governmental Authority in connection with the matters contemplated by this Agreement.

5.20 **Accounts Receivable Collections.** After the Closing, Sellers shall permit, and hereby authorizes, Buyer to collect, in the name of Sellers, and shall not attempt to collect, Accounts Receivable and to endorse with the name of Sellers for deposit in Buyer's account any checks or drafts received in payment thereof. Sellers shall promptly deliver to Buyer any cash, checks or other property that they may receive after the Closing in respect of any Accounts Receivable. Buyer shall use its commercially reasonable efforts consistent with Buyer's ordinary business practices when engaging in such collection efforts.

5.21 **Disclosure Schedule Supplements.** From time to time prior to the Closing, Sellers shall have the right (but not the obligation) to supplement or amend the Disclosure Schedules hereto with respect to any matter hereafter arising or of which it becomes aware after the date hereof (each a "**Schedule Supplement**"). Any disclosure in any such Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement, including for purposes of the termination rights contained in this Agreement or of determining whether or not the conditions set forth in **Section 4.2** have been satisfied.

ARTICLE VI

TERMINATION

6.1 **Termination.** Notwithstanding anything contained in this Agreement to the contrary, this Agreement may be terminated at any time prior to the Closing:

- (a) by mutual written consent of Sellers and Buyer;
- (b) by Buyer, if (i) the representations and warranties of Sellers set forth in this Agreement shall not be true and correct to the extent that the conditions to Closing set forth in **Section 4.1** would not be satisfied, or Sellers shall have breached or failed to perform any of their respective obligations, covenants or agreements under this Agreement to the extent that the conditions to Closing set forth in **Section 4.1** would not be satisfied, and (ii) such breach, failure or misrepresentation (A) cannot be cured by the Closing Date or (B) if curable, is not cured

within fifteen (15) days after Buyer gives Sellers written notice identifying such breach, failure or misrepresentation;

(c) by Sellers, if (i) any of the representations and warranties of Buyer set forth in this Agreement shall not be true and correct to the extent that the condition to Closing set forth in **Section 4.3** would not be satisfied, or if Buyer shall have breached or failed to perform any of its obligations, covenants or agreements under this Agreement to the extent that the condition to Closing set forth in **Section 4.3** would not be satisfied, and (ii) such breach, failure or misrepresentation (A) cannot be cured by the Closing Date or (B) if curable, is not cured within fifteen (15) days after Sellers give Buyer written notice identifying in reasonable detail such breach, failure or misrepresentation;

(d) by either Sellers or Buyer, if any court or Governmental Authority has issued a Final Order, decree or ruling restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated by this Agreement;

(e) by Buyer (provided that it is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if it shall have reasonably determined that one (1) or more conditions set forth in **Section 4.2** has not been or cannot be fulfilled or satisfied prior to the date specified in such condition (if such condition specifies a date other than the Closing Date by which such condition must be satisfied) or the Closing Date Deadline;

(f) by Sellers (provided that it is not then in material breach of any representation, warranty, covenant or other agreement contained herein) if Sellers shall have reasonably determined that one (1) or more conditions set forth in **Section 4.3** has not been or cannot be fulfilled or satisfied prior to the date specified in such condition (if such condition specifies a date other than the Closing Date by which such condition must be satisfied) or the Closing Date Deadline; and

(g) by Sellers, if (i) any Person other than Buyer is designated as the Successful Bidder of the Auction, (ii) Sellers seek or support Bankruptcy Court approval of an Alternative Transaction (other than to or by Buyer) or (iii) executes and delivers a written agreement or understanding of any kind with respect to an Alternative Transaction;

(h) by Buyer or Sellers, if the Bankruptcy Court enters an order approving any Alternative Transaction (other than the sale of the Purchased Assets to Buyer);

(i) by Buyer (i) if the Bankruptcy Court does not enter the Bid Procedures Order by the Bid Procedures Order Deadline Date (or such later date as Buyer may determine in its sole discretion), or (ii) if following the entry of the Bid Procedures Order but prior to the entry of the Sale Order, the Bid Procedures Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction;

(j) by Buyer, if an Auction is required under the Bid Procedures Order and Sellers fail to have held the Auction by the Auction Deadline Date (or such later date as Buyer may determine in its sole discretion);

(k) by Buyer (i) if the Bankruptcy Court does not enter the Sale Order by the Sale Order Deadline (provided that Buyer may not terminate this Agreement pursuant to this **Section 6.1(k)(i)** if Buyer is then in material breach of any provision of this Agreement and such breach is the primary cause of such failure to enter the Sale Order), or (ii) on or after the date the Sale Order ceases to be in full force and effect, or is revoked, rescinded, vacated, materially modified, reversed or stayed, or otherwise rendered ineffective by a court of competent jurisdiction;

(l) by Buyer if the Chapter 11 Case is dismissed or converted into a case under Chapter 7 of the Bankruptcy Code and neither such dismissal nor conversion expressly contemplates the transactions provided for in this Agreement, or a trustee is appointed for Sellers and such trustee rejects the transactions contemplated by this Agreement;

(m) by Buyer if, prior to the earlier of the Diligence Deadline or the evidentiary hearing to approve the Sale Motion scheduled for October 11, 2016, Buyer is not satisfied in all respects and in its sole discretion with the results of its ongoing due diligence investigation of the business, assets, operations, properties, financial condition, contingent liabilities, prospects and material agreements of the Company, the Purchased Assets, the employees and Account Executives (including the ability of Buyer to hire or engage such Persons); and

(n) by Buyer, if the Closing has not occurred by the date that is forty-five (45) days from the date of this Agreement (the "**Closing Date Deadline**") or such later date, if any, as Sellers and the Buyer may agree in writing.

6.2 **Breakup Fee.**

(a) Whether prior to, on or after termination of this Agreement, upon the first to occur of the date Sellers consummate (i) an Alternative Transaction or (ii) a Chapter 11 plan in connection with or as a result of an Alternative Transaction, or one in lieu thereof which accomplishes a comparable result, pursuant to the Bankruptcy Code, the Company shall immediately pay (in cash) to Buyer a breakup fee in an amount equal to \$250,000 (the "**Breakup Fee**"), which amount shall be payable only out of the proceeds of such Alternative Transaction or Chapter 11 plan in connection with or as a result of an Alternative Transaction.

(b) The Sellers' obligation to pay the Breakup Fee pursuant to this **Section 6.2** shall survive termination of this Agreement and shall constitute an administrative expense of Sellers.

(c) The parties acknowledge that the agreements contained in this **Section 6.2** are an integral part of the transactions contemplated by this Agreement and constitute liquidated damages and not a penalty, and that, without these agreements, Buyer would not have entered into this Agreement.

6.3 **Effect of Termination; Limitation of Liability.**

(a) If this Agreement is terminated pursuant to **Section 6.1**, this Agreement and each Transaction Document and the Email Agreement shall immediately become void and

have no effect and none of the parties hereto shall have any liability (including for costs and expenses incurred by other parties in connection with this Agreement and the transactions contemplated hereby) to any other party hereto with respect to this Agreement, any Transaction Document, the Email Agreement or the transactions contemplated hereby or thereby (or the failure of such transactions to be consummated), other than with respect to any claims relating to a breach of this Agreement or any Transaction Document or the Email Agreement prior to the termination of this Agreement.

(b) Notwithstanding anything to the contrary in this **Article VI** or elsewhere in this Agreement, this **Section 6.3**, **Section 6.2** and **Article VII** shall survive the termination hereof and shall be enforceable by the parties hereto and thereto.

ARTICLE VII

MISCELLANEOUS

7.1 **Non-Survival of Representations and Warranties.** The representations and warranties respectively made by Sellers and the Buyer in this Agreement and in any certificate delivered hereunder will expire as of the Closing. Subsequent to Closing, no claim with respect to any breach of any representation or warranty contained in this Agreement may be pursued or maintained (either hereunder or otherwise) against any other party. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing shall survive the Closing hereunder, and each party hereto shall be liable to the other after the Closing for any breach thereof.

7.2 **Notices.** All notices, reports, records or other communications that are required or permitted to be given to the parties under this Agreement shall be sufficient in all respects if given in writing and delivered in person, by overnight courier, by registered or certified mail, postage prepaid, return receipt requested, or by email, to the receiving party at the following address:

If to Sellers: Delivery Agent, Inc.
300 California Street, Suite 300
San Francisco, CA 94104
Attn: Jeff Hagan, CFO
jhagan@deliveryagent.com

with a copy (which shall not constitute notice) to: Keller & Benvenuti LLP
650 California Street, Suite 1900
San Francisco, CA 94108
Attn: Tobias S. Keller, Esq. and Jane Kim, Esq.
tkeller@kellerbenvenuti.com,
jkim@kellerbenvenuti.com

If to Buyer: HALO Branded Solutions, Inc.
Two Prudential Plaza, Suite 3500
180 North Stetson
Chicago, Illinois 60601
Attention: Marc S. Simon
Facsimile: (630) 218-7070
Email: marc.simon@halo.com

with a copy (which shall not constitute notice) to: Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attention: Ryan D. Harris, P.C.
Facsimile: (312) 984-7700
Email: ryan.harris@kirkland.com

7.3 **Entire Agreement; Amendment.** This Agreement, including the schedules hereto, the Transactions Documents and the instruments and agreements executed in connection herewith and therewith contain all of the terms, conditions and representations and warranties agreed upon by the parties relating to the subject matter of this Agreement and supersede all prior and contemporaneous agreements, negotiations, correspondence, undertakings and communications of the parties, oral or written, respecting such subject matter, but excluding the Non-Disclosure Agreement by and between the Buyer and the Company, dated September 8, 2016 (the "NDA"). Notwithstanding anything to the contrary set forth in this Agreement, effective as of the Closing, the terms of the NDA shall be deemed terminated and of no further force and effect. This Agreement shall not be amended or modified except by an agreement in writing duly executed by Buyer and Sellers and, if necessary, approved by the Bankruptcy Court.

7.4 **Counterparts; Deliveries.** This Agreement may be executed simultaneously in counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. This Agreement, the Transaction Documents and each other agreement or instrument entered into in connection herewith or therewith or contemplated hereby or thereby, and any amendments hereto or thereto, to the extent signed and delivered by means of a facsimile machine or other electronic transmission, shall be treated in all manner and respects and for all purposes as an original agreement or instrument and shall be considered to have the same binding legal effect as if it were the original signed version thereof delivered in person.

7.5 **No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended to confer any right or remedy under or by reason of this Agreement on any Person other than the parties signatory hereto, and their respective heirs, representatives, successors and assigns, nor is anything set forth herein intended to affect or discharge the obligation or liability of any third Persons to any party to this Agreement, nor shall any provision give any third party any right of subrogation or action over against any party to this Agreement.

