

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

In re:

FPMI SOLUTIONS, INC.

Debtor

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Case No: 16-12142 REM
(Chapter 11)

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DEBTOR'S EXPEDITED MOTION FOR AN ORDER (I) APPROVING ASSET PURCHASE AGREEMENT, (II) AUTHORIZING TRANSFER OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS OUTSIDE THE ORDINARY COURSE OF BUSINESS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (III) AUTHORIZING ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS PURSUANT TO THE ASSIGNMENT AND ASSUMPTION AGREEMENT WITH NOVATION, AND (IV) GRANTING RELATED RELIEF

FPMI Solutions, Inc., a Delaware corporation, the debtor and debtor in possession herein (the "Debtor" or "FPMI"), by counsel, files this Expedited Motion for an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Transfer of Substantially All of the Debtor's Assets Outside the Ordinary Course of Business Free and Clear of Liens, Claims, Encumbrances, and Interests, (III) Authorizing Assignment of Certain Executory Contracts Pursuant to the Assignment and Assumption Agreement with Novation, and (IV) Granting Related Relief (this "Motion"), and in support thereof, states as follows:

Jurisdiction and Venue

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157.

2. The relief sought by this Motion is based upon §§ 105, 363, and 365 of Title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code"), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rules

2002-1 and 6004-2 of the Local Rules of the United States Bankruptcy Court for the Eastern District of Virginia (the “Local Rules”).

Background Relevant to the Relief Requested

3. On June 20, 2016 (the “Petition Date”), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code. The Debtor continues in possession of its property and manages its financial affairs as a debtor in possession pursuant to §§ 1107 and 1108 of the Bankruptcy Code.

4. The Debtor is a government contractor that operates as a business partner to organizations. The Debtor’s federal solutions include human capital management, human capital outsourcing, and learning services. Its global/commercial solutions include strategic HR consulting solutions, recruitment process outsourcing & executive search, temporary service providers, shared services, and learning services.

5. The Debtor has actively marketed the assets of the company since February, 2016. The Debtor previously placed the assets and liabilities of the company to auction in order to receive the highest and best offer for the company, yet received only one bid. In connection with that single bid, the Debtor was still unable to reach a satisfactory agreement in the best interests of the Debtor, the Debtor’s creditors, and the Debtor’s estate, to sell substantially all of the assets of the company and assign substantially all of the contracts with customers.

6. The Debtor continued to market the assets and customer contracts of the business and has since engaged a new potential purchaser. The Debtor has negotiated an asset purchase agreement (the “Agreement”) with Apprio, Inc. (the “Purchaser”).

7. The Debtor has determined that it is in the best interests of the Debtor, its creditors, and its bankruptcy estate as a whole to sell substantially all of its assets (the “Assets”) to the Purchaser and to assist in the transfer of the Debtor’s customer contracts to the Purchaser in exchange for, principally, the assumption of 100% of the Debtor’s accrued payroll liability for identified employees for both of the two-week periods ending on May 20, 2016, and June 3, 2016, which should have been paid by the Debtor on June 3, 2016, and June 17, 2016,

respectively, and as further described in the letter of intent attached hereto as **Exhibit A** (the “Agreement”).

8. The Debtor as marketed the Assets and Contracts to potential buyers.

9. At the hearing on August 16, 2016, the court approved Debtor’s Motion to Approve Bid Procedures Order. Pursuant to those procedures, the Debtor invited any interested bidders to submit a higher or better bid than the agreement presented therein. No higher bids were submitted.

The Asset Purchase Agreement

10. Accordingly, the Debtor has negotiated the Agreement with the Purchaser for (i) the option to seek assignment and novation of identified contracts (the “Contracts”), (ii) the transfer of all of its assets related to the conduct of Debtor’s government contracting business in the United States, including all contracts, intellectual property, and equipment (but not to include furniture, fixtures, accrued government account receivables or FPMI’s interest in FPMI Services Mexico, S.A. de C.V. and FPMI International Mexico, S.A. de C.V.) (collectively the “Assets” or “Purchased Assets”), and (iii) the transfer of identified employees, which foregoing (i) through (iii) are in exchange for a payment with represents certain identified liabilities, which represent 100% of certain accrued and unpaid pre-bankruptcy payroll obligations of the Debtor (the foregoing is referred to as the “Sale” or “Transaction”). The Agreement in the form of a Letter of Intent attached hereto as **Exhibit A**, is incorporated herein by reference, and is subject to Bankruptcy Court approval of higher and better bids. The Agreement’s terms and conditions may be set forth in a more detailed asset purchase agreement to be executed by the parties.

Principal Terms of the Agreement

11. The principal terms and conditions of the Agreement are summarized below. This summary does not purport to be complete and is qualified in its entirety by reference to the full text of the Agreement in Exhibit A attached to this Motion. In the event of any inconsistency, the terms of the Agreement shall control.

Purchased Assets: At the Closing, and upon the terms and conditions of the Agreement, Debtor shall transfer, assign, convey and deliver to Purchaser free and clear of all liens, claims and interests, other than the Assumed Liabilities (as defined in the Agreement), and Purchaser shall assume from Debtor, all of Debtor's right, title and interest of every kind and nature owned by Debtor in all of its assets related to the conduct of Debtor's government contracting business in the United States, including all contracts, intellectual property, and equipment, but not to include furniture and fixtures (the "Assets").

Contracts: The Debtor agrees to provide the Purchaser with an opportunity to conduct detailed discussions with each of the Debtor's customers, which are primarily contracts with government clients and related support contracts. Where necessary, the Debtor and Purchaser acknowledge that federal government approval of novation will be required separately and, where desired by both parties, will work to obtain full novation of each contract after approval of this Motion by the Court. Purchaser has the option, but not the obligation, to seek assignment and novation of the Contracts.

