

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re : Chapter 11
:
GRIDWAY ENERGY HOLDINGS, INC., *et al.*<sup>1</sup> : Case No. 14-10833 (CSS)
:
Debtors. : Jointly Administered
:
-----x Ref. Docket No.: 664 & 736

**ORDER PURSUANT TO SECTIONS 105(a), 363  
AND 365 OF THE BANKRUPTCY CODE AND BANKRUPTCY RULES 6004 AND  
6006 (I) AUTHORIZING SALE OF THE ASSETS OF ZIPHANY, LLC  
PURSUANT TO ASSET PURCHASE AGREEMENT, FREE AND CLEAR OF  
ALL LIENS, CLAIMS, ENCUMBRANCES AND OTHER INTERESTS; (II)  
APPROVING THE ASSET PURCHASE AGREEMENT, (III) APPROVING  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; (IV)  
PROVIDING FOR THE PAYMENT OF THE SALE PROCEEDS IN  
ACCORDANCE WITH ORDER APPROVING THE GLOBAL  
SETTLEMENT, AND (V) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion"), of Gridway Energy Holdings, Inc. and certain of its affiliated above-captioned debtors and debtors in possession (each a "Debtor" and collectively, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases"), pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2002, 6004, 6006, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Gridway Energy Holdings, Inc. (5072); Glacial Energy Holdings (3292); Glacial Energy, Inc. (1189); Glacial Energy of New York (0776); Glacial Energy of New England, Inc. (1724); Glacial Energy of Maryland, Inc. (7173); Glacial Energy of California, Inc. (1795); Glacial Energy of Illinois, Inc. (1796); Glacial Energy of New Jersey, Inc. (8671); Glacial Energy of Pennsylvania, Inc. (9762); Glacial Energy of Texas (1517); Glacial Energy of Washington DC, Inc. (5548); Glacial Energy of Ohio, Inc. (0103); Glacial Energy of Michigan, Inc. (7110); Glacial Natural Gas, Inc. (0165); Negawatt Business Solutions (6299); Negawatt Business Solutions, Inc. (f/k/a/ Gridway Energy Partners, Inc.) (7086); Ziphany, L.L.C. (7934); and Glacial Energy VI, LLC (1142). The location of the headquarters of Glacial Energy VI, LLC is 5326 Yacht Haven Grande, Box 36, St. Thomas, VI 00802. The location of the headquarters for the remaining Debtors is 24 Massachusetts 6A, Sandwich, MA 02563.

Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), seeking entry of an order, among other things (i) authorizing and approving the sale (the “Ziphany Sale”) of substantially all of the assets of Ziphany, LLC (“Ziphany” or the “Seller”) (to the extent such assets constitute Purchased Assets, the “Ziphany Assets”) to the prevailing bidder (the “Prevailing Bidder” or the “Buyer”), free and clear of all liens, claims, encumbrances and other interests (ii) authorizing and approving the proposed asset purchase agreement (the “APA”), attached hereto as Exhibit 1, (iii) approving the assumption and assignment of certain executory contracts and unexpired leases related thereto, (iv) providing for the payment of sale proceeds in accordance with the order approving the Global Settlement, and (v) granting related relief,<sup>2</sup> and the Debtors having received a Qualifying Bid from JKMV Acq LLC who is the Buyer; and the Debtors having determined that the Buyer’s bid was (and is) the Prevailing Bid (as such term is defined and described in the Motion); and the Declaration of Chip Cummins in Support of the Ziphany Sale [D.I. 736]; and the Court having reviewed the Motion and other related pleadings, including but not limited to all affidavits and declarations and having found and determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion and at the Ziphany Sale Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor:

**IT IS FOUND AND DETERMINED, that:**<sup>3</sup>

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<sup>2</sup> Unless otherwise noted, capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Motion or the APA, as applicable.