7.6 **Expenses.** Except as set forth in **Section 6.2**, each of the parties shall pay all costs and expenses incurred or to be incurred by it in negotiating and preparing this Agreement and all documents executed in connection herewith and in closing and carrying out the

transactions contemplated hereunder and thereunder including, but not limited to, legal and accounting fees and expenses.

7.7 **No Waiver.** No failure of any party to exercise any right or remedy given to such party under this Agreement or otherwise available to such party or to insist upon strict compliance by any other party with its obligations hereunder, and no custom or practice of the parties in variance with the terms hereof, shall constitute a waiver of any party's right to demand exact compliance with the terms hereof, unless such waiver is set forth in writing and executed by such party. Any such written waiver shall be limited to those items specifically waived therein and shall not be deemed to waive any future breaches or violations or other non-specified breaches or violations unless, and to the extent, set forth therein.

7.8 **Headings.** The subject headings of articles and sections of this Agreement are included for purposes of convenience of reference only and shall not affect the construction or interpretation of any of its provisions.

7.9 **Governing Law.** This Agreement shall be construed and governed in accordance with the internal laws of the State of Delaware without regard to the principles of conflicting laws.

7.10 **Binding Nature; Assignment.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns, but neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without prior written consent of the other parties; except (a) that Buyer may assign any of its rights and obligations hereunder to any Affiliate or Subsidiary of Buyer or to its lender and, following the Closing, in whole or in part to any successor-in-interest to any Person acquiring all or any portion of the Purchased Assets; and (b) as otherwise expressly provided in this Agreement. Sellers hereby agree that Buyer may grant a security interest in their rights and interests hereunder to its lenders, and Sellers will sign a consent with respect thereto if so requested by Buyer or its lender, and that the terms of this Agreement shall be binding upon any subsequent trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code. Notwithstanding anything to the contrary set forth herein, the rights and interests of Sellers under this Agreement shall inure to the benefit of any trustee appointed under Chapter 11 or Chapter 7 of the Bankruptcy Code and/or any liquidating trust or any other entity appointed as a successor to Sellers pursuant to a confirmed plan under Chapter 11 of the Bankruptcy Code.

7.11 **Waiver of Jury Trial.** Each of the parties hereto hereby irrevocably waives any and all right to trial by jury of any claim or cause of action in any legal proceeding arising out of or related to this Agreement or the transactions or events contemplated hereby or any course of conduct, course of dealing, statements (whether verbal or written) or actions of any party hereto. The parties hereto each agree that any and all such claims and causes of action shall be tried by the court without a jury. Each of the parties hereto further waives any right to seek to consolidate any such legal proceeding in which a jury trial has been waived with any other legal proceeding in which a jury trial cannot or has not been waived.

7.12 **Construction.** Where specific language is used to clarify by example a general statement contained herein, such specific language shall not be deemed to modify, limit or restrict in any manner the construction of the general statement to which it relates. The language used in this Agreement shall be deemed to be the language chosen by the parties to express their mutual intent, and no rule of strict construction shall be applied against any party.

7.13 **Public Announcements.** Until the date of the filing of the Sale Motion, and except as provided in **Section 5.5(b)**, no party shall make any public announcement or filing with respect to the transactions provided for herein without the prior written consent of Buyer and Sellers, unless otherwise required by Law. Except as provided in **Section 5.5(b)**, any press release or other announcement or notice regarding the transactions contemplated by this Agreement shall be mutually agreed to by Buyer and Sellers. Notwithstanding the foregoing, following the Closing (a) Buyer shall in its sole discretion control all communications (including the timing and delivery method of any such communications) between Sellers and the Account Executives and (b) Sellers (i) shall not, and shall cause their directors, officers and employees to not, communicate with any Account Executive without the consent of Buyer, and (ii) shall, and shall cause its directors, officers and employees to, promptly refer all inquiries from any Account Executive regarding Sellers, the Business or the transactions contemplated hereby to Buyer.

7.14 **Specific Performance.** Except in any instance in which the Break-Up Fee is paid hereunder, the Sellers acknowledge and agree that Buyer would be irreparably damaged in the event any of the Sellers' covenants or obligations contained in this Agreement was not performed. Accordingly, except in any instance in which the Break-Up Fee is paid hereunder, in addition to any other right or remedy Buyer may have, Buyer shall be entitled to specific performance of the covenants and obligations of the Sellers set forth in this Agreement and temporary and permanent injunctive relief to prevent any breach or violation hereof, and no bond or other security will be required from any such Person in connection therewith. If any action is brought by Buyer to enforce this Agreement or any Transaction Document, the Sellers hereby waive the defense that there is an adequate remedy at law.

7.15 **Confidentiality.** Until the date of the filing of the Sale Motion, Buyer and Sellers shall treat and hold as confidential all of the terms and conditions of the transactions contemplated by this Agreement and the Transaction Documents; provided, however, that each of the Buyer and Sellers may disclose such information to its legal counsel, accountants, financial planners and/or other advisors on an as-needed basis so long as any such Person is bound by a confidentiality obligation with respect thereto.

ARTICLE VIII

DEFINITIONS

"**Account Obligor**" means the party responsible for the liabilities and obligations in connection with any Account Receivable.

"**Adjustment Holdback**" means \$100,000.

"**Affiliate**" means, with respect to any Person, any other Person directly or indirectly controlling, controlled by, or under common control with such Person, and any officer, director or executive employee of such Person.

"**Affiliated Group**" means an affiliated group as defined in Section 1504 of the Code (or analogous combined, consolidated or unitary group defined under state, local or foreign income Tax law).

"**Alternative Transaction**" means a transaction or series of transactions (other than by Buyer or one of its designated Affiliates), whether by merger, consolidation, business combination, sale of equity interests or assets, tender offer, foreclosure or plan of reorganization or liquidation or otherwise, involving, directly or indirectly, the sale or other disposition of the Business, for an aggregate purchase price that exceeds the Purchase Price. For the avoidance of doubt, "Alternative Transaction" does not mean the transaction contemplated by that certain stalking horse Asset Purchase Agreement by and among the Company, Music Today, LLC, Shop The Shows, LLC, and Clean Fun, the DIP Agent on behalf of the DIP Lender under the DIP Credit Agreement (as defined below) and not in its individual capacity but shall include a sale to a competing bidder.

"**Assignment Order**" means any order of the U.S. Bankruptcy Court (including the Sale Order) pursuant to section 365 of the U.S. Bankruptcy Code authorizing and approving the assumption and assignment of any Assumed Contract. The Assignment Order shall be in form and substance acceptable to the Buyer in all material respects.

"**Auction**" means the auction conducted by Sellers pursuant to the Bid Procedures Order for substantially all of the Purchased Assets in the event a Qualified Bid is timely received prior to the Bid Deadline (as defined in the Bid Procedures Order).

"**Auction Deadline Date**" means 6:00 p.m. CT on October 10, 2016 or such other date as may be agreed upon in accordance with the Bid Procedures Order.

"**Avoidance Actions**" means any claims for relief or causes of action arising under Chapter 5 of the Bankruptcy Code and any similar state law claims (including, for the avoidance of any doubt, any and all preference or other avoidance Claims and actions of the Company, including all such Claims and actions arising under Sections 544, 547, 548, 549, and 550 of the Bankruptcy Code, or other applicable law in respect of fraudulent conveyances, fraudulent transfer, or other similar Claims).

"**Bankruptcy Code**" means Title 11 of the United States Code.

"**Bankruptcy Court**" means the United States Bankruptcy Court (or District Court) for the District of Delaware, presiding over the Chapter 11 Cases.

"**Bid**" has the meaning as shall be ascribed to such term in the Bid Procedures Order.

"**Bid Deadline**" shall have the meaning set forth in the Bid Procedures Order.

"Bid Procedures Order" means the order of the Bankruptcy Court, in a form to be mutually agreed to by Buyer and Sellers, or, to the extent that the Bankruptcy Court does not enter such order in the form mutually agreed to by Buyer and Sellers, such other form consented to by Buyer in its sole discretion.

"Bid Procedures Order Deadline Date" means October 12, 2016.

"Board" means the board of directors of the Company.

"Business" means the Sellers' and their Affiliates' business of operating a promotional products distributorship engaged in promotional planning, product development, imprinting, distribution, implementation and fulfillment of branded and promotional merchandise primarily operated from the Costa Mesa Facilities and commonly known as Clean Fun.

"Business Day" means any day other than Saturday, Sunday and any day that is a legal holiday or a day on which banking institutions in the State of Delaware are authorized by Law to close.

"Cash Amount" means (i) \$1,000,000 plus (ii) the Closing AR Value plus (iii) the Paid Pre-Petition Commission Amount plus (iv) the Identified Orders Payment Amount minus (v) the amount of the Assumed Customer Royalties and Rebates minus (vi) the amount of Assumed Deposits and Prepayments plus (vii) the Positive Adjusted Purchase Amount, if any, less (viii) the Negative Adjusted Purchase Amount, if any.

"CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (42 U.S.C. §9601 et seq.) and any Laws promulgated thereunder.

"Chapter 11 Case" means, collectively, the cases commenced by the Company and its Affiliates under Chapter 11 of the United States Bankruptcy Code in the Bankruptcy Court.

"Claim" has the meaning set forth in Section 101(5) of the Bankruptcy Code, and shall include all demands, claims, suits, arbitrations, investigations, actions or causes of action, assessments, complaints, directives, citations, information requests issued by any Government Authority, proceedings, orders, notices of potential responsibility, losses, damages, liabilities, sanctions, costs and expenses, including interest, penalties and attorneys' and experts' fees and disbursements.

"Clean Fun Knowledge Party" means Greg Washer.

"Clean Fun Knowledge Party's Knowledge" means the actual knowledge of the Clean Fun Knowledge Party.

"Closing AR Value" means the dollar value amount of the Accounts Receivable included in the Purchased Assets less the allowance for doubtful accounts (calculated in accordance with GAAP), in each case as of the Closing.

"Code" means the United States Internal Revenue Code of 1986, as amended.

"Company Benefit Plans" means all Employee Benefit Plans maintained by the Company or its Affiliates or to which the Company or its Affiliates has made contributions or had any other liability with respect thereto.

"Company Closing Costs" means all fees, costs and expenses for any legal, accounting, reorganization, restructuring (including bankruptcy administrative expenses), brokerage or similar fees or expenses incurred by Sellers that are in connection with, resulting from or attributable to the transactions contemplated by this Agreement, the Chapter 11 Case or otherwise and all change of control payments due by Sellers to any Person under any plan, agreement or arrangement of Sellers, which liability, in each case, is payable or becomes due as a result of the consummation of the transactions contemplated hereby, including all Taxes which are payable by Sellers in connection with the payment of such liability.