Active Contracts/PO/Orders		
Agency	Prime Contract ID	Customer P/O ID
Architect of the Capitol		AOC15G1124
Bureau of Prisons		DJBP0700COBOR7K10006
Commodity Future Trading	CFHRB-13-BP-0093	CFODT-14-DO-0218
Commodity Future Trading	CFHRB-13-BP-0093	CFODT-14-DO-0187
Commodity Future Trading	CFHRB-13-BP-0093	CFHRB-14-DO-0195
Commodity Future Trading	CFHRB-13-BP-0093	CFHRB-14-DO-0171
Commodity Future Trading		CFOM-12-DO-0050
Dept of Homeland Security	HSCEMS-15-A-00001	HSCEMS-15-F-00005
Dept of Homeland Security	HSCEMS-15-A-00001	HSCEMS-16-F-00003
Dept. of Justice		DJJ-14F-ENR01-0160
Dept. of Justice		6-TAX-P-56601
Dept. of Justice		15F-UST-00330
Dept. of Justice		DJJ-15F-EIR01-0101
DHHS	HHSP233201300050B	HHSP2337005
DHHS	HHSP233201300050B	HHSP2337010
DHHS	HHSP233201300050B	HHSP2337002
DHHS	HHSP233201300050B	HHSP2337003
DHHS	HHSP233201300050B	HHSP2337004
DHHS	HHSP233201300050B	HHSP2337006

DHHS	HHSP233201300050B	HHSP23337010
DHHS	HHSP233201300050B	HHSP23337007
Dougherty & Assoc Inc DAI		VA HRAcademy 2014-06
Federal Communications Co	BPA: FCC15-A-0017	FCC15J0066 CLIN 1
Federal Communications Co	BPA: FCC15-A-0017	FCC15J0066 CLIN 2
Federal Communications Co	FCC15-G-0109	HRM150002
Federal Highway Admin		DTFH6114A00002/ORD#2
Federal Highway Admin		DTFH611400002
Federal Highway Admin		DTFH6114A00002/Ord#3
Federal Retirement Thrift		TIB-2015-A-0008
Federal Retirement Thrift		TIB-2011-A-0001
Federal Trade Commission		FTC-14-H-4136
Franklin Maxwell (Sub)		FPMI TM-HQ-16-C-0021
Kelly, Anderson, & Assoc (Sub)		KAA 2/26/16 Subcontract
Marine Corps		Credit Card
Marine Corps		Credit Card
National Inst of Health	HHSN26320110060B	HHSN26300004 TO 42
National Inst of Health	HHSN26320110060B	HHSN26300005 TO 43
Natl Science Found		VFY16-10
RAVENS GROUP	SC14009-09	TRG-VA119A14D0025
RAVENS GROUP	SC14009-18	TRG-VA119A14D0025
RiVidium Incorporated (Sub)		VA256-15-Q-0938-001
US Attorneys Office		DJJ-14F-USA16-0365
US Department of Navy		Credit Card

US Env. Protection Agency	BPA: EP-BPA-15C-0004	EP-B16C-00016
US Env. Protection Agency	BPA: EP-BPA-15C-0004	EP-B16C-00023
US Env. Protection Agency	BPA: EP-BPA-15C-0004	EP-B16C-00024
US Env. Protection Agency	BPA: EP-BPA-15C-0004	EP-B16C-00025
US Govt Printing Office		3024950
US Nuclear Regulatory Com		NRC-HQ-84-15-T-0001
USDOL	DOLQ119632084	DOL-OPS-16-U-00077
USDOL	DOLQ119632084	DOL-OPS-16-U-00011
USDOL	DOLQ119632084	DOL-OPS-16-U-00059
USDOL		DOL-DAL-16-F-00002
USDOL		Credit Card
USDOL	DOLQ119632084	DOL-OPS-16-U-00046
USDOL	DOLQ119632084	DOL-OPS-15-U-00122
USDOL	DOLQ119632084	DOL-OPS-16-U-00093
USDOL	DOLQ119632084	DOL-OPS-16-U-00080
Active Blanket Purchase Agreements		
Agency	Prime Contract ID	
US Department of Navy	BPA#N00189-15-A-0031	
Commodity Future Trading	CFHRB-13-BP-0093	
Dept of Homeland Security (ICE)	HSCEMS-15-A-00001	
Federal Retirement Thrift	TIB-2015-A-0008	
DHHS	HHSP233201300050B	
National Inst of Health	HHSN26320110060B	
USDOL	DOLQ119632084	
Federal Highway Admin	DTFH6114A00002	
US Env. Protection Agency	BPA: EP-BPA-15C-0004	
Federal Communications Co	BPA: FCC15-A-0017	

Other Contract Vehicles awarded to FPMI			
Agency	End Date	Prime Contract ID	
General Services Administration (GSA) - Schedule 738X		GS-15F-0070K	
General Services Administration (GSA) - FSC Group 874		GS-23F-8009H	
General Services Administration (GSA) - IT Professional SVCS		GS-35F-0568J	
Human Capital and Training Solutions (HCaTS)		GS02Q16DCR0015	
Contract Description	Contract Name		
Royalty Agreement with John Grobe	That certain Publication Agreement, dated December 31, 2012, by and between John Grobe and FPMI Solutions, Inc. and any related amendments, modifications, exhibits, schedules, or annexes thereto.		
Deltek Annual Support and Maintenance Plan	That certain Deltek Multiyear Support Addendum, dated on or about March 30, 2015, by and between Deltek, Inc. and FPMI Solutions, Inc. and related Deltek License Agreement and any related amendments, modifications, exhibits, schedules, or annexes thereto.		
Infotek Consulting Deltek Hosting SAAS Agreement	That certain Software Subscription Agreement, dated March 25, 2015, by and between Infotek Consulting, LLC and FPMI Solutions, Inc. and any related amendments, modifications, exhibits, schedules, or annexes thereto.		

Liability Payments:

The Agreement provides for the Purchaser to make two payments (each a "Liability Payment") which represent accrued payroll and payroll taxes relating to specifically identified employees of Debtor (such list to be provided in a negotiated asset purchase agreement) and relating to both of the two-week periods ending on May 20, 2016, and June 3, 2016, which should have been paid by the Debtor on June 3, 2016, and June 17, 2016, (both of the foregoing being referred to as the "Back-Pay Liability"), and as further described in the Agreement. An amount equal to 100% of such Back-Pay Liability will be paid into an escrow account at closing. An amount equal to 50% of such Back-Pay Liability will be paid by Debtor to Transferred Employees promptly after Closing. An amount representing the remaining 50% of such Back-Pay Liability will be paid by Debtor to transferred employees on December 30, 2016 provided such Transferred Employees remain employed by Purchaser. Liability Payments shall only be those specifically identified liabilities. Liability Payments specifically exclude paid-time-off, vacation, or other similar employee-related liability,

and specifically excludes penalties or fees for late-paid payroll. Stipulations of the Liability Payments to be further defined in the negotiated asset purchase agreement.

Purchase Price: Purchaser agrees to pay to the Debtor, and the Debtor agrees to accept payment of an aggregate purchase price of One Hundred Dollars (\$100) (the "Purchase Price").

Closing date: Subject to the terms and conditions of the Agreement, the "Closing Date" shall be on or before September 30, 2016.

The Court Should Approve the Agreement

12. Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), and consistent with Bankruptcy Code § 363(m), the Debtor requests that the Order not be stayed and that it shall be effective and enforceable immediately upon entry. Time is of the essence in closing the transactions referenced herein or contemplated hereby, and the Debtor and the Purchaser intend to close the Sale on or prior to September 30, 2016.