<sup>3</sup> The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

**Jurisdiction and Venue**

A. This Court has jurisdiction over the Motion, the APA, the Ziphany Sale, the assumption and assignment of the Assumed Contracts, and all of the other transactions contemplated by the APA pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of these cases and proceedings is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

**Statutory Predicates**

B. The statutory predicates for the relief requested in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9008, and 9014.

**Final Order**

C. This order (the "Order") constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Notwithstanding Bankruptcy Rules 6004(h) and 6006(d), and to any extent necessary under Bankruptcy Rule 9014 and rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, this Court expressly finds that there is no just reason for delay in the implementation of this Order and that waiver of any applicable waiting period is appropriate, and expressly directs entry of judgment as set forth herein.

**Wind-Down of Negawatt Business Solutions, Inc.**

D. On June 19, 2014, the Bankruptcy Court entered the Global Settlement Order [D.I. 381], approving the Global Settlement. Under the Global Settlement, Ziphany and its affiliated Debtor, Negawatt Business Solutions, Inc. ("NBS"), were each required to conduct a sale of all of their assets. On August 6, 2014, subsequent to the entry of the Global Settlement

Order, the parties to the Global Settlement (the "Settlement Parties") entered into a letter agreement (the "Sale Process Letter") under which they agreed that given NBSs' negative cash flow and the nature of its assets, the time and expense associated with a sale of NBSs' assets were not justified. In the Sale Process Letter, the Settlement Parties also agreed that, notwithstanding the terms of the original Global Settlement, NBSs' assets would be wound down by the Debtors rather than sold. The Sale Process Letter constitutes a valid amendment to the Global Settlement and is binding on all parties to the Global Settlement.

**Adequate Marketing Efforts in Connection with the Ziphany Assets**

E. As demonstrated by (i) the testimony and other evidence proffered or introduced at the Ziphany Sale Hearing and (ii) the representations of counsel made on the record at the Ziphany Sale Hearing, the Debtors have thoroughly and fairly marketed the Ziphany Assets and conducted the related sale process in good faith. All interested persons and entities have been afforded a full, fair, and reasonable opportunity to (i) conduct due diligence investigations, (ii) submit bids and to submit higher or otherwise better bids to purchase the Ziphany Assets, and (iii) object or be heard with respect to the Motion and the relief granted by this Order. The marketing process, including the Bidding Procedures were non-collusive, designed and implemented in good faith, substantively and procedurally fair to all parties, and obtained the highest and best value for the Ziphany Assets for the Debtors, their creditors, and their estates. Through use of the Bidding Procedures, the Debtors, in consultation with EDF Trading North America, LLC ("EDFT"), Vantage Commodities Financial Services I, LLC ("Vantage"), and the Official Committee of Unsecured Creditors (the "Committee"), determined that the bid submitted by the Buyer and memorialized by the APA is the Prevailing Bid.

Notice

F. As evidenced by the affidavits and certificates of service and publication previously filed with the Court, in light of the exigent circumstances of these bankruptcy cases and based on the representations of counsel at the Ziphany Sale Hearing, (i) proper, timely, adequate, and sufficient notice of the Motion, the Ziphany Sale, and the assumption and assignment of the Assumed Contracts, all of the other transactions contemplated by the APA, and the Ziphany Sale Hearing have been provided in accordance with Bankruptcy Rules 2002(a), 6004(a), 6006(c), 9008 and 9014, and all applicable provisions of the Bankruptcy Code and the Local Rules; (ii) such notice was good, sufficient, reasonable, and appropriate under the particular circumstances of the Chapter 11 Cases, and reasonably calculated to reach and apprise all holders of Liens, claims, encumbrances, and other interests, including, without limitation, any holder asserting any rights or claims based on any successor or transferee liability, about the Motion, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, all of the other transactions contemplated by the APA, and the Ziphany Sale Hearing; and (iii) no other or further notice of the Motion, Ziphany Sale and the assumption and assignment of the Assumed Contracts, and any other transactions contemplated by the APA, the Ziphany Sale Hearing, or any matters in connection therewith, is or shall be required.