"Company's Knowledge" means the actual knowledge of Michael Fitzsimmons, James Jeffrey Hagan and Mark Epstein.

"Company Systems" means the computer systems, including the Software, hardware, networks, historically saved data, interfaces, platforms and related systems currently used exclusively and directly in the conduct of the Business by the Company.

"Contract" means any agreement, license, contract, commitment or other binding arrangement or understanding, whether written or oral, and, with respect to any Contract to which any of the Sellers is a party, such contract which Sellers is permitted under the Bankruptcy Code to assume and assign other than an Employee Benefit Plan.

"Cost of Goods Sold" means the costs associated with an order determined in accordance with Buyer's policies as applicable to all account executives of the Buyer, as such may be in effect from time to time.

"Costa Mesa Facilities" means (i) 3185 Pullman Street, (ii) 3185A Pullman Street, (iii) 3186 Pullman Street, and (iv) 3187 Pullman Street, in each case in Costa Mesa, California.

"Cure Amount" means, in respect of any Assumed Contract, all amounts owing as at the Closing Date by the Company or an affiliate thereof pursuant to such Assumed Contract and all amounts required to be paid to cure any monetary defaults thereunder, if any, required to effect an assumption and/or assignment thereof from the Company to the Buyer and/or to obtain any third party approvals pursuant to **Section 5.19** and/or, as applicable, pursuant to any Assignment Order or the Sale Order, which estimates of such amounts are set forth next to each Assumed Contract set forth on **Schedule 1.2(h)**. For the avoidance of doubt, it is agreed and understood that to the extent no amount is set forth next to an Assumed Contract on **Schedule 1.2(h)**, as applicable, the Cure Amount is deemed to be zero dollars (\$0.00).

"Diligence Deadline" means 5:00 p.m. C.T. on the day which is ten (10) days after the Buyer's receipt of the final Disclosure Schedules.

"DIP Agent" means Hillair Capital Management LLC, as the administrative and collateral agent on behalf of the DIP Lender under the DIP Credit Agreement (and not in its individual capacity), and any successor agent duly appointed under the DIP Credit Agreement.

"DIP Credit Agreement" means that certain Senior Secured Super -Priority Debtor-In-Possession Credit Agreement, dated as of September 16, 2016, by and among Delivery Agent, as borrower, each of Music Today, Clean Fun, and Shop the Shows, as guarantors, the DIP Agent and the DIP Lender, as amended, restated, supplemented or otherwise modified from time to time in accordance with the DIP Order.

"DIP Lender" shall mean the "Lender" as defined in and under the DIP Credit Agreement.

"DIP Order" means any Order of the Bankruptcy Court relating to the DIP Credit Agreement.

"Employee Benefit Plan" means any of the following (whether written, unwritten or terminated): (a) any "employee welfare benefit plan," as defined in Section 3(1) of ERISA, including, but not limited to, any medical plan, life insurance plan, short-term or long-term disability plan, dental plan, and sick leave; (b) any "employee pension benefit plan," as defined in Section 3(2) of ERISA, including, but not limited to, any excess benefit, top hat or deferred compensation plan or any nonqualified deferred compensation or retirement plan or arrangement or any qualified defined contribution or defined benefit plan; or (c) any other plan, policy, program, arrangement or agreement that provides employee benefits or benefits to any current or former employee, dependent, beneficiary, director, independent contractor or like person, including, but not limited to, any severance agreement or plan, personnel policy, vacation time, holiday pay, service award, moving expense reimbursement programs, tool allowance, safety equipment allowance, material fringe benefit plan or program, bonus or incentive plan, stock option, restricted stock, stock bonus or deferred bonus plan, salary reduction, change-of-control or employment agreement (or consulting agreement with a former employee).

"Environmental and Safety Requirements" means all federal, state and local laws (including CERCLA and analogous state laws), rules, regulations, ordinances, orders, statutes, actions, policies and requirements relating to public health and safety, worker health and safety, pollution or protection of the environment, all as amended or hereafter amended.

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

"Final Order" means an Order as to which no appeal, motion for rehearing or reconsideration or a petition for writ of certiorari is pending.

"GAAP" means generally accepted accounting principles set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as may be approved by a significant segment of the accounting profession that are applicable to the circumstances from time to time, as historically and consistently applied by Sellers.

"Guaranty" means any obligation, contingent or otherwise, of Sellers directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person. The term "guarantee" used as a verb has a corresponding meaning.

"Hazardous Materials" means (a) hazardous materials, hazardous substances, extremely hazardous substances, hazardous wastes, infectious wastes, acute hazardous wastes, toxic substances, toxic contaminants or pollutants, as those terms are defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., and any other Environmental and Safety Requirements; (b) petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute); (c) any radioactive material, including any source, special nuclear, or by-product material as defined in 42 U.S.C. § 2011 et seq.; (d) asbestos in any form or condition; and (e) any substance that contains regulated levels of polychlorinated biphenyls.

"Identified Orders Payment Amount" means 7.5% of the aggregate gross proceeds received (i) in respect of determining such amount for purposes of determining the Cash Amount, prior to Closing or which is otherwise expected to be received by Buyer with respect to Identified Orders which have been billed or otherwise shipped prior to Closing, or (ii) in respect of determining any such payment due pursuant to **Section 5.8(b)(ii)**, prior to the date of termination or which is otherwise expected to be received by Buyer with respect to Identified Orders which have been billed or otherwise shipped prior to the date of termination, in each case, whether pursuant to this Agreement or the Email Agreement and with respect to which no previous payment has been made to Sellers.

"Indebtedness" of any Person means all: (a) indebtedness for borrowed money or funded debt owed by Sellers (including without limitation, all loans to any Stockholder), (b) Guaranties, (c) all liabilities of Sellers evidenced by notes, bonds or debentures, (d) all liabilities of Sellers secured by any Liens, (e) the capitalized portion of lease liabilities of Sellers under any capitalized lease, (f) all liabilities of Sellers arising from installment purchases of property or representing the deferred purchase price of property or services in respect of which a Seller is liable, contingently or otherwise, as obligor or otherwise (other than trade payables and other current liabilities incurred in the ordinary course of business), (g) any Severance Payments (other than those as provided in **Section 5.17**) and (h) any interest, principal, prepayment penalty, fees, or expenses, to the extent due or owing in respect of those items listed in clauses (a) through (g) above.

"Insurance Policies" means all insurance policies of Sellers or otherwise covering the Purchased Assets.

"Intellectual Property" means, collectively, in the United States, (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereto, and all Patents, (ii) all Trademarks, all goodwill associated therewith, and all applications, registrations, and renewals in connection therewith, (iii) all moral rights and copyrights in any work of authorship (including but not limited to databases, software, and mask works) and all applications, registrations, and renewals in connection therewith, (iv) all trade secrets and confidential business information (including confidential ideas, research and development, know-how, methods, formulas, compositions, manufacturing and production processes and techniques, technical and other data, designs, drawings, specifications, customer and supplier lists, pricing and cost information, and business and marketing plans and proposals),

(v) computer software and firmware (including source code, executable code, data, databases, user interfaces and related documentation) (collectively, "**Software**"), (vi) all other proprietary and intellectual property rights, (vii) all copies and tangible embodiments of any of the foregoing (in whatever form or medium), and (viii) all income, royalties, damages and payments related to any of the foregoing (including damages and payments for past, present or future infringements, misappropriations or other conflicts with any intellectual property), and the right to sue and recover for past, present or future infringements, misappropriations or other conflict with any intellectual property.

"**Interim AR**" means the Accounts Receivable included in the Purchased Assets that arose from the Petition Date to the Closing Date.

"**Interim Expense**" means the amount of the Interim Payables plus the commissions due to Account Executives included in the Assumed Liabilities that arose from the Petition Date to the Closing Date.

"**Lender Consent**" means a consent and release from Hillair Capital Management, LLC (as DIP Agent under the DIP Credit Agreement and not in its individual capacity) in form and substance acceptable to Buyer approving the transactions contemplated hereby, releasing all Liens on and rights to acquire the Purchased Assets subject to the consummation of the transactions contemplated hereby and agreeing not to bid on the Purchased Assets at the Auction.

"**Latest Balance Sheet Date**" means the Company's balance sheet as of August 31, 2016.

"**Lien**" or "**Liens**" means any lien (statutory or otherwise), hypothecation, encumbrance, security interest, interest, mortgage, pledge, restriction, charge, instrument, license, preference, priority, security agreement, easement, covenant, encroachment, option, right of recovery, right of preemption, right of first refusal or other third party right, or Order of any Governmental Authority, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, (iii) any claim based on any theory that Buyer is a successor, transferee or continuation of Sellers or the Business, and (iv) any leasehold interest, license or other right, in favor of a third party or Sellers, to use any portion of the Purchased Assets), whether secured or unsecured, choate or inchoate, filed or unified, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, known or unknown; provided, however, that Liens shall not include non-exclusive licenses to Company Intellectual Property.

"**Material Adverse Effect**" means any change, effect, event, occurrence, state of facts or development or any combination of such matters that is, or could reasonably be expected to, materially and adversely effect to the business or financial condition of the Business; provided, however, that the following shall not be deemed to constitute a material adverse effect: (i) changes in conditions generally affecting the industry in which Sellers operate; (ii) acts of war or terrorism; (iii) general economic conditions, (iv) conditions in the securities or financial markets in general; or (v) any changes in applicable Laws or accounting rules, including GAAP; provided, that in any such case, (x) there is not a disproportionate effect on Sellers as compared

to the other companies in the industry in which Sellers operate, and (y) the act of filing the Chapter 11 Case in and of itself shall not constitute a Material Adverse Effect.

"Negative Adjusted Purchase Price" means the amount by which the Interim Expense exceeds the Interim AR.

"Notice" means any summons, citation, directive, Order, claim, litigation, proceeding, letter or other communication, written or oral, actual or threatened, from the United States Environmental Protection Agency or any other Governmental Authority, or any other Person, entity or any individual, and shall include the imposition of any Lien on property owned, leased, occupied or used by Sellers or the Business pursuant to any Law.

"Order" means any award, decision, decree, order, injunction, ruling, judgment, or consent of or entered, issued, made or rendered by any Governmental Authority.

"Organizational Documents" means the documents by which any Person (other than an individual) establishes its legal existence or which govern its internal affairs (including any certificate or articles of incorporation or organization, certificate of formation, constitutional documents, by-laws, partnership agreement, limited liability company agreement and operating agreement), in each case, as amended through the date of this Agreement.