Authority for Relief Requested

A. The Asset Purchase Agreement Should be Approved

13. "[§363] permits a trustee to maximize the recovery from an asset without being unduly entangled at an early stage of the proceedings in controversies concerning the existence, validity and priority of liens and other interests in the property sought to be sold." *In re Takeout Taxi Holdings, Inc.*, 307 B.R. 525, 528 (Bankr. E.D. Va. 2004). "[§363] allows a trustee to quickly cut through the potential morass of such controversies, promptly sell the property for the best price available and resolve those controversies at a later date." *Id.* Pursuant to §363(b)(1) of the Bankruptcy Code, after notice and a hearing, a debtor-in-possession may use, sell, or lease property of the estate other than in the ordinary course of business. "This Court follows the "sound business purpose" test when examining § 363(b) sales." *In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997) (citing *In re WBQ Partnership*, 189 B.R. 97, 102 (Bankr.E.D.Va.1995)). The test consists of four elements. A trustee or debtor-in-possession must prove that: (1) a sound business reason or emergency justifies a pre-confirmation sale; (2) adequate and reasonable notice of the sale was provided to interested parties; (3) the sale has

been proposed in good faith; and (4) the purchase price is fair and reasonable. *In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997)

i. Sound Business Reason or Emergency Justifies a Pre-Confirmation Sale

14. “[The sound business reason or emergency] element is similar to many states’ ‘business judgment rule,’ where great deference is given to a business in determining its own best interests.” *In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 836 (Bankr. E.D. Va. 1997). In *In re W.A. Mallory Co., Inc.*, the debtor asserted that it was “unable to service its mortgage debt ... [and] pay taxes as they became due” and that a §363 sale was “necessary to preserve the assets of the estate.” *Id.* at 837. In that case, the court “defer[ed] to the debtor's undisputed assertions” and found “that the debtor present[ed] a sound business reason for selling the four properties, which comprises substantially all of its assets.” *Id.* Similarly, where the debtor has established that a “sale is necessary to prevent the value of its assets from deteriorating as a result of its financial problems” and the sale would relieve the debtor’s estate of additional costs and expenses, thereby benefitting creditors, a court will find that the debtor has “presented a sound business reason for selling its property before plan confirmation, and accordingly, the debtor has satisfied the first element of the sound business purpose test.” *In re WBQ P'ship*, 189 B.R. 97, 103 (Bankr. E.D. Va. 1995).

15. Here, the Debtor’s prior financial condition has already caused it to miss pre-bankruptcy payroll obligations. The Purchaser intends to resolve the issues which caused the prior agreement to deteriorate by making a payment which will satisfy the majority of employee payroll obligations. Upon approval of the Sale, the Purchaser will hire the Transferred Employees and assist in promptly paying certain of the Debtor’s pre-bankruptcy payroll obligations. Without the Sale, Debtor will continue to incur payroll obligations and expenses which will only exacerbate the already outstanding liabilities. The Purchaser’s payment in reference to certain pre-bankruptcy payroll obligations of the Debtor, and offer of steady employment to employees will benefit the Transferred Employees. Thus, the Sale will provide the best possible outcome for Debtor’s creditors and the Debtor’s estate.

16. Further, the Debtor believes that unless this Sale is consummated through the process described herein, the Assets will continue to lose value, and become less marketable. Any piecemeal liquidation approach to selling the assets will significantly diminish the value to the Debtor and its estate. Accordingly, the Debtor believes that the Sale is the best way to maximize the value of the Purchased Assets and certain of the Debtor's pre-bankruptcy payroll liabilities.

17. Based on the foregoing, the Debtor submits that the Sale is in the best interest of the Debtor, its estate and creditors, and is based upon sound, reasoned and informed business judgment warranting this Court's approval. *See In re Naron & Wagner, Chartered*, 88 B.R. 85, 87 (Bankr. D. Md. 1988); *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2 Cir.1983); *In re Gulf States Steel, Inc. of Alabama*, 285 B.R. 497, 503 (Bankr. N.D. Ala. 2002).

18. Because Debtor has established that the Sale will preserve the assets of the estate for the highest return for all creditors and not just Western Alliance, as successor in interest to Bridge Bank, Debtor has presented a sound business reason for selling its property under §363.

ii. Adequate and Reasonable Notice of the Sale Was Provided to Interested Parties.

19. "For our purposes, 'notice is sufficient if it includes the terms and conditions of the sale, if it states the time for filing objections, and if the estate is selling real estate, it generally describes the property.'" *In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 837 (Bankr. E.D. Va. 1997) (citing *In re WBQ Partnership*, 189 B.R. at 103).

20. Debtor provided notice of the Bid Procedures to its twenty largest creditors on August 5, 2016. The Debtor also provided notice of the prior potential sale on August 17, 2016 to every interested parties. These filings provided notice to every party in interests of a potential sale, and provided all parties an opportunity to bid on the Assets. Given that every party interested in the Debtor's estate has already received notice of the first potential sale, and the Debtor has received authority from the Court to limit the service of this Motion to (i) the Office of the United States Trustee, (ii) Western Alliance, (iii) Robert Coulter, Assistant United States Attorney, (iv) the parties to the contracts, (v) the list of twenty largest unsecured creditors and to Debtor's creditors holding claims over \$7,000, and (vi) all parties that have requested service of

pleadings pursuant to Bankruptcy Rule 2002. By this service, Debtor will again provide notice for this proposed sale, and provide notice of its intentions.

iii. The Sale Terms Were Negotiated in Good Faith and the Purchase Price is Fair and Reasonable

21. “While not entirely similar, these two criteria [(whether the sales have been proposed in good faith and whether the purchase prices are fair and reasonable)] work interdependently.” *In re W.A. Mallory Co., Inc.*, 214 B.R. 834, 837 (Bankr. E.D. Va. 1997). “Good faith requires the Court to scrutinize the sales to insure that they are arm's length transactions and absolutely fair under the circumstances.” *Id.* “This analysis complements the last part of the business purpose test because a negotiation conducted at arm's length helps to ensure that the agreed prices are ultimately fair and reasonable.” *Id.* “A negotiation conducted at arm's length helps to ensure that the agreed price ultimately will be fair and reasonable.” *In re WBQ P'ship*, 189 B.R. 97, 103 (Bankr. E.D. Va. 1995).