G. On November 28, 2014, Ziphany served individualized notices (the "Assumption and Assignment Notice") of the potential assumption and assignment of the Assumed Contracts on the counterparties to such Assumed Contracts identified on Exhibit 1 thereto (each a "Contract Party"), which notice included (i) the Assumed Contracts that could potentially be assumed and assigned, (ii) the name of the counterparties to such Assumed Contracts, (iii) the amount, if any, determined by the Debtors to be necessary to be paid (the "Cure Amounts") as of the date of the Assumption and Assignment Notices upon the assumption

of the Assumed Contracts, and (iv) the deadline by which any Contract Party must object to the possible assumption by Ziphany and the assignment to the Buyer of the Assumed Contracts. On December 11, 2014, Ziphany served a supplemental notice (the "Supplemental Assumption and Assignment Notice", together with the Assumption and Assignment Notice, the "Cure Notices") of the potential assumption and assignment of the Assumed Contracts on the Contract Parties identified on Exhibit 1 thereto, which notice included (i) the Assumed Contracts that could potentially be assumed and assigned, (ii) the name of the Contract Party, (iii) the Cure Amount as of the date of the Supplemental Assumption Notices upon the assumption of the Assumed Contracts, and (iv) the deadline by which any Contract Party must object to the possible assumption by the Debtors and assignment to the Buyer of the Assumed Contracts. The service of such Cure Notices was good, sufficient, and appropriate under the particular circumstances, and no other or further notice of the assumption and assignment of the Assumed Contracts or the applicable Cure Amounts is required. Each Contract Party to the Assumed Contracts has had an opportunity to object to the assumption by the Debtors and the assignment to the Buyer of the Assumed Contracts and to the applicable Cure Amounts set forth in the Cure Notices.

H. The Cure Amounts set forth in the Cure Notices (as such amounts may have been subsequently modified) are the sole amounts necessary under Sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code to cure all defaults and pay all actual pecuniary losses under the Assumed Contracts. In accordance with the APA, the Buyer shall pay the Cure Amount for each of the Assumed Contracts in the amounts set forth on Exhibit 2 attached to this Order.

#### Corporate Authority

I. Ziphany (i) has full corporate power and authority to execute and deliver the APA and all other documents contemplated thereby, (ii) has all of the necessary corporate

power and authority to consummate the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, (iii) has taken all corporate action necessary to authorize and approve the APA and the consummation by Ziphany of the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, and (iv) subject to entry of this Order, needs no consents or approvals, other than those expressly set forth in the APA, to consummate the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts.

**Good Faith**

J. The Buyer is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code, and is therefore entitled to the full protection of that provision and any other applicable or similar provisions under bankruptcy and nonbankruptcy law. The Buyer has at all times acted in good faith within the meaning of section 363(m) of the Bankruptcy Code in consummating the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts. The APA and the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, were negotiated, proposed, and entered into by the Seller and the Buyer without collusion, in good faith, and from arm's length bargaining positions, and such parties are "unrelated" for purposes of ERISA Section 4204, as may be applicable. Neither the Seller, the Buyer, or their respective agents, officials, personnel, representatives, and advisors, have engaged in any conduct that would cause or permit the avoidance of the APA or any of the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, or the imposition of costs, fees, expenses, or damages under section 363(n) of the Bankruptcy Code.

None of the Buyer or its respective agents, officials, personnel, representatives, or advisors is an “insider” of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