"Patents" means all letters patent and pending applications for patents of the United States and all reissues, reexaminations, divisions, continuations, continuations-in-part, revisions, and extensions thereof.

"Person" means any individual, sole proprietorship, partnership, limited liability company, joint venture, trust, unincorporated association, corporation or other entity or any Governmental Authority.

"Petition Date" means September 15, 2016.

"Positive Adjusted Purchase Amount" means the amount by which the Interim AR exceeds the Interim Expense.

"Qualified Bidder" has the meaning as shall be ascribed to such term in the Bid Procedures Order.

"Rule" or **"Rules"** means the Federal Rules of Bankruptcy Procedure.

"Rule 2002 notice list" means the list of parties required to be served under Rule 2002.

"Sale Order" means the order of the Bankruptcy Court, in a form consented to by Buyer in its sole discretion, to be entered by the Bankruptcy Court pursuant to Sections 363, 365 and 1146(c) of the Bankruptcy Code, which order, amongst other approvals, approves the sale of the Purchased Assets to Buyer free and clear of all Liens pursuant to Section 363(f) of the Bankruptcy Code. The Sale Order shall be in form and substance acceptable to the Buyer in all material respects.

"Sale Order Deadline" means October 12, 2016.

"Severance Payments" means all severance, stay bonus or change of control payments (whether payable prior to, on or after the Closing Date) that arose under any Employee Benefit Plan of Sellers or contract at, in connection with or prior to the Closing Date.

"Shared Corporate Services" means all services, databases, and other technologies and computer systems of Sellers and their Affiliates used or made available generally throughout Sellers' businesses, including but not limited to NetSuite, and access thereto.

"Stockholder" means any holder of capital stock of the Company.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (a) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof or (b) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof and for this purpose, a Person or Persons owns a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be or control any manager, management board, managing director or general partner of such business entity (other than a corporation). The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"Successful Bidder" has the meaning as shall be ascribed to such term in the Bid Procedures Order.

"Tax" means any multi-national, Federal, state, or local or foreign income, gross receipts, franchise, estimated, alternative minimum, add on minimum, sales, use, transfer, registration, value added, excise, natural resources, entertainment, amusement, severance, stamp, occupation, premium, windfall profit, environmental, customs, duties, real property, personal property, ad valorem, escheat, abandoned or unclaimed property, capital stock, social security, unemployment, disability, workers' compensation, payroll, license, employee or other withholding, or other tax, of any kind whatsoever, including any interest, penalties or additions to Tax or additional amounts in respect of the foregoing; the foregoing shall include any transferee or secondary liability for a Tax and any liability assumed by agreement or otherwise or arising as a result of being (or ceasing to be) a member of any Affiliated Group (or being included (or required to be included) in any Tax Return relating thereto).

"Tax Returns" means returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of any Tax of any party or the administration of any laws, regulations or administrative requirements relating to any Tax.

"Trademarks" mean, in the United States, registered trademarks, registered service marks, trademark and service mark applications, unregistered trademarks and service marks, registered trade names and unregistered trade names, corporate names, fictitious names, trade dress, logos, slogans, Internet domain names, rights in telephone numbers, and other indicia of origin, together with all translations, adaptations, derivations, combinations and renewals thereof.

The following terms are defined in the following Sections:

503 Liabilities	1.4(a)(i)
Account Executive Meeting	5.5(b)
AE Communication	5.5(b)
Account Executives	2.18(c)
Accounts Receivable	2.7(c)
Affiliate Transaction	2.15
Agreement	Preamble
Assignment and Assumption Agreement	4.2(h)(ii)
Assumed Contracts	1.2(h)
Assumed Cure Amounts	1.4(a)(iv)
Assumed Customer Royalties and Rebates	1.4(a)(v)
Assumed Deposits and Prepayments	1.4(a)(vii)
Assumed Liabilities	1.4(a)
Assumed Payables	1.4(a)(i)
Books and Records	1.2(i)
Breakup Fee	6.2(a)
Buyer	Preamble
Buyer Default Termination	1.10
Cash Amount Adjustment	1.11(e)(iv)
Cash Amount Certificate	1.11
Chapter 11 Professionals	2.6
Closing	1.9
Closing Date	1.9
Closing Date Deadline	6.1(m)
Company	Preamble
Company Real Property	2.16
Company Transition Costs	5.17(a)
Confidential Information	5.2(a)
Deposit	1.10
Disputed Items	1.11(e)
Disputed Items Notice	1.11(e)
Disclosure Schedules	2.19
Escrow Holder	1.10
Estimated Cash Amount	1.11(a)
Estimated Cash Amount Certificate	1.11(a)
Excluded Assets	1.3
Excluded Contracts	1.5(b)
Excluded Liabilities and Obligations	1.5

Expenses	7.6
Final Cash Amount	1.11(e)
Financial Statements	2.7(a)
Governmental Authority	2.4
Identified Order	5.8(a)
Independent Accounting Firm	1.11(d)
Laws	2.5(b)
Material Contracts	2.11(q)
NDA	7.3
Paid Pre-Petition Commission Amount	5.6
Open Order Reports	2.18(e)
Pre-Petition Commission Amounts	5.6
Proceedings	2.12
Program Customer Websites	1.2(f)
Purchase Price	1.13
Purchased Assets	1.2
Remaining Disputed Items	1.11(d)
Sale Motion	5.9
Schedule Supplement	5.21
Scheduled Contracts	1.6(a)
Stakeholder Meetings	5.5(b)
Supplier Communication	5.5(b)
Supplier Meeting	5.5(b)
Transaction Documents	2.2
Transition Bonuses	5.17(b)
Transition Period	5.17(a)
Transition Services	5.17(a)
Transitional Employees	5.17(a)
Use Expenses	5.18
Use Period	5.18

[Signature Page follows.]

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

SELLERS:

DELIVERY AGENT, INC.

By:

A handwritten signature in blue ink, appearing to be 'M Fitzsimmons', is written over a light-colored rectangular background.

Name: Michael Fitzsimmons

**CLEAN FUN PROMOTIONAL MARKETING,
INC.**

By:

A handwritten signature in blue ink, appearing to be 'MF', written over a light-colored background.

Name: Michael Fitzsimmons

BUYER:

HALO BRANDED SOLUTIONS, INC.


By: 
Name: Marc S. Simon
Its: Chief Executive Officer

Exhibit C

(Bidding Procedures Order)

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

In re:

DELIVERY AGENT, INC., et al.,¹

Debtors.

Chapter 11

Case No. 16-12051 (LSS)

(Jointly Administered)

ORDER (A) AUTHORIZING DEBTORS' ENTRY INTO THE ASSET SALE AGREEMENT WITH RESPECT TO THE CLEAN FUN BUSINESS AND RELATED ASSETS, (B) AUTHORIZING AND APPROVING THE BIDDING PROCEDURES, (C) AUTHORIZING AND APPROVING BREAK-UP FEE, AND (D) APPROVING THE NOTICE PROCEDURES

Upon the motion (the "Motion")² of the above-captioned affiliated debtors and debtors in possession (collectively, the "Debtors"), pursuant to sections 105, 107(b)(1), 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)(A) Authorizing Debtors' Entry Into the Asset Sale Agreement with respect to the Clean Fun Business and Related Assets, (B) Authorizing and Approving the Bidding Procedures, (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases, (D) Authorizing and Approving Break-Up Fee, (E) Approving the Notice Procedures, and (F) Setting a Date for the Sale Hearing; (II) Authorizing and Approving (A) the Sale of

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor's U.S. tax identification number are as follows: Delivery Agent, Inc. (8744), Musictoday, LLC (7995), Clean Fun Promotional Marketing, Inc. (6635), and Shop the Shows, LLC (n/a). The notice address for all of the Debtors is: 300 California Street, 3rd Floor, San Francisco, California 94104.

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

Certain Assets Free and Clear of All Liens, Claims, Encumbrances and Interests and (B) the Assumption and Assignment of Certain Contracts; and (III) Granting Related Relief; and the Court having reviewed the Motion; and the Court having determined the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties-in-interest; and it appearing that proper and adequate notice of the Motion has been given and that no other or further notice is necessary; and upon the record herein; and after due deliberation thereon; and good and sufficient cause appearing therefore;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

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

B. The statutory predicates for the relief requested in the Motion are (i) sections 105, 107(b)(1), 363 and 365 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002, 6004, 6006, 9014 and 9018; and (iii) Local Rule 6004-1 and 9018-1.

C. As reflected in the certificates of service filed on September [___], 2016 [D.I. ___] (the "Sale Notice Certificates of Service"), good and sufficient notice of the Motion, the hearing on the Motion, and the relief granted by this Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order (including, without limitation, with respect to the proposed Break-Up Fee (as defined herein)) has been afforded to those parties entitled to notice pursuant to Local Rule 2002-1(b). A reasonable and fair opportunity to object to the Motion and the relief granted in this Order has

been afforded under the circumstances. Accordingly, no further notice of the Motion, the hearing on the Motion, or the relief granted by this Order shall be required.

D. The Debtors' sale notice, as served in the manner described above, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Auction (if necessary), and the Sale Hearing, and no other or further notice is required.

E. The Debtors' articulated reasons for approval of Bidding Procedures, in the form annexed hereto as **Exhibit 1**, based on the record before the Court, satisfy the Court that the Bidding Procedures: (i) are in the best interests of the Debtors and their creditors and their estates; and (ii) represent a prudent exercise of the Debtors' reasonable business judgment. The Debtors have articulated good, sufficient, and reasonable business justifications for the selection of the Buyer as the stalking horse bidder and the proposed procedures related thereto, which are designed to permit the Debtors to solicit the highest or otherwise best bid for their assets through the Bidding Procedures.

F. Entry into the Agreement, a copy of which is attached to the Motion as **Exhibit A**, as a "stalking-horse" sale agreement is in the best interest of the Debtors and the Debtors' estates and creditors. The Agreement enabled the Debtors to secure an adequate floor for the Auction and will provide a clear benefit to the Debtors' estates.

G. The Break-Up Fee is fair and reasonable and provided a benefit to the Debtors' estates and creditors and was a critical element in the Buyer's decision to enter into the Asset Purchase Agreement.

H. The Debtors' payment of the Break-Up Fee under the conditions set forth in the Agreement, the Motion and this Order is (a) an actual and necessary cost of preserving the

Debtors' estates, within the meaning of section 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtors' estates and creditors and all parties in interest herein, (c) reasonable and appropriate, and (d) necessary to ensure that Buyer will continue to pursue the proposed Agreement to undertake the sale of the Assets. Notwithstanding anything to the contrary in this or any other order of this Court, the Break-Up Fee shall constitute an administrative expense with priority pursuant to Bankruptcy Code sections 503(b).