22. Courts have approved the proposed sale of assets by comparing the purchase price to the appraised value. See *In re WBQ P'ship*, 189 B.R. 97, 104 (Bankr. E.D. Va. 1995) (internal citations omitted) (“Relying on these numbers, we observe that the proposed price of \$515,000 constitutes 78% of the assets' appraised going-concern value and 100% of their appraised “as is” market value. Under these circumstances, we conclude that the proposed price is fair and reasonable...”); See also *In re Tamojira, Inc.*, 212 B.R. 824, 826 (Bankr. E.D. Va. 1997) (citing 4th Circuit case law where “for value” is determined to be the fair market value). Further, courts are more willing to approve a sale at public auction. See *In re WBQ P'ship*, 189 B.R. 97, 104 (Bankr. E.D. Va. 1995) (“By and large, we agree that a public auction can serve the interests of creditors more than a private deal reached between a Chapter 11 debtor and a prospective buyer.”)

23. Debtor submits, based on the exercise of its business judgment, that the terms of the Sale are fair and reasonable. Sale of the Assets as a “going concern” pursuant to Section 363 of the Bankruptcy Code and approval of the assignment and assumption agreement with novation will return a greater benefit to the Debtor’s estate and its creditors than any of the

alternatives. The proposed prompt Sale under Section 363 allows the Debtor to receive consideration, in the form of a payment of liabilities related to pre-petition wages for Transferred Employees, and further provides for an orderly transition of Debtor's workforce while also ensuring such workforce is compensated, thereby affording the majority of Debtor's creditors (its employees) with the best possible outcome. Thus, approval of the Sale provides the Debtors with the ability to maximize the value of the Assets through an orderly court-monitored sale process and minimizes the Debtor's need to incur further additional debt and administrative expenses by continuing to operate the business at a loss.

24. The Debtor submits that the Agreement is the product of good faith, arm's-length negotiations between the Debtor and the Purchaser. The Purchaser is not affiliated with the Debtor or any associated entity of the Debtor. All negotiations were undertaken in good faith and in compliance with the Bankruptcy Code. Accordingly, the Debtor requests a finding that the transaction contemplated by the Agreement is (a) subject to the protections afforded to "good faith" purchasers under Section 363(m) of the Bankruptcy Code, and (b) not subject to avoidance under Section 363(n) of the Bankruptcy Code.

25. Given Debtor's circumstances, the terms of the Agreement and the Purchase Price are fair and reasonable.

B. The Sale Should be Free and Clear of All Liens, Claims, Encumbrances and Interests

26. Pursuant to Section 363(f) of the Bankruptcy Code, the debtor-in-possession may sell property free and clear of any interest in such property of an entity other than the estate if (1) permitted under applicable non-bankruptcy law, (2) the party asserting such interest consents, (3) the interest is a lien and the purchase price of the property is greater than the aggregate amount of all liens on the property, (4) the interest is subject of a bona fide dispute, or (5) the party asserting the interest could be compelled, in a legal or equitable proceeding, to accept a money satisfaction for such interest. 11 U.S.C. §363(f). §363(f) of the Bankruptcy Code is stated in the disjunctive. See *In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995) (noting that §363(f) is phrased in the disjunctive such that only one of the enumerated conditions must be

met for the court to approve the proposed sale). Thus, it is only necessary for the Debtor to satisfy one of the five conditions of §363(f).

27. Virginia Bankruptcy Courts have interpreted “that ‘value’ should be defined as the secured value, not the face amount of liens”. *In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995). “Utilizing an analysis which focuses on §506(a), Courts have, under a number of different circumstances, approved sales where the price is lower than the face amount of liens, but greater than the secured value of the claims.” *In re Collins*, 180 B.R. 447, 450 (Bankr. E.D. Va. 1995). “This court has usually allowed sales of estate property where a lien or interest holder fails to respond to a motion to sell provided that the sale proceeds will be sufficient to pay liens of non-responsive parties.” *In re Silver*, 338 B.R. 277, 280 (Bankr. E.D. Va. 2004).

28. Creditors of the Debtor’s bankruptcy estate shall be paid in accordance with the terms of a yet to be proposed plan of reorganization (or liquidation). Moreover, any lien, claim, encumbrance or interest in the Purchased Assets that exists immediately prior to the Closing of the proposed Sale will attach to the Sale proceeds with the same validity, priority, force and effect as it has at such time. “The commonly accepted method for adequate protecting a secured creditor when a sale is authorized under §363(f) is to order the liens to attach to the proceeds of the sale.” *In re Collins*, 180 B.R. 447, 452 (Bankr. E.D. Va. 1995). Thus, the proposed sale satisfies §363(f) of the Bankruptcy Code.

C. The Court Should Approve the Assignment and Assumption Agreement with Novation of Contracts

29. Under §365(a) of the Bankruptcy Code, “subject to the court’s approval, [a trustee] may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. §365(a). However, “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. §365(b)(1). Further, “[t]he 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. §365(f)(2).

30. “Congress's intent in imposing these conditions on the ability of the debtor to assume the contract was to insure that the contracting parties receive the full benefit of their bargain if they are forced to continue performance.” *In re Ionosphere Clubs, Inc.*, 85 F.3d 992, 999 (2d Cir. 1996) (Internal citations omitted). “The terms ‘adequate assurance’ of future performance are not words of art; the legislative history of the Code shows that they were intended to be given a practical, pragmatic construction.” *In re Evelyn Byrnes, Inc.*, 32 B.R. 825, 828–29 (Bankr. S.D.N.Y. 1983). “As such, its primary focus centers on the assignee's ability to satisfy the financial obligations imposed by the lease.” *Id.* See also *In re United Am., Inc.*, 327 B.R. 776, 786 (Bankr. E.D. Va. 2005) (representation by debtor that it will promptly pay all further invoices upon completion of all of the work is adequate assurance); *In re S. Galeski Optical Co.*, No. 97-34221-S, 1997 WL 33807884, at *3 (Bankr. E.D. Va. Aug. 28, 1997) (adequate assurance has been demonstrated where forfeiture is unlikely and significant business experience by assuming party are established facts); but see *In re Washington Capital Aviation & Leasing*, 156 B.R. 167, 173 (Bankr. E.D. Va. 1993) (“while an absolute guarantee of future performance is not required under § 365(b)(1)(C), more than the debtor's speculative plans are needed”).

31. In the case of the Debtor, to the extent any defaults exist under the Contracts, 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 in accordance with applicable non-bankruptcy law governing the novation of federal government contracts. Purchaser's payment to Debtor of certain of the Debtor's pre-bankruptcy payroll obligations for Transferred Employees evidences its financial stability and commitment to fulfilling obligations of the Contracts. If necessary, Debtor will submit additional facts prior to or at the hearing on the Sale to show the financial credibility or financial stability of Purchaser and its willingness to perform under the Contracts.

32. It is an exercise of Debtor's sound business judgment to assume and assign the Contracts to Purchaser in connection with the Sale. Assumption and assignment of the Contracts will provide those third parties to the contracts with the comfort that they will receive their benefit of the bargain. Debtor submits that such assumption and assignment is in the best interests of Debtor, its estate, and creditors. The Contracts are a valuable aspect of the Debtor's estate, and sold in the aggregate greatly increase the value of the Debtor's estate.