**Business Justification**

K. The Debtors have demonstrated good, sufficient, and sound business reasons and compelling circumstances to enter into the APA and to consummate the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, and such actions are appropriate and reasonable exercises of the Debtors’ business judgment and in the best interests of the Debtors, their estates and creditors, and other parties in interest. Such business reasons include, but are not limited to, the facts that (i) the APA and the terms thereof constitute the highest and best offer for the Ziphany Assets and provide fair and reasonable consideration for the Ziphany Assets, (ii) no other entity or group of entities has offered to purchase the Ziphany Assets for greater economic value to the Debtors or their estates than the Buyer, (iii) the Ziphany Sale pursuant to the terms of the APA presents the best opportunity to realize the value of the Ziphany Assets and avoid decline and devaluation of the Ziphany Assets, (iv) the consideration to be provided by the Buyer under the APA exceeds the liquidation value of the Ziphany Assets, and (v) unless the Ziphany Sale and all of the other transactions contemplated by the APA are concluded expeditiously as provided for in the Motion and pursuant to the APA, recoveries to creditors may be diminished. The Debtors’ determination that the APA constitutes the highest and best offer for the Ziphany Assets constitutes a valid and sound exercise of the Debtors’ business judgment.

L. The terms and conditions of the APA, including, without limitation, the consideration to be realized by the Debtors pursuant to the APA, are fair and reasonable.

Approval of the Motion, the APA, and the transactions contemplated thereby, including, without



limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, is in the best interests of the Debtors, their estates and creditors, and all other parties in interest.

**No Fraudulent Transfer**

M. The consideration provided by the Buyer for the Ziphany Assets pursuant to the APA (i) is fair and reasonable, (ii) is the highest and best offer for the Ziphany Assets, (iii) will provide a greater recovery for the Debtors' creditors and estates than would be provided by any other practical available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States and of each state, territory, possession, and the District of Columbia.

N. The Buyer is not a mere continuation of the Debtors or their estates, there is no continuity or common identity between the Buyer and any of the Debtors, and there is no continuity of enterprise between the Buyer and any of the Debtors. The Buyer is not holding itself out to the public as a continuation of any of the Debtors. The Buyer is not a successor to any of the Debtors or their estates, and none of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale or the assumption and assignment of the Assumed Contracts, amounts to a consolidation, merger, or de facto merger of the Buyer with or into any of the Debtors. None of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale or the assumption and assignment of the Assumed Contracts, is being undertaken for the purpose of escaping liability for any of the Debtors' debts or hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States or of any state, territory, possession or the District of Columbia.

**Free and Clear**

O. The transfers of the Ziphany Assets to the Buyer will be legal, valid, and effective transfers of the Ziphany Assets, and will vest the Buyer with all right, title, and interest

of the Seller to the Ziphany Assets free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than any Liens created by the Buyer), including, without limitation, rights or claims (for purposes of this Order, the term "claim" shall have the meaning ascribed to such term in section 101(5) of the Bankruptcy Code) based on any successor or transferee liability, including, without limitation, (i) those that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Seller's or the Buyer's interest in the Ziphany Assets or any similar rights, and (ii) (a) those arising under all mortgages, deeds of trust, security interests, conditional sale or other title retention agreements, pledges, Liens, judgments, demands, encumbrances, rights of first refusal or charges of any kind or nature, if any, including, without limitation, any restriction on the use, voting, transfer, receipt of income, or other exercise of any attributes of ownership, and (b) all claims arising in any way in connection with any agreements, acts, or failures to act, of any of the Seller or any of the Seller's predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, and whether imposed by agreement, understanding, law, equity, or otherwise, including, without limitation, claims otherwise arising under doctrines of successor or transferee liability, or under federal or state tax laws.

P. The Seller may transfer the Ziphany Assets free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than any Liens created by the Buyer), including, without limitation, rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those (i) holders of Liens, claims, encumbrances, and other interests, including, without limitation, rights or claims based on any taxes or successor or transferee liability, and (ii) non-Debtor parties to the Assumed Contracts,

who did not object or who withdrew their objections to the Motion, are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those (i) holders of Liens, claims, encumbrances, and other interests, including, without limitation, rights or claims based on any taxes or successor or transferee liability, and (ii) non-Debtor parties to the Assumed Contracts who did object, fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code, including, without limitation, section 363(f)(5) of the Bankruptcy Code, because the holders of any such interest could be compelled in a legal or equitable proceeding to accept monetary satisfaction on account of such interest, and are adequately protected by having their interests, if any, attach to the proceeds of the Ziphany Sale ultimately attributable to the Ziphany Assets in which each such creditor alleges an interest, in the same order of priority, with the same validity, force, and effect that each such creditor had prior to the sale, subject to any claims and defenses the Debtors, their estates, or other parties may possess with respect thereto.