I. To the extent that the Debtors consummate an Alternative Transaction or a chapter 11 plan in connection with or as a result of an Alternative Transaction, the Break-Up Fee shall not be deemed to constitute collateral of any entity (including the DIP Lender or the Prepetition Secured Parties (as such terms are defined in the *Interim Order (I) Authorizing And Approving Debtors Post-Petition Financing; (II) Granting Liens And Security Interests And Providing Superpriority Administrative Expense Status; (III) Authorizing Use Of Cash Collateral And Affording Adequate Protection; (IV) Modifying Automatic Stay; And (V) Scheduling Final Hearing* [D.I. 38] (the "Interim Financing Order")) and any other order granting the relief in such order on a final basis (together with the Interim Financing Order, collectively, the "Financing Orders")), and the Break-Up Fee shall be deemed to be held in trust solely for the benefit of the Buyer. Upon entry of this Order, the DIP Lender and the Pre-Petition Secured Parties shall be deemed to have consented to waive any and all of their respective rights (if any) with respect to the Break-Up Fee if payable under this Order, and shall be deemed to acknowledge that the Break-Up Fee (if payable) shall be held in trust solely for the benefit of the Buyer.

J. The Auction was scheduled for [and held at] 10:00 a.m. (ET) on October 10, 2016, at the offices of Pachulski Stang Ziehl & Jones LLP, located at 919 North Market Street, 17th Floor, Wilmington, DE 19801.

K. A hearing (the “Sale Hearing”), at which the Debtors seek approval of the Successful Bid (as defined in the Bidding Procedures) was held in this Court on October 11, 2016, at 9:00 a.m. (ET). The Sale Hearing may be adjourned or rescheduled by the Debtors with the prior consent written consent of the Buyer without further notice by an announcement of the adjourned date at the Sale Hearing. The Court’s findings and rulings with respect to approval of the Successful Bid are set forth in a separate order.

L. The entry of this Order is in the best interests of the Debtors and their estates, creditors, and interest holders and all other parties in interest herein.

Based upon the foregoing and after due consideration and good cause appearing therefor:

IT IS ORDERED, ADJUDGED AND DECREED BY THE COURT, that:

1. Those portions of the Motion seeking approval of the Bidding Procedures, the Bidding Protections, the Notice Procedures, and setting the time, date and place of the Sale Hearing are GRANTED.

2. Except as expressly provided herein (including for the avoidance of doubt with respect to the rights of the DIP Lender and the Pre-Petition Secured Parties with respect to the Break-Up Fee), nothing herein shall be construed as a determination of the rights of any party in interest in these chapter 11 cases.

Bidding Procedures

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

4. The Buyer is deemed a Qualified Bidder pursuant to the Bidding Procedures for all purposes.

5. The Bidding Procedures apply to the Qualified Bidders and the conduct of the sale of the Assets and the Auction.

The Agreement

6. Subject to the Bidding Procedures and approval of the sale at the Sale Hearing, the Debtors' entry into the Agreement attached to the Motion as **Exhibit A** is hereby approved. The Agreement serves as the “stalking horse” sale agreement.

The Break-Up Fee

7. Notwithstanding anything to the contrary in the Financing Orders, to the extent due and payable under section 4.5 of the Agreement, (a) the Debtors are authorized to pay Buyer the Break-Up Fee (as defined in the Agreement) out of the proceeds of an Alternative Transaction or a chapter 11 plan in connection with or as a result of an Alternative Transaction, (b) the Break-Up Fee shall not constitute the collateral of, or be subject in any way to any lien of, the DIP Lender or the Pre-Petition Secured Parties (as defined under the Financing Order), (c) the Break-Up Fee shall be held, and shall be deemed to be held, in trust solely for the benefit of the Buyer, and (d) the DIP Lender and the Pre-Petition Secured Parties shall be permanently enjoined from seeking to assert any rights with respect to their claims or liens against the Break-Up Fee.

8. The Break-Up Fee shall be entitled to priority as an administrative expense of the Sellers pursuant to section 503(b) of the Bankruptcy Code.

Sale Notice Procedures

9. The Sale Notice Procedures set forth in the Motion, including the procedures for providing notice of the sale and opportunity to object and be heard with respect to the Motion, are hereby approved.

10. The Sale Notice, which was served as described in the Sale Notice Certificates of Service, is sufficient to provide effective notice to all interested parties of the Bidding

Procedures, the Auction, the sale contemplated in the Agreement, and the assumption and assignment of the Purchased Contracts, pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and is hereby approved.

11. The Debtors' service of the Sale Notice, by first-class mail, postage pre-paid, on the date of the filing of the Motion, upon (a) all taxing authorities having jurisdiction over the Debtors, including the IRS, (b) all known lien holders of the Assets, (c) all current and former employees of the Clean Fun Business, (d) all Account Executives of the Clean Fun Business, (e) all known creditors of the Clean Fun Business, and (f) all contract counterparties and entities and persons on the Clean Fun Business's accounts payable system, (a) constituted adequate and sufficient notice under the circumstances of these chapter 11 cases and these proceedings and complied with the various applicable requirements of the Bankruptcy Code, the Bankruptcy Rules and the Bidding Procedures Order, and (b) provided a reasonable opportunity to object and be heard with respect to the Motion and the relief requested therein was afforded to all interested persons and entities.

Assumption and Assignment Procedures

12. The procedures relating to assumption and assignment of the Purchased Contracts as set forth in the Motion, including the form of Cure Notice attached hereto as **Exhibit 3**, are hereby authorized, approved, and made part of this Order as if fully set forth herein.

Other Relief Granted

13. In the event there is a conflict between this Order and the Motion or the Agreement, this Order shall control and govern.

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

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

16. The Debtors and the Buyer are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

17. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004 or 6006 or any other provision of the Bankruptcy Code or Bankruptcy Rules is expressly lifted. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in their discretion and without further delay, take any action and perform any act authorized under this Order. For the avoidance of doubt, the Break-Up Fee approved by this Order shall be immediately appealable and failure to appeal in accordance with the Bankruptcy Rules or other applicable law shall constitute a waiver of such rights.

Dated: Wilmington, Delaware
October ____, 2016

United States Bankruptcy Judge

Exhibit 1

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the “Bidding Procedures”) to be employed with respect to the proposed sale of certain assets and assumption of certain liabilities as set forth in the Asset Purchase Agreement (as defined below) with respect to Buyer, or, as set forth in the relevant purchase agreement(s) with respect to a Successful Bidder or a Back-Up Bidder (each as defined below) (in each event, the “Sale”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement.

On September 25, 2016, Delivery Agent, Inc. and Clean Fun Promotional Marketing, Inc. (collectively, the “Selling Debtors”) executed that certain Asset Purchase Agreement (the “Asset Purchase Agreement”) with Halo Branded Solutions, Inc. (the “Buyer”).

The Selling Debtors have determined that: (A) the transactions contemplated by the Asset Purchase Agreement with respect to Buyer, or, as set forth in the relevant sale or purchase agreement(s) with respect to a Successful Bidder (collectively, the “Transaction”) should be subject to competitive bidding as set forth herein; (B) the transfer of the Selling Debtors’ rights, title and interests in and to the Assets (as defined below) should be subject to approval by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) pursuant to sections 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1330, as amended (the “Bankruptcy Code”); and (C) the Transactions shall be subject to such other closing conditions as are set forth in the Asset Purchase Agreement with respect to Buyer, or, as set forth in the relevant purchase agreement(s) with respect to a Successful Bidder.

On September [], 2016, the Debtors filed the *Debtors’ Motion for Orders (I)(A) Authorizing Debtors’ Entry into the Asset Purchase Agreement with respect to the Clean Fun Business and Related Assets, (B) Authorizing and Approving the Bidding Procedures, (C) Authorizing and Approving a Break-up Fee, (D) Approving the Notice Procedures and the Assumption and Assignment Procedures, and (E) Setting a Date for the Sale Hearing; (II) Authorizing and Approving (A) the Sale of Debtor’s Business and Certain Assets Free and Clear of All Liens, Claims and Encumbrances and (B) the Assumption and Assignment of Certain Executory Contracts; and (III) Granting Related Relief* [Docket No. ____] (the “Sale Motion”).

A hearing before the Bankruptcy Court to consider approval of the Sale Motion, including, among other things, the Bidding Procedures set forth herein and the payment, in certain circumstances, of the Break-Up Fee, as well as approval of the Transaction, is scheduled for October [11], 2016, at 9:00 a.m. ET.

Bidding Process

The Bidding Procedures set forth herein describe, among other things, the Assets available for sale, the manner in which prospective bidders may gain access to or continue to

have access to due diligence materials concerning the Assets, the manner in which bidders and bids become Qualified Bidders (as defined below) and Qualified Bids (as defined below), respectively, the receipt and negotiation of bids received, the conduct of any subsequent Auction (as defined below), the ultimate selection of the Successful Bidder (as defined below), and the Bankruptcy Court's approval thereof (collectively, the "Bidding Process"). In the event that the Debtors and any party disagree as to the interpretation or application of these Bidding Procedures, the Bankruptcy Court will have jurisdiction to hear and resolve such dispute.

Assets To Be Sold

The Selling Debtors are offering for sale, in a single Transaction, the Selling Debtors' assets relating to the Clean Fun Business, as described in the Asset Purchase Agreement (to the extent that such assets are not subsequently excluded from the sale in accordance with the terms of the Asset Purchase Agreement) with respect to Buyer, or, as set forth in the relevant sale or purchase agreement(s) with respect to a Successful Bidder, and related schedules (such assets, collectively, the "Assets").

"As Is, Where Is"

The sale of the Assets will be on an "as is, where is" basis and without surviving representations or warranties of any kind, nature, or description by the Selling Debtors, their agents, or estates, except, with respect to Buyer, to the extent set forth in the Asset Purchase Agreement or, with respect to a Successful Bidder (as defined below), to the extent set forth in the relevant sale or purchase agreement(s) of such Successful Bidder.

Free Of Any And All Claims And Interests

All of the rights, title and interests of the Selling Debtors in and to the Assets, or any portion thereof, to be acquired will be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon and there against (collectively, the "Claims and Interests") to the extent permitted by sections 363 and 365 of the Bankruptcy Code and other applicable law, such Claims and Interests to attach to the net proceeds of the sale of such Assets (without prejudice to any claims or causes of action regarding the priority, validity or enforceability thereof), except, with respect to Buyer, to the extent otherwise set forth in the Asset Purchase Agreement or, with respect to a Successful Bidder, to the extent otherwise set forth in the relevant sale or purchase agreement(s) of such Successful Bidder with the Selling Debtors.