33. Accordingly, the Court should authorize the Debtor to assume and assign the Contracts as set forth herein.

D. No Stay of the Order under Bankruptcy Rules 6004(h) and 6006(d) is Appropriate

34. "An order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004. "An order authorizing the trustee to assign an executory contract or unexpired lease under §365(f) is stayed until the expiration of 14 days after the entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6006

35. The purpose of these rules is "to provide sufficient time for a party to request a stay pending appeal" and "[t]he court may, in its discretion, order that Rule 6004(g) is not applicable so that the property may be used, sold, or leased immediately in accordance with the order entered by the court." See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

36. In dispensing with the stay period, courts generally require a showing of “exigency” or that no objections to the procedure have been filed. *In re PSINet Inc.*, 268 B.R. 358, 379 (Bankr. S.D.N.Y. 2001).

37. In the case at bar, Debtor’s negotiated contract requires closing on or before September 30, 2016. Further, if the Debtor continues to operate, it may continue to be a detriment to the Debtor’s estate. If the Court enters an order on September 27, 2016, and a stay of the Order is applied, the Debtor will continue to incur unnecessary charges and expenses. Further, unless an objection is filed then no parties will seek an appeal.

38. Thus, an order granting the relief requested herein shall dispense with any stay and provide that relief is effective upon entry by the Court.

CONCLUSION

39. The Debtor believes that the proposed Sale is in the best interest of the creditors of the bankruptcy estate.

Certification Pursuant to Local Rule 9013-1(N)

40. The undersigned certifies that he (1) has carefully examined the matter and concluded that there is a true need for an expedited hearing; (2) has not created the emergency through any lack of due diligence; and (3) has made a *bona fide* effort to resolve the matter without hearing.

WHEREFORE, the Debtor, FPMI Solutions, Inc., moves for the entry of an Order substantially in the form attached hereto:

- A. Approving the Agreement;
- B. Authorizing the Sale of the Assets free and clear of all liens, claims, encumbrances, or interests of any party;
- C. Authorizing the Debtor to take any and all actions and to execute any and all documents necessary and appropriate to effectuate and consummate the terms of said Sale of the Assets free and clear of all liens, claims, encumbrances, or interests of the Debtor to the Purchaser;

D. Authorizing the Debtor to assume and assign the Assigned Contracts pursuant to §§363 and 365 of the Bankruptcy Code in accordance with the Assumption and Assignment Agreement with Novation;

E. Directing the Debtor to place the Sales proceeds (after payment of the Bridge Bank secured claim) in its debtor-in-possession accounts for the purpose of satisfying the Debtor's remaining claims in its case;

F. Finding that the Purchaser is a good faith purchaser and is protected by the provisions of §363(m) of the Bankruptcy Code; and

G. Dispensing with the stay, FRBP 6004(b) and 6006(d), and providing relief effective upon entry of the order.

Dated: September 21, 2016

/s/ Paul Sweeney
Paul Sweeney, 33994
Yumkas, Vidmar, Sweeney & Mulrenin, LLC
10211 Wincopin Circle, Suite 500
Columbia, Maryland 21044
(443) 569-5972
psweeney@yvslaw.com

Counsel for Debtor

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of September 2016, notice of filing the Debtor's Expedited Motion for an Order (I) Approving Asset Purchase Agreement, (II) Authorizing the Transfer of Substantially All of the Debtor's Assets Outside the Ordinary Course of Business Free and Clear of Liens, Claims, Encumbrances, and Interests, (III) Authorizing Assignment of Certain Executory Contracts Pursuant to the Assignment and Assumption Agreement with Novation, and (IV) Granting Related Relief was sent electronically to those parties listed on the docket as being entitled to such electronic notices, including the Office of the United States Trustee, Western Alliance, Robert Coulter, Assistant United States Attorney, and all parties that have requested service of pleadings; and a copy of the Motion was mailed first class, postage prepaid to the parties to the contracts, the list of the twenty largest, unsecured creditors, and the Debtor's creditors holding claims over \$7,000, as shown on the attached service list, pursuant to Bankruptcy Rule 2002.¹

/s/ Paul Sweeney
Paul Sweeney

¹ In accordance with Local Rule 5005-1(C)(8)(f), the full list of names will not be attached to the service copies. The parties may reference the full service list attached to this original filing that has been filed with the Court.

Architect of the Capitol
Attn: Stephen T. Ayers, FAIA, LEED AP
2nd & D Streets SW, Room H2-265A
Washington, DC 20515

Aronson LLC
805 King Farm Boulevard
Rockville, MD 20850-6190

Blue Cross Blue Shield
450 Riverchase Parkway East
Birmingham, AL 35298-0001

Bosserman Ctr Conflict Resolut
1100 Camden Avenue
Salisbury, MD 21801-6833

Bureau of Prisons, Local 1406
Attn: Thomas Kane, PhD, Acting Director
320 First Street NW
Washington, DC 20534

CIGNA Life Insurance Company
P. O. Box 8500 K 110
Philadelphia, PA 19178-0110

City of Alexandria, Virginia
P.O. Box 178
Attn: S. Washington
Alexandria, VA 22313-1500

Commodity Futures Trading Commission
Attn: Timothy G. Massad, Chairman
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

DHHS
Attn: Secretary Sylvia Mathews Burwell
200 Independence Avenue, S.W.
Washington, D.C. 20201

DHHS, Local 1216
Leslie Harold Earll
P. O. Box 210004
San Francisco, CA 94121-0004

DHS, ICE Burlington Finance C
Attn: ICE-ERO/DRO-FHQ-MSD
P. O. Box 1620
Williston, VT 05495-1620

DOJ, California Service Center
Kathleen E. Weiss
24000 Avila Road
Laguna Niguel, CA 92677-3401

DOT
Attn: Anthony Foxx, Secretary
1200 New Jersey Avenue, SE
Washington, DC 20590

Deltak Systems, Inc.
P. O. Box 79581
Baltimore, MD 21279-0581

Dentons US LLP
233 S. Wacker Drive, Ste 5900
Chicago, IL 60606-6404

Department of Justice
Exec. Office for US Trustees
441 G Street NW, Suite 6150
Washington, DC 20548-0001

Department of Justice
Attn: Loretta E. Lynch, Attorney General
of the United States
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

Dougherty & Associates, Inc.
(DAI Solutions)
1199 North Fairfax Street, Suite 800
Alexandria, VA 22314

FPMI Solutions Group, Inc.
689 Discovery Dr NW, Suite 300
Huntsville, AL 35806-2829