Q. The Buyer would not have entered into the APA and would not consummate the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, (i) if the transfer of the Ziphany Assets was not free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than any Liens created by the Buyer), including, without limitation, rights or claims based on any taxes or successor or transferee liability, or (ii) if the Buyer would, or in the future could, be liable for any such Liens, claims, encumbrances, and other interests, including, without limitation, rights or claims based on any taxes or successor or transferee liability (subject only, in the case of the Buyer with respect to the Ziphany Assets, to the Assumed Liabilities). The Buyer will not consummate the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, unless this Court expressly orders that none of the Buyer, its respective

affiliates, its respective present or contemplated members, partners or shareholders, or the Ziphany Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Liens, claims, encumbrances, and other interests, including, without limitation, rights or claims based on any taxes, successor or transferee liability, except for the Assumed Liabilities.

R. Not transferring the Ziphany Assets free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than any Liens created by the Buyer), including, without limitation, rights or claims based on successor or transferee liability, except for the Assumed Liabilities, would adversely impact the Debtors' efforts to maximize the value of their estates, and the transfer of the Ziphany Assets other than pursuant to a transfer that is free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever would be of substantially less benefit to the Debtors' estates.

S. The Buyer would not have entered into the APA and will not consummate the transactions contemplated thereby unless this Court expressly orders that, without limiting the generality of the foregoing, none of the Buyer, its respective affiliates, its respective present or contemplated members, partners or shareholders, or the Ziphany Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Liens, claims, encumbrances, and other interests relating to any U.S. federal, state, or local income tax liabilities, including, without limitation, any such tax liabilities that are attributable to the recapture of an excess loss account under Treasury Regulation Section 1.1502-19 (or any similar provision of state or local tax law), that the Debtors are liable for or incur in connection with consummation of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts.

**Validity of Transfer**

T. The consummation of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363, and 365, and all of the applicable requirements of such sections have been complied with in respect of the transactions contemplated under the APA.

U. The Ziphany Assets constitute property of the Ziphany's estate, and good title thereto is vested in the Ziphany estate within the meaning of section 541(a) of the Bankruptcy Code. Ziphany is the sole and lawful owner of the Ziphany Assets, and no other person has any ownership right, title, or interest therein.

**Assumed Contracts**

V. The assumption and assignment of the Assumed Contracts, free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever, pursuant to the terms of this Order is integral to the transactions contemplated by the APA and is in the best interests of the Debtors, their estates and creditors, and all other parties in interest, and represents a reasonable exercise of the Debtors' sound and prudent business judgment.

W. Pursuant to the terms of the APA, the Buyer has (i) either cured or provided adequate assurance of cure of, any monetary default existing under any of the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and (ii) provided compensation, or adequate assurance of compensation, to any party for actual pecuniary loss to such party resulting from a monetary default under any of the Assumed Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code.

X. The Buyer has demonstrated adequate assurance of its future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code. Pursuant to section 365(f) of the Bankruptcy Code, the Assumed Contracts to be assumed and assigned under the APA shall be assigned and transferred to, and remain in full force and effect for the benefit of, the Buyer notwithstanding any provision in the contracts or other restrictions prohibiting the assignment or transfer.

Y. The releases set forth in paragraph 30 of this Order irrevocably and unconditionally release parties that were critical to the formulation, negotiation, and implementation of the APA and the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts. The releases include Buyer and its affiliates, Vantage and its affiliates, EDFT and its affiliates, and all such parties' past, present and future shareholders, partners, members, board of directors and/or supervisors, managers, officers, employees, agents, representatives and advisors (collectively, the "Released Parties").