Participation Requirements

Unless otherwise ordered by the Bankruptcy Court, for cause shown, or as otherwise determined by the Selling Debtors, to participate in the Bidding Process, prior to the Bid

Deadline (as defined below), each person other than Buyer who wishes to participate in the Bidding Process (a “Potential Bidder”) must deliver to the Notice Parties (as defined below) at the addresses provided below:

(a) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to a Potential Bidder) in form and substance satisfactory to the Debtors. In the event that the Potential Bidder has already entered into an acceptable confidentiality agreement with the Debtors, it must provide a statement waiving any of its rights under such confidentiality agreement that are in conflict with the Bidding Procedures or that would otherwise prohibit disclosures regarding the Potential Bidder, or any Transactions it may enter into, to the Notice Parties (as defined below);

(b) sufficient information, as determined by the Debtors, which may include current audited financial statements and latest unaudited financial statements of the Potential Bidder, or, if the Potential Bidder is an entity formed for the purpose of acquiring the Assets (or any portion thereof), current audited financial statements and latest unaudited financial statements of the equity holders of the Potential Bidder who will guarantee the obligations of the Potential Bidder, or such other form of financial disclosure and credit-quality support or enhancement that will allow the Debtors and their financial advisors to make a reasonable determination as to the Potential Bidder’s financial and other capabilities to consummate the Transactions; and

(c) a statement demonstrating to the Debtors’ satisfaction, a bona fide interest in purchasing the Assets from the Debtors, for consideration in excess of the Buyer’s purchase price, plus the amount of the Break-Up Fee, plus the amount of the minimum bid increment.

A Potential Bidder that has executed a confidentiality agreement and has otherwise complied with the requirements described above, and that the Debtors determine in their reasonable business judgment, after consultation with their counsel and financial advisors, is likely (based on availability of financing, experience and other considerations) to be able to consummate the Transactions, will be deemed a “Qualified Bidder.”

As promptly as practicable after a Potential Bidder delivers the information required above, the Debtors will determine, and will notify the Potential Bidder, if such Potential Bidder is a Qualified Bidder. At the same time that the Debtors notify the Potential Bidder that it is a Qualified Bidder, the Debtors will allow the Qualified Bidder to begin or continue to conduct due diligence with respect to the Assets as provided in the following paragraph.

Due Diligence

The Debtors may in their reasonable business judgment, and subject to competitive and other business considerations, afford each Qualified Bidder and any person seeking to become a Qualified Bidder that has executed a confidentiality agreement with the

Debtors such due diligence access to materials and information relating to the Assets as the Debtors deem appropriate. Due diligence access may include management presentations as may be scheduled by the Debtors, access to electronic data rooms, on-site inspections, and other matters which a Qualified Bidder may reasonably request and as to which the Debtors, in their reasonable business judgment, may agree. The Debtors' investment bankers, Houlihan Lokey, will coordinate all reasonable requests for additional information and due diligence access from Qualified Bidders. No additional due diligence for any party other than a Qualified Bidder who has submitted a Qualified Bid will continue after the Bid Deadline (as defined below). The Debtors may, in their discretion, coordinate diligence efforts such that multiple Qualified Bidders have simultaneous access to due diligence materials and/or simultaneous attendance at management presentations or site inspections. In any event, Buyer shall be provided access to all material due diligence materials, management presentations, on-site inspections and other information provided to any Qualified Bidders that were not previously made available to Buyer as soon as commercially practicable and in no event later than five (5) calendar days after the date that the Debtors made such information available to any such Qualified Bidder. Neither the Debtors nor any of their affiliates (or any of their respective representatives) will be obligated to furnish any information relating to the Assets to any person other than to Qualified Bidders. The Debtors make no representation or warranty as to the information to be provided through this due diligence process or otherwise, except to the extent set forth in the Asset Purchase Agreement or in any other definitive agreement(s) with any Successful Bidder executed and delivered by the Debtors.

Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "Notice Parties"): (i) Delivery Agent, Inc. and the other Debtors, Attn: Jeff Hagan, CFO, 300 California Street, Suite 300, San Francisco, CA 94104, jhagan@deliveryagent.com; (ii) Debtors' counsel: Keller & Benvenuti LLP, Attn: Tobias S. Keller, Esq. and Jane Kim, Esq., 650 California Street, Suite 1900, San Francisco, CA 93108, tkeller@kellerbenvenuti.com, jkim@kellerbenvenuti.com; (iii) Debtors' counsel: Pachulski Stang Ziehl & Jones LLP, Attn: Laura Davis Jones, Esq., 919 North Market Street, 17th Floor, Wilmington, DE 19801, ljones@pszjlaw.com; (iv) Debtors' financial advisors: Arch & Beam, LLC, 2500 Camino Diablo, Suite 110, Walnut Creek, CA 94597, hbailey@arch-beam.com; and (v) Debtor's investment bankers: Houlihan Lokey, Attn: Ryan Sandahl, 111 South Wacker Drive, 37th Floor, Chicago, IL 60606, rsandahl@hl.com; so as to be received not later than October 7, 2016 at 12:00 p.m. (PT) by the Debtors by electronic mail or hard copy (as may be extended as set out below, the "Bid Deadline"). The Debtors may extend the Bid Deadline once or successively, but they are not obligated to do so; provided that for any such extension beyond two (2) Business Days, the Debtors have obtained the written consent of the Buyer, which consent will not be unreasonably withheld. If the Debtors extend the Bid Deadline, they will promptly notify all Qualified Bidders (including Buyer) and the parties listed above of such

extension.

Qualified Bid

A bid submitted will be considered a “Qualified Bid” only if the bid is submitted by a Qualified Bidder, pursuant to the previous paragraph and complies with all of the following:

(a) it states that the applicable Qualified Bidder offers to purchase the Assets upon the terms and conditions substantially as set forth in the Asset Purchase Agreement, including without limitation, with respect to certainty and timing of closing, or pursuant to an alternative structure (including without limitation, an offer conditioned upon confirmation of a plan of reorganization proposed by the Debtors either individually or in collaboration with such Qualified Bidder), or upon alternative terms and conditions that the Debtors reasonably determine are no less favorable than the terms and conditions of the Asset Purchase Agreement.

(b) it includes a signed letter stating that the bidder’s offer is irrevocable until the selection of the Successful Bidder and, if applicable, the Back-Up Bidder (as defined below), provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the earlier of (i) closing of the Sale to the Successful Bidder or the Back-Up Bidder, and (ii) (x) with respect to the Successful Bidder only, twenty-five (25) days from the Sale Hearing, subject to further extensions as may be agreed to under the applicable purchase agreement and (y) with respect to the Back-Up Bidder only, the Back-Up Bid Expiration Date (as defined below);

(c) it includes duly authorized and executed Asset Purchase Agreement, including the purchase price for the Assets expressed in U.S. Dollars (the “Purchase Price”), together with all exhibits and schedules thereto and such additional ancillary agreements as may be required by the bidder with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements), as well as copies of such materials marked to show those amendments and modifications to the Asset Purchase Agreement (“Marked Agreement”) and the proposed order to approve the Sale by the Bankruptcy Court proposed by the bidder;

(d) it includes written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the proposed transaction, that will allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Marked Agreement;

(e) it is not conditioned on (i) the outcome of unperformed due diligence by the bidder and/or (ii) obtaining financing;

(f) it fully discloses the identity of each entity that will be bidding for the Assets or otherwise sponsoring or participating in connection with such bid, and the complete terms of any

such participation;

(g) it has a value to the Debtors, in the Debtors' reasonable business judgment, after consultation with their financial advisors, that either individually or, when evaluated in conjunction with any other Qualified Bid for the Assets, is greater than or equal to the sum of the Purchase Price offered under the Asset Purchase Agreement, plus the amount of the Break-Up Fee (each as defined below) plus \$50,000;

(h) it includes an acknowledgment and representation that the bidder will assume the Selling Debtors' obligations under the executory contracts and unexpired leases proposed to be assigned pursuant to the Asset Purchase Agreement (or identifies with particularity which of such contracts and leases the bidder wishes not to assume, or alternatively which additional executory contracts or unexpired leases the bidder wishes to assume), contains full details of the bidder's proposal for the treatment of related cure costs; and it identifies with particularity any executory contract or unexpired lease the assumption and assignment of which is a condition to closing;

(i) it includes an acknowledgement and representation that the bidder: (i) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Marked Agreement; and (iv) is not entitled to any expense reimbursement or break-up fee in connection with its bid;

(j) it includes evidence, in form and substance reasonably satisfactory to the Debtors, of authorization and approval from the bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Marked Agreement;

(k) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), certified check or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to ten percent (10%) of the purchase price, to be dealt with as provided for under "Good Faith Deposits" herein;

(l) it (i) contains full details of the proposed number of employees of the Selling Debtors who will become employees of the Qualified Bidder and any proposed measures associated with their continued employment and associated with the employment of all employees who will become employees of the Qualified Bidder, and (ii) identifies any Employee Liabilities of any employees who will become employees of the Qualified Bidder that the Qualified Bidder intends

to assume or purchase;

(m) it includes evidence of the Potential Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Potential Bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Selling Debtors and assigned or subleased to the Potential Bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such contracts and leases;

(n) it contains other information reasonably requested by the Debtors; and

(o) it is received by the Bid Deadline.

The Debtors will determine, in their reasonable business judgment, whether to entertain bids for the Assets that do not conform to one or more of the requirements specified herein and deem such bids to be Qualified Bids. Notwithstanding the foregoing, Buyer will be deemed a Qualified Bidder, and the Asset Purchase Agreement will be deemed a Qualified Bid, for all purposes in connection with the Bidding Process, the Auction, and the Sale.

The Debtors shall notify Buyer and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and, with respect to each Qualified Bidder that submitted a bid other than the Buyer, whether such Qualified Bidder's bid constitutes a Qualified Bid), and shall provide Buyer and any Qualified Bidder that has previously submitted a Qualified Bid with a copy of any Qualified Bid, promptly, and in no event later than twenty-four (24) hours, after the determination is made that such bid is a Qualified Bid.

Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation, items such as the purchase price and the net value (including assumed liabilities and the other obligations to be performed or assumed by the bidder) provided by such bid, the claims likely to be created by such bid in relation to other bids, the counterparties to such Transactions, the proposed revisions to the relevant Transaction documents, the effect of the Transactions on the value of the ongoing businesses of the Debtors (including ongoing relationships with partners, customers and suppliers), other factors affecting the speed, certainty and value of the Transactions (including any regulatory approvals required to close the Transactions), the assets included or excluded from the bid, the estimated number of the Debtors' employees to be offered post-closing employment by the Qualified Bidder and any proposed measures associated with their continued employment, the transition services required from the Selling Debtors post-closing and any related restructuring costs, and the likelihood and timing of consummating such transactions, each as determined by the Debtors, in consultation with their advisors.