Federal Trade Commission
Attn: Edith Ramirez, Chairwoman
600 Pennsylvania Avenue NW
Washington, DC 20580

Federal Highway Administration
Attn: Gregory G. Nadeau, Administrator
1200 New Jersey Avenue SE
Washington, DC 20590

Federal Communications Commissions
Attn: Tom Wheeler, Chairman
445 12th Street SW
Washington, DC 20554

Federal Hill Renewal LLC
P. O. Box 23
New Market, MD 21774-0023

Federal Retirement Thrift Investment
Board
Michael Kennedy, Chairman
77 K Street NE, Suite 1000
Washington, DC 20002

Franklin Maxwell Group, LLC
3039 Cedarwood Ln
Falls Church, VA 22042

GSA Modifications LLC
4646 Roundhill Road
Ellicott City, MD 21043-6733

Hart, Victoria
3149 La Mancha Way
Henderson, NV 89014-3683

ITC-DELTACOM/Deltacom 1058
P. O. Box 2252
Birmingham, AL 35246-1058

KAA Federal Solutions
Jenny Lau
1523 New Hampshire Avenue
Washington, DC 20036-1203

Kelly, Anderson & Associates
424 North Washington Street
Alexandria, VA 22314-2312

Mass Mutual
Attn: N 405 DCS David Kern
1295 State Street
Springfield, MA 01111-0001

NEC Financial Services
24189 Network Place
Chicago, IL 60673-1241

NEC Financial Services
250 Pehle Avenue, Suite 309
Saddle Brook, NJ 07663-5832

National Institutes of Health
Attn: Francis Collins, M.D., Ph.D., Director
9000 Rockville Pike
Bethesda, Maryland 20892

National Science Foundation
Attn: Dr. France A. Córdova, Director
4201 Wilson Boulevard
Arlington, Virginia 22230

Pittmon, Jimmi L.
11804 Rodeo Drive
Frisco, TX 75035-2275

Randolph S. Chase, Jr.
3712 Chancelor Drive
Upper Marlboro, MD 20772-8246

RiVidium Incorporated
7615 Coppermine Drive
Manassas, VA 20109

Smith, Monique E.
6056 Chicory Place, Suite 100
Alexandria, VA 22310-1795

Sygnetics Inc.
2514 S. Rochester Road
Rochester Hills, MI 48307-3817

The Ravens Group, Inc.
4640 Forbes Boulevard, Suite 300
Lanham, MD 20706

United States Attorney's Office
555 4th Street, NW
Washington, DC 20530

US Environmental Protection Agency
Attn: Gina McCarthy, Administrator
1200 Pennsylvania Avenue NW
Washington, DC 20460

US Government Printing Office
Attn: Davita Vance-Cooks, Director
732 North Capitol Street NW
Washington, DC 20401-0001

United States Nuclear Regulatory
Commission
Attn: Stephen G. Burns, Chairman
Washington, DC 20555-0001

United States Department of Agriculture
Attn: Secretary of Agriculture Tom Vilsack
1400 Independence Ave., S.W.
Washington, DC 20250

U.S. Immigration & Customs Enforcement
Attn: Director Sarah R. Saldaña
500 12th St., SW
Washington, D.C. 20536

USDOL, Law Enforcement Training
Attn: Secretary of Labor Thomas E. Perez
Frances Perkins Building
200 Constitution Avenue, NW
Washington, DC 20210

U.S. Department of Labor
Attn: Naomi M. Barry-Pérez, Director
Civil Rights Center
Frances Perkins Building
200 Constitution Ave NW
Washington DC 20210

Vinci, Cheryl
26187 Tuscany Drive
Millsboro, DE 19966-1567

West, Syrena J.
176 Bluegreen Way
Rockwood, TN 37854-5557

Wiggins, Lea F.
1711 Benjamin Drive
Murfreesboro, TN 37128-8544

The following parties received electronic notice of the filing:

Christopher Barrett Bowman, Esquire
(cbowman@bregmanlaw.com)
Counsel for Canal Center TT, LLC
Bregman Berbert Schwartz Gilday LLC
7315 Wisconsin Avenue, Suite 800W
Bethesda, Maryland 20814

Robert K. Coulter, Esquire
(robert.coulter@usdoj.gov)
Office of the U.S. Attorney
2100 Jamieson Avenue
Alexandria, Virginia 22314

Jack Frankel, Esquire
(jack.i.frankel@usdoj.gov)
Office of the United States Trustee
115 South Union Street, Room 210
Alexandria, Virginia 22314

Joseph A. Guzinski, Esquire
(joseph.a.guzinski@usdoj.gov)
Office of the United States Trustee
115 South Union Street, Room 210
Alexandria, Virginia 22314

Jerald R. Hess, Esquire
(j.hess@dlapiper.com)
Counsel for Western Alliance Bank
DLA Piper LLP (US)
500 Eighth Street, N.W.
Washington, D.C. 20004

Jennifer Maria Kappel, Esquire
(jennifer.kappel@dlapiper.com)
Counsel for Bridge Bank
DLA Piper, LLP
11911 Freedom Drive, Suite 300
Reston, Virginia 20190

Rebecca L. Saitta, Esquire
(rsaitta@wileyrein.com)
Counsel for MCS Partnership
Wiley Rein LLP
7925 Jones Branch Drive, Suite 6200
McLean, Virginia 22102

Paul Sweeney, Esquire
(psweeney@yvslaw.com)
Counsel for Debtor
Yumkas, Vidmar, Sweeney & Mulrenin
10211 Wincopin Circle, Suite 500
Columbia, Maryland 21044

EXHIBIT A

Confidential

September 21, 2016

R. Mark McLindon
Chief Executive Officer
FPMI Solutions, Inc.
689 Discovery Drive, Suite 300
Huntsville, AL 35806

Re: Proposed Transaction between Apprio, Inc. and FPMI Solutions, Inc.

Dear Mr. McLindon:

The purpose of this letter is to set forth our present mutual understandings and intentions with respect to a proposed transaction (the **“Proposed Transaction”**) pursuant to which Apprio, Inc. (acting through itself and/or through an affiliate) (the **“Purchaser”**) would purchase all of the assets related to the conduct of FPMI Solutions, Inc.’s (the **“Seller”**) government contracting business in the United States, including all contracts, intellectual property and equipment, but not to include furniture and fixtures (collectively, the **“Assets”**), and would agree to pay a sum which represents the amount of certain liabilities of the Seller, as set forth in Section 1 below (the **“Liabilities”**). Except as set forth in paragraphs 10-17, this letter is not intended to and does not constitute a binding agreement among the parties with respect to the Proposed Transaction or otherwise. Any binding agreement with respect to any aspect of the Proposed Transaction (other than as set forth in paragraphs 10-17) would only arise as a result of the negotiation, execution and delivery of a written definitive purchase agreement (and related ancillary agreements and other documents) by and among the Seller and the Purchaser (the **“Purchase Agreement”**).