**Compelling Circumstances for an Immediate Sale**

Z. To maximize the value of the Ziphany Assets and preserve the viability of the business to which the Ziphany Assets relate, it is essential that the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, occur within the time constraints set forth in the Motion and the APA. Time is of the essence in consummating the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts.

AA. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, prior to, and outside of, a chapter 11 plan. The transactions contemplated by the APA, including, without limitation, the Ziphany Sale, and the assumption and assignment of the Assumed Contracts, neither impermissibly restructure the rights of the Debtors' creditors nor impermissibly dictate the terms of a chapter 11 plan for the Debtors, and therefore do not constitute a sub rosa plan.

BB. Given all of the circumstances of the Chapter 11 Cases and the adequacy and fair value of the Purchase Price under the APA, the consummation of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, constitutes a reasonable and sound exercise of the Debtors' business judgment.

**IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED THAT:**

**General Provisions**

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the APA and the consummation of the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, is authorized and approved. The Motion complies with all provisions of Local Rule 6004-1 other than those previously waived by the Court.

2. Any objections and responses to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservations of rights included in such objections and responses, are overruled on the merits and denied with prejudice.

**Approval of the APA**

3. The APA, attached hereto as Exhibit 1, all ancillary documents, and the transactions contemplated thereby, the Ziphany Sale and the assumption and assignment of the Assumed Contracts and all the terms and conditions thereof, are approved. If there is any conflict between the APA and this Order, this Order shall govern.

4. Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform their obligations under, and comply with the terms of, the APA, and all ancillary documents and to consummate the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, pursuant to, and in accordance with, the terms and provisions of the APA and this Order.

5. The Debtors are authorized and directed to execute and deliver, and empowered to perform under, consummate, and implement, the APA, together with all additional instruments and documents that the Seller or the Buyer reasonably deem necessary or appropriate to implement the APA and effectuate the transactions contemplated thereby, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, and to take all further actions as may reasonably be required by the Buyer for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyer or reducing to possession the Ziphany Assets, or as may be necessary or appropriate to the performance of any other obligations as contemplated by the APA.

6. Nothing contained in any plan confirmed in any of the Chapter 11 Cases, any order confirming any such plan, any order converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code, or any order dismissing any of the Debtors' bankruptcy



cases shall conflict with or derogate from the provisions of the APA or this Sale Order in any material way.

**Transfer of the Ziphany Assets Free and Clear**

7. Pursuant to sections 105(a), 363(b), 363(f), 365(b) and 365(f) of the Bankruptcy Code, in accordance with the APA, (a) the Ziphany Assets shall be transferred to the Buyer and (b) the Ziphany Assets shall be free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than any Liens created by the Buyer), including, without limitation, rights or claims based on any taxes or successor or transferee liability.

8. Except as expressly permitted or otherwise specifically provided by the APA or this Order, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, dealers, employees, litigation claimants, and other creditors, holding Liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability, against or in a Seller or the Ziphany Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or noncontingent, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Seller, the Ziphany Assets, the use or operation of the Ziphany Assets prior to the Closing Date, or the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, are forever barred, estopped, and permanently enjoined from asserting against the Buyer, its respective successors and assigns, its respective property and the Ziphany Assets, or such persons' or entities' Liens, claims, encumbrances, or other interests, including, without limitation, rights or claims based on any taxes or successor or transferee liability.

9. This Order (a) shall be effective as a determination that, as of the Closing Date, (i) no Liens, claims, encumbrances, or other interests of any kind or nature (other than any Liens created by the Buyer) shall be assertable against the Buyer, its affiliates, their respective present or contemplated members, partners or shareholders, successors, or assigns, or any of its or their respective assets (including, without limitation, the Ziphany Assets), (ii) the Ziphany Assets shall have been transferred to the Buyer free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than any Liens created by the Buyer), and (iii) the transfers described herein have been effected, and (b) is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks, or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing persons and entities is directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA.

10. The transfers of the Ziphany Assets to the Buyer in accordance with the APA constitute legal, valid, and effective transfers of the Ziphany Assets and