No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Asset Purchase Agreement received from Buyer, the Auction shall be cancelled and the Debtors shall report the same to the Bankruptcy Court, and subject to requiring and obtaining approvals of the Bankruptcy Court and satisfaction of the conditions set forth in the Asset Purchase Agreement, the Debtors shall promptly proceed to seek entry of the appropriate order approving the Transactions with Buyer pursuant to the terms and conditions set forth in the Asset Purchase Agreement. In addition, if no Qualified Bid is received, the Debtors reserve the right to, and will, if requested by the Buyer, use reasonable commercial efforts to, request that the Bankruptcy Court advance the date of the Sale Hearing (as defined below) and, in such case, provide notice of such new date to those parties in interest entitled to notice thereof.

Break-Up Fee

Recognizing the value and benefits that Buyer has provided to the Selling Debtors by entering into the Asset Purchase Agreement, as well as Buyer's expenditure of time, energy and resources, the Selling Debtors have agreed that they will, under the circumstances set forth in the Asset Purchase Agreement, pay to Buyer a break-up fee equal to \$250,000 (the "Break-Up Fee").

Auction

If the Debtors receive one or more Qualified Bids in addition to the Asset Purchase Agreement, the Debtors will conduct an auction (the "Auction") of the Assets, which shall be transcribed or recorded on video to the extent required under Delaware local practice, at 10:00 a.m. on October 10, 2016, at the offices of Pachulski Stang Ziehl & Jones LLP, located at 919 North Market Street, 17th Floor, Wilmington, DE 19801, or such other location as shall be timely communicated to all entities entitled to attend the Auction, which Auction may be cancelled or adjourned, subject to the terms of the Asset Purchase Agreement. The Auction shall run in accordance with the following procedures:

(a) The Debtors, the Buyer, any official committee appointed in these cases, and any other Qualified Bidder that has timely submitted a Qualified Bid, and each of their respective advisors, shall be permitted to attend the Auction in person, and only Buyer and such other Qualified Bidders will be entitled to make any subsequent bids at the Auction.

(b) Each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Transactions.

(c) At least two (2) days prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtors whether it intends to attend the Auction;

provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until (i) the date of the selection of the Successful Bidder at the conclusion of the Auction and (ii) if such bidder is selected as a Back-Up Bidder (as defined below), the Back-Up Bid Expiration Date. At least one (1) day prior to the Auction, the Debtors will provide copies of the Qualified Bid or combination of Qualified Bids which the Debtors believe, in their reasonable business judgment, is the highest or otherwise best offer (the "Starting Bid") to Buyer and all other Qualified Bidders which have informed the Debtors of their intent to participate in the Auction.

(d) All Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction with the understanding that the true identity of each Qualified Bidder at the Auction will be fully disclosed to all other Qualified Bidders at the Auction and that all material terms of each Subsequent Bid will be fully disclosed to all other bidders throughout the entire Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attend the Auction in person.

(e) The Debtors, after consultation with their counsel and financial advisors, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (e.g., the amount of time allotted to make Subsequent Bids) for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Local Rules, the Bankruptcy Code, or any order of the Bankruptcy Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction.

(f) Bidding at the Auction will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round at least one subsequent bid is submitted by a Qualified Bidder that (i) improves upon such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (ii) the Debtors determine, in consultation with their advisors, that such Subsequent Bid is (A) for the first round, a higher or otherwise better offer than the Starting Bid, and (B) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each incremental bid at the Auction shall provide net value to the estate of at least \$100,000 over the Starting Bid or the Leading Bid, as the case may be, provided that the Debtors shall retain the right to modify the increment requirements at the Auction after informing each participating Qualified Bidder. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid or combination of bids (and the value of such bid(s)) that it believes to be the highest or otherwise better offer (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid.

(g) Except as specifically set forth herein, for the purpose of evaluating the value of

the consideration provided by Subsequent Bids (including any Subsequent Bid by Buyer), the Debtors will, at each round of bidding, give effect to the Break-Up Fee that may be payable to Buyer under the Asset Purchase Agreement as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtors.

Selection Of Successful Bid

Prior to the conclusion of the Auction, the Debtors, in consultation with their advisors, will (a) review each Qualified Bid and evaluate each Qualified Bid as set forth in the section titled "Evaluation of Competing Bids" herein, (b) identify the highest or otherwise best offer or offers for the Assets received at the Auction (one or more such bids, collectively the "Successful Bid") and the bidder(s) making such bid, collectively, the "Successful Bidder") and (c) communicate to Buyer and the other Qualified Bidders the identity of the Successful Bidder, the Back-Up Bidder (as defined below), if any, and the details of the Successful Bid and Back-Up Bid (as defined below), if any. The determination of the Successful Bid and Back-Up Bid by the Debtors, at the conclusion of the Auction, shall be final subject to approval by the Bankruptcy Court.

The Selling Debtors will sell the Assets to the Successful Bidder pursuant to the terms of the Successful Bid (or, under certain circumstances described herein, the Back-Up Bidder) upon the approval of such Successful Bid (or Back-Up Bidder if applicable) by the Bankruptcy Court at the Sale Hearing.

Sale Hearing

The sale hearing to approve these Bidding Procedures and the Break-Up Fee and to authorize certain of the Debtors to enter into agreements with respect to the Successful Bid and to approve the Sale of the Assets to the Successful Bidder (the "Sale Hearing") will be held before the Honorable Judge Silverstein (or any substitute therefor) in the United States Bankruptcy Court for the District of Delaware, located in Wilmington, Delaware, on a date to be scheduled by the court and currently proposed as [October 11, 2016] at [9:00 a.m.] (ET). The Sale Hearing may be adjourned or rescheduled by the Debtors without further notice by an announcement of the adjourned date at the Sale Hearing or, in the case of an adjournment of a relevant hearing of any other applicable court, at such hearing subject to the deadlines in the Buyer's Asset Purchase Agreement and debtor in possession financing documents. If the Debtors do not receive any Qualified Bids (other than the Qualified Bid of Buyer), the Debtors shall proceed as set forth in the "No Qualified Bids" section above. If the Debtors receive one or more additional Qualified Bid(s), then, at the Sale Hearing, the Debtors will seek approval of the Successful Bid, and, at the Debtors' election, the next highest or best Qualified Bid (the "Back-Up Bid") and, such bidder, the "Back-Up Bidder"). The Debtors' presentation to the Bankruptcy Court of the Successful Bid and, if applicable, the Back-Up Bid will not constitute the Debtors' acceptance of either of such bids, which acceptance will only occur upon the approval of such

bids by the Bankruptcy Court at the Sale Hearing. Following approval of the Sale to the Successful Bidder, if the Successful Bidder fails to consummate the Sale for any reason, then the Back-Up Bid will be deemed to be the Successful Bid and the Debtors will be authorized, but not directed, to effectuate a Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid of such Back-Up Bidder without further order of the Bankruptcy Court. The Back-Up Bid shall remain open until the earlier of (a) the thirtieth (30th) calendar day following the conclusion of the Auction, unless, prior to such date, the Debtors have delivered written notice to the Back-Up Bidder that the transaction contemplated by the Successful Bid will not occur and the Debtors intend to consummate the transaction contemplated by the Back-Up Bid, in which case the terms of the Back-Up Bid shall be enforceable and shall govern or (b) the consummation of the Sale to the Successful Bidder (the “Back-Up Bid Expiration Date”). All the Qualified Bids other than the Successful Bid and the Back-Up Bid shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and the Back-Up Bid by the Bankruptcy Court.

Good Faith Deposits

Other than with respect to Buyer, whose Good Faith Deposit shall be treated in accordance with the terms and conditions of the Asset Purchase Agreement, the Good Faith Deposit of any Back-Up Bidder shall be retained by the Debtors until the Back-Up Bid Expiration Date and returned to the Back-Up Bidder within five (5) Business Days thereafter or, if the Back-Up Bid becomes the Successful Bid, shall be applied to the purchase price to be paid by the Back-Up Bidder in accordance with the terms of the Back-Up Bid. The Good Faith Deposits of Qualified Bidders not selected as either the Successful Bidder or Back-Up Bidder shall be returned to such bidders within five (5) Business Days of the date of the selection of the Successful Bidder and the Back-Up Bidder. The Good Faith Deposit of the Successful Bidder will be dealt with in accordance with the terms of the Successful Bid.

Reservation Of Rights

The Debtors, after consultation with their advisors, (a) may determine after each round of bidding at the Auction which Qualified Bid, if any, is the highest or otherwise best offer and the value thereof, (b) may reject, at any time, any bid (other than Buyer’s initial bid) that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (iii) contrary to the best interests of the Debtors, their estates, and stakeholders as determined by the Debtors, and (c) except as otherwise specifically set forth herein, in consultation with Buyer, may modify the Bidding Procedures or impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Assets.

Notwithstanding the foregoing, the Debtors may not, without the prior written consent of Buyer, impair or modify Buyer’s rights and obligations under the Asset Purchase Agreement or Buyer’s right to credit the Bid Protection Amounts as part of any subsequent bids (except as specifically

set forth herein). For the avoidance of doubt, Hillair Capital Investments L.P. will not, and will not permit any entity, affiliate, or managed account to, credit bid any pre-petition or post-petition obligations (including any obligations under or related to the DIP Facility (as defined in the Sale Motion)) that are secured by the Assets at the Auction or otherwise in connection with these Bidding Procedures.

Exhibit 2

(Procedures Notice)

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

In re:

DELIVERY AGENT, INC., et al.,¹

Debtors.

Chapter 11

Case No. 16-12051 (LSS)

(Jointly Administered)

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

PLEASE TAKE NOTICE that on September [], 2016, the above-captioned affiliated debtors and debtors in possession (collectively, “Delivery Agent” or the “Debtors”), filed the *Debtors’ Motion for Orders (I)(A) Authorizing Debtors’ Entry into the Asset Sale Agreement with respect to the Sale of the Clean Fun Business and Related Assets, (B) Authorizing and Approving the Bidding Procedures, (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Authorizing and Approving a Break-Up Fee, and (E) Approving the Notice Procedures; (II) 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 (III) Granting Related Relief* (the “Motion”).² The Debtors seek, among other things, to sell their assets relating to the promotional marketing business (Clean Fun) (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 the Motion attaches bidding procedures (the “Bidding Procedures”), which set the key dates and times related to the Sale of the Assets, subject to Court approval. All interested bidders should carefully read the Bidding Procedures. To the extent that there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, an auction (the “Auction”) to sell the Assets will be conducted on **October 10, 2016, at 10:00 a.m.** (prevailing Eastern Time) at the offices of Pachulski Stang Ziehl & Jones LLP, located at 919 North Market Street, 17th Floor, Wilmington, DE 19801, or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction. Within twenty-four (24) hours of the conclusion of the Auction, the Debtors shall file a notice with the Bankruptcy Court identifying the Successful Bidder.