The following are the principal terms and conditions on which Purchaser is prepared to pursue the Proposed Transaction:

1. **Acquisition of the Assets and Payment of Liabilities.** At the closing of the Proposed Transaction (the **“Closing”**), the Purchaser and/or one of its affiliates would:

- (a) acquire the Assets (free and clear of any liens or encumbrances);
- (b) agree to pay a sum which represents the amount of the Back-Pay Liability according to the following schedule and conditions:
 - (i) At the Closing, the Purchaser would pay in to [the Seller’s attorney’s trust account] (the **“Trust Account”**) a sum equal to fifty percent (50%) of the Back Pay Liability (as defined below) for each of the Seller’s employees who accepts employment with the Purchaser as of the Closing Date (each, an **“Employee”**), with the understanding and agreement of the parties that each such Employee will receive payment

of such fifty percent (50%) of the Back Pay Liability owed to the Employee (less any necessary and appropriate tax and other payroll-related withholdings and deductions, the “**First Back-Pay Tranche**”) out of the Trust Account promptly following the Closing; provided that, if any Employee has previously received payment of the First Back-Pay Tranche from and out of Seller cash receipts held in abeyance by the United States of America (“USA”), then the amount of such Employee’s First Back-Pay Tranche held in the Trust Account may be used for the payment of administrative costs or liabilities of the Seller’s estate in bankruptcy that have been approved or allowed by order of the appropriate Bankruptcy Court; and

(ii) At the Closing, the Purchaser would pay in to the Trust Account an amount equal to fifty percent (50%) of the Back Pay Liability for each Employee, with the understanding and agreement of the parties that each such Employee will receive payment of such fifty percent (50%) of the Back Pay Liability owed to the Employee (less any necessary and appropriate tax and other payroll-related withholdings and deductions, the “**Second Back-Pay Tranche**”) out of the Trust Account on December 30, 2016, provided that the Employee: (i) remains an employee of Purchaser as of December 30, 2016; and (ii) continues to either: (1) perform in the same direct billable role under the same contract as such Employee performed immediately prior to the Closing; or (2) perform the same indirect function for the Purchaser as the Employee performed for the Seller prior to the Closing. Notwithstanding the foregoing, if: (1) any Employee who meets the conditions in the preceding provisions of this Section 1(b)(ii) in order to entitle such Employee to receive the Second Back-Pay Tranche out of the Trust Account; and (2) such Employee has previously received payment of the Second Back-Pay Tranche from and out of Seller cash receipts held in abeyance by the USA, then the the amount of such Employee’s Second Back-Pay Tranche held in the Trust Account may be used for the payment of administrative costs or liabilities of the Seller’s estate in bankruptcy that have been approved or allowed by order of the appropriate Bankruptcy Court. Any amount of the Second Back-Pay Tranche that is not paid out of the Trust Account pursuant to the preceding sentences of this Section 1(b)(ii) shall immediately be paid back to the Purchaser.

“**Back-Pay Liability**” means the amount of accrued payroll and payroll taxes (not including any penalties or fees for late-paid payroll) for the two two-week pay periods ended on May 20, 2016 and June 3, 2016, which should have been paid by the Seller on June 3, 2016 and June 17, 2016, respectively, owed by the Seller to an Employee.

2. **PTO.** The Purchaser agrees that pursuant to the terms of employment with any Employee, if an Employee: (i) remains an employee of Purchaser as of December 31, 2017; and (ii) continues to either: (1) perform in the same direct billable role under the same contract as such Employee performed immediately prior to the Closing; or (2) perform the same indirect function for the Purchaser as the Employee performed for the Seller prior to the Closing, then Purchaser shall grant to such Employee paid-time-off equivalent to one-half of any paid-time-off balance that such Employee had as an employee of Seller immediately prior to Closing that the Employee lost as a result of the Closing. If an Employee: (i) remains an employee of Purchaser as of December 31, 2018; and (ii) continues to either: (1) perform in the same direct billable role under the same contract as such Employee performed immediately prior to the Closing; or (2) perform the same

indirect function for the Purchaser as the Employee performed for the Seller prior to the Closing, then Purchaser shall grant to such Employee paid-time-off equivalent to one-half of any paid-time-off balance that such Employee had as an employee of Seller immediately prior to Closing that the Employee lost as a result of the Closing. The parties hereto agree that any such grant of paid-time-off to an Employee in accordance with this Section 2 shall be (or part of) an independent agreement between the Purchaser and the Employee, and shall not be subject further adjudication or interpretation by the Bankruptcy Court.

3. **No Other Liabilities.** Purchaser shall not accept or assume any other liabilities of Seller, including without limitation, any successor liability for ERISA obligations, 401(k) contributions, environmental liability, products liability, or other prior employment claims, including, and not limited to, paid-time-off, vacation or other similar employee-related liability.

4. **Consideration.** As consideration for the purchase of the Assets and the assumption of the Liabilities, the Purchaser would pay to the Seller an aggregate purchase price (the “**Purchase Price**”) of One Hundred Dollars (\$100).

5. **Stub Payroll.** At Closing, the Seller agrees to pay to each of the Acquired Employees any accrued salary (or other payroll amount) for any final Seller pay period(s) through and including the Closing Date.

6. **Conditions to Closing.** The Purchaser’s obligation to pay the Liabilities would be conditioned upon certain standard conditions to closing, including without limitation: (i) the Purchaser being given an opportunity to conduct detailed discussions with each of the Seller’s customers for the Seller Contracts; and (ii) that the next option periods for each of the Seller’s contracts with the Department of Health and Human Services (including Centers for Medicare and Medicaid Services), the Environmental Protection Agency and the Department Of Labor have been exercised, such that the periods for those contracts have been extended through September 30, 2017, and that those contracts have been funded for the period through September 30, 2017.

7. **Terms of the Purchase Agreement.** The Seller would make comprehensive representations and warranties, customary covenants, and indemnities regarding the Assets and other customary terms and conditions.

8. **Closing.** The Closing is currently expected to take place on or about September 30, 2016 or as promptly as practicable following the execution and delivery of the Purchase Agreement, and would be subject to customary conditions precedent.

9. **Due Diligence.** The Seller understands and acknowledges that the Purchaser has not had an opportunity to complete its examination of the Assets, the Liabilities or the other properties and records of the Seller, and that execution and delivery of the Purchase Agreement and the terms thereof will be subject to such examination.

10. **Conduct of the Company.** In consideration of Purchaser entering into this letter and undertaking to investigate the Assets, the Liabilities and the business of the Seller

and to incur expenses in connection therewith, from the date hereof until the execution and delivery of the Purchase Agreement or such earlier date as negotiations may terminate:

(a) the Seller shall conduct its business only in the normal and ordinary course in substantially the manner it has heretofore been conducted by the Seller;

(b) the Seller shall make available to the Purchaser, its officers, employees, directors, advisors, agents and representatives access to the Seller's facilities and personnel and such information and documents as the Purchaser may reasonably request;

(c) the Seller notify the Purchaser of any material adverse change in the financial or other conditions of either the Seller or its business;

11. **Term of Letter of Intent; Exclusivity.** In the event a Purchase Agreement is not entered into on or prior to September 30, 2016 (the "**Termination Date**"), either the Seller or the Purchaser may terminate the provisions hereof and any further negotiations. Such termination shall not impair or otherwise affect the rights or remedies of the parties for any prior breach of any obligation set forth in paragraphs 10-17 of this letter.

Further, the Seller and the Purchaser each acknowledges and agrees that, until the earlier of the Termination Date, the date the parties enter into a Purchase Agreement, or the date on which the Purchaser advises the Seller in writing that it is terminating all negotiations regarding a Proposed Transaction, neither the Seller nor any of its Representatives (as defined below) will, directly or indirectly:

(i) solicit or encourage the initiation or submission of any expression of interest, inquiry, proposal or offer from any person or entity (other than the Purchaser) relating to an Acquisition Transaction (as defined below);

(ii) participate in any discussions or negotiations or enter into any agreement with, or provide any non-public information to, any person or entity (other than the Purchaser) in connection with a possible Acquisition Transaction; or

(iii) entertain, consider or accept any proposal or offer from any person or entity (other than the Purchaser) relating to a possible Acquisition Transaction.

The Seller shall, and shall cause its Representatives to, immediately discontinue any ongoing discussions or negotiations (other than any ongoing discussions with the Purchaser) relating to a possible Acquisition Transaction, and shall promptly provide the Purchaser with an oral and a written description of any expression of interest, inquiry, proposal or offer relating to a possible Acquisition Transaction that is received by the Seller or any its Representatives from any person or entity (other than the Purchaser) after the date of this letter and on or prior to the Termination Date.

"Representatives" shall mean with respect to any party, such party's officers, directors, employees, including those of its subsidiaries and other affiliates, its attorneys, advisors, accountants, agents and representatives.

“Acquisition Transaction” shall mean any transaction involving: (1) the sale, license, disposition or acquisition of all or a material portion of the business or assets of the Seller or any direct or indirect subsidiary or division of the Seller; (2) the issuance, grant, disposition or acquisition of (A) any capital stock or other equity security of the Seller or , (B) any option, call, warrant or right (whether or not immediately exercisable) to acquire any capital stock or other equity security of the Seller , or (C) any security, instrument or obligation that is or may become convertible into or exchangeable for any capital stock or other equity security of the Seller ; or (3) any merger, consolidation, tender offer, share exchange, reorganization or similar transaction involving the Seller. Notwithstanding the foregoing, it is the intention of the parties that the Seller’s right to divest its 99 % ownership interests in FPMI Services Mexico,S.A. de C.V. and FPMI International Mexico, S.A. de C.V. (collectively FPMI Mexico”) is permitted and the Debtor’s ownership interests in FPMI Mexico are not included in this sale.

12. **Publicity.** The Seller and the Purchaser agree that they will not make any disclosures about the existence or contents of this letter or negotiations relating to the Proposed Transaction or cause to be publicized in any manner whatsoever by way of interviews, responses to questions or inquiries, press releases or otherwise any aspect or proposed aspect of this Proposed Transaction without prior written notice to and written approval of the other parties (such approval not to be unreasonably withheld, delayed or conditioned), except as may otherwise be required by law.

13. **Representations and Warranties.** Each of the parties represents and warrants to the other parties that this letter: (i) has been validly executed and delivered by such party; (ii) has been duly authorized by all corporate or other action of such party necessary for the authorization thereof; (iii) with respect to the matters set forth in paragraphs 10-17 only, constitutes a binding and enforceable obligation of such party, enforceable in accordance with its terms; and (iv) does not violate or interfere with any contract or legal requirement applicable to such party. The Seller represents to the Purchaser that it is under no obligation, either oral or written, that would restrict or inhibit their ability to execute and deliver this letter of intent or to take the actions or to complete the transactions contemplated herein.

14. **Governing Law.** This letter of intent shall be governed by the laws of the District of Columbia.

15. **Fees and Expenses.** The Purchaser, on one hand, and the Seller, on the other hand, shall each bear and pay all costs and expenses (including, without limitation, finder’s or broker’s fees or commissions and fees and expenses of attorneys and consultants) he, she or it incurs in connection with the transactions contemplated by this letter regardless of whether a Purchase Agreement is executed or the Proposed Transaction is consummated.

16. **Miscellaneous.** This letter constitutes the entire agreement of the parties relating to the transactions contemplated by this letter and supersedes all prior contracts or agreements with respect to those matters, whether oral or written (other than that certain agreement dated September 14, 2016 between the Purchaser and the Company related to confidentiality). All notices, requests, or consents provided for or permitted to be given

under this letter must be in writing and, in the case of the Seller, may be given to the addressee of this letter. A party's rights and obligations under this letter are assignable only with the prior written consent of each other party. This letter may be amended only by a written agreement executed by all parties hereto. This letter may be executed by facsimile transmission and in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same agreement. This letter is solely for the benefit of the parties hereto, and shall not be construed to give rise to or create any liabilities or obligation to, or to afford any claim or cause of action to, any other person or entity. This letter shall be superseded in its entirety by the Purchase Agreement upon the approval and execution thereof.

17. Any agreement herein is subject to the Purchase Agreement and is subject to the Bankruptcy Court's entry of an order approving the sale which is final and non-appealable, which order must be in a form acceptable to the Purchaser with provisions, including findings that: the Purchaser is a "good faith purchaser" and not an insider; that the sale is free and clear of any liens, including those in favor of Western Alliance Bank, its successors and assigns, and any liens transferred to the proceeds of sale; and Purchaser is not a successor in interest to the Seller and has no liability for, and is not assuming, any liability for any obligation not expressly stated in the Purchase Agreement.

If the foregoing accurately reflects the discussions between us to date, please indicate your acceptance and agreement below.

Very truly yours,

Apprio, Inc.

By: _____
Name: Darryl Britt
Title: President & CEO

SUBJECT TO COURT APPROVAL
ACKNOWLEDGED AND AGREED:

FPMI Solutions, Inc.

By: _____

Name: Mark McLindon
Title: Chief Executive Officer