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: Delivery Agent, Inc. (8744), Musictoday, LLC (7995), Clean Fun Promotional Marketing, Inc. (6635), and Shop the Shows, LLC (n/a). The notice address for all of the Debtors is: 300 California Street, 3rd Floor, San Francisco, California 94104.

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

PLEASE TAKE FURTHER NOTICE that the Motion seeks entry of an order (the “Sale Order”) that is expected to provide, among other things, that any Successful Bidder will have no responsibility for, and the Assets will be sold free and clear of, any successor liability, including the following: (a) any liability or other obligation of the Debtors’ estates or related to the Assets other than as expressly set forth in the Sale Order; or (b) any claims against the Debtors, their estates, or any of their predecessors or affiliates. Except as expressly provided in any Sale Order, the Successful Bidder shall have no liability whatsoever with respect to the Debtors’ estates’ (or their predecessors’ or affiliates’) respective businesses or operations or any of the Debtors’ estates’ (or their predecessors’ or affiliates’) obligations (as described below, “Successor or Transferee Liability”) based, in whole or part, directly or indirectly, on any theory of successor or vicarious liabilities of any kind or character, including, but not limited to, any theory of antitrust, environmental, successor or transferee liability, labor law, joint employer, de facto merger or substantial continuity, whether known or unknown as of the closing date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the closing date, including, but not limited to, liabilities under any collective bargaining agreement or on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of any of the Assets prior to the closing of the Sale.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the Motion, including the sale of the Offered Assets to the Successful Bidder (the “Sale Hearing”) before the Honorable Laurie Selber Silverstein, United States Bankruptcy Judge, United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom 2, on **October 11, 2016, at 9:00 a.m.** (prevailing Eastern Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing. Objections to the Sale shall be filed with the Bankruptcy Court and served **so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on October 6, 2016**, by: (i) Debtors’ counsel: Keller & Benvenuti LLP, Attn: Tobias S. Keller, Esq. and Jane Kim, Esq., 650 California Street, Suite 1900, San Francisco, CA 93108, tkeller@kellerbenvenuti.com, jkim@kellerbenvenuti.com; (ii) Debtors’ counsel: Pachulski Stang Ziehl & Jones LLP, Attn: Laura Davis Jones, Esq., 919 North Market Street, 17th Floor, Wilmington, DE 19801, ljones@pszjlaw.com; (iii) counsel to Buyer: Kirkland & Ellis LLP, Attn: Gregory F. Pesce, 300 North LaSalle, Chicago, Illinois 60601, gregory.pesce@kirkland.com; and Klehr Harrison Harvey Branzburg LLP, Attn. Domenic E. Pacitti, 919 North Market Street, Suite 1000, Wilmington, DE 19801, dpacitti@klehr.com; (iv) counsel to DIP Lender: Olshan Frome Wolosky LLP, Attn: Adam H. Friedman, Esq. and Jonathan H. Deblinger, Esq., 1325 Avenue of the Americas, New York, New York 10019, afriedman@olshanlaw.com, jdeblinger@olshanlaw.com, (v) 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 (vi) counsel to any Official Committee (collectively, the “Objection Notice Parties”).

PLEASE TAKE FURTHER NOTICE THAT ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE FOREGOING

PARAGRAPH SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO SUCH SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE SELLING DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE ASSET PURCHASE AGREEMENT.

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion and Bidding Procedures, subject to Court approval. The Debtors encourage parties in interest to review such documents in their entirety. The orders entered by the Court with respect to the Motion and Bidding Procedures shall control in the event of any conflict. Any party that has not received a copy of the Motion and Bidding Procedures that wishes to obtain a copy of the Motion or the Bidding Procedures, including all exhibits thereto, may make such a request in writing to Keller & Benvenuti LLP, Attn: Jane Kim, Esq., 650 California Street, Suite 1900, San Francisco, CA 93108, or by e-mailing jkim@kellerbenvenuti.com.

Dated: September [], 2016
Wilmington, Delaware

PACHULSKI STANG ZIEHL & JONES LLP

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-and-

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Jane Kim (admitted *pro hac vice*)
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*Proposed Attorneys for Debtors
and Debtors-in-Possession*

Exhibit 3

(Cure Notice)

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

In re:

DELIVERY AGENT, INC., et al.,¹

Debtors.

Chapter 11

Case No. 16-_____ (___)

Jointly Administered

**NOTICE TO COUNTERPARTIES TO EXECUTORY
CONTRACTS AND UNEXPIRED LEASES OF THE
DEBTORS THAT MAY BE ASSUMED AND ASSIGNED**

PLEASE TAKE NOTICE that on September [], 2016, the above-captioned affiliated debtors and debtors in possession (collectively, “Delivery Agent” or the “Debtors”), filed the *Debtors’ Motion for Orders (I)(A) Authorizing Debtors’ Entry into the Asset Sale Agreement with respect to the Sale of the Clean Fun Business and Related Assets, (B) Authorizing and Approving the Bidding Procedures, (C) Approving Procedures Related to the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases, (D) Authorizing and Approving a Break-Up Fee, and (E) Approving the Notice Procedures; (II) 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 (III Granting Related Relief* (the “Motion”).²

PLEASE TAKE FURTHER NOTICE that the Motion seeks approval of certain bidding procedures (the “Bidding Procedures”), approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of substantially all of the assets (the “Assets”) of the Selling 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 “Assumed 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

¹ The Debtors in these chapter 11 cases and the last four digits of each Debtor’s U.S. tax identification number are as follows: Delivery Agent, Inc. (8744), Musictoday, LLC (7995), Clean Fun Promotional Marketing, Inc. (6635), and Shop the Shows, LLC (n/a). The notice address for all of the Debtors is: 300 California Street, 3rd Floor, San Francisco, California 94104.

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

website of the Debtors' claims and noticing agent, at [<http://dm.epiq11.com/Site/Search>]. Any counterparty to a Assumed Contract that wishes to receive such notice by email or fax, must provide their email address or fax number to Keller & Benvenutti LLP, Attn: Jane Kim, Esq., by e-mailing jkim@kellerbenvenutti.com before the Auction.

PLEASE TAKE FURTHER NOTICE that an evidentiary hearing (the “Sale Hearing”) to approve the Motion, including the Sale, and authorize the assumption and assignment of the Assumed Contracts will be held on **October 11, 2016, at 9:00 a.m.** (prevailing Eastern Time), before the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, Delaware 19801, 6th Floor, Courtroom 2. 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 Assumed Contract(s) are described on Exhibit A attached to this Notice. The amount shown on Exhibit A hereto as the “Cure Amount” is the amount, if any, which the Debtors assert is owed to cure any defaults existing under the Assumed Contract.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assumed Contract(s) on Exhibit A to which you are a party, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 N. Market Street, Wilmington, Delaware 19801, an objection on or before **October 6, 2016, at 4:00 p.m. (prevailing Eastern Time)**. Any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an objection to the Cure Amount contained in this Notice, you will receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set forth herein, if any. Any counterparty to a Assumed Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached Exhibit A.

PLEASE TAKE FURTHER NOTICE that if you have any other objection to the Debtors' assumption and assignment of the Assumed Contract (including an objection based on adequate assurance of future performance by the Stalking Horse Purchaser³ under the Assumed Contract) to which you may be a party, you also must file that objection in writing no later than **October 6, 2016, at 4:00 p.m. (prevailing Eastern Time)** provided, however, that if any Successful Bidder is not the Stalking Horse Purchaser, any counterparty to a Assumed Contract may raise an objection to the assumption and assignment of the Assumed Contract solely with respect to such Successful Bidder's ability to provide adequate assurance of future performance under the Assumed Contract at the Sale Hearing, or any time before the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that any objection you may file must be served so as to be received by the following parties by the applicable objection deadline date and time: (i) Debtors' counsel: Keller & Benvenutti LLP, Attn: Tobias S. Keller, Esq. and Jane Kim, Esq.,

³ The Stalking Horse Purchaser is HALO Branded Solutions, Inc.

650 California Street, Suite 1900, San Francisco, CA 93108, tkeller@kellerbenvenuti.com, jkim@kellerbenvenuti.com; (ii) Debtors' counsel: Pachulski Stang Ziehl & Jones LLP, Attn: Laura Davis Jones, Esq., 919 North Market Street, 17th Floor, Wilmington, DE 19801, ljones@pszjlaw.com; (iii) counsel to Buyer: Kirkland & Ellis LLP, Attn: Gregory F. Pesce, 300 North LaSalle, Chicago, Illinois 60601, gregory.pesce@kirkland.com; and Klehr Harrison Harvey Branzburg LLP, Attn. Domenic E. Pacitti, 919 North Market Street, Suite 1000, Wilmington, DE 19801, dpacitti@klehr.com; (iv) counsel to DIP Lender: Olshan Frome Wolosky LLP, Attn: Adam H. Friedman, Esq. and Jonathan H. Deblinger, Esq., 1325 Avenue of the Americas, New York, New York 10019, afriedman@olshanlaw.com, jdeblinger@olshanlaw.com, (v) 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 (vi) counsel to any Official Committee.

PLEASE TAKE FURTHER NOTICE that the Successful Bidder(s) shall be responsible for paying the Cure Amount of any Assumed 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 Assumed Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assumed Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, in the event that the Debtors and the counterparty cannot resolve an Assumption Objection, and the Court does not otherwise make a determination at the Sale Hearing regarding an Assumption Objection related to a Cure Amount, such Assumed Contract may not be assumed and assigned until after the Court has made its determination as to Cure Amount.

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 Debtors and their estates shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assumed Contracts.

PLEASE TAKE FURTHER NOTICE that nothing contained herein shall obligate the Debtors or the Successful Bidder(s) to assume any Assumed Contracts or to pay any Cure Amount.⁴

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

ANY COUNTERPARTY TO ANY ASSUMED CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSUMED CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

⁴ "Assumed Contracts" are those contracts and leases that the Debtors believe may be assumed and assigned as part of the orderly transfer of the Assets; however, the Successful Bidder may choose to exclude certain of the Debtors' contracts or leases from the list of Assumed Contracts as part of their Qualifying Bid or until Closing, causing such Contracts and Leases not to be assumed by the Debtors.

Dated: September [], 2016
Wilmington, Delaware

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-and-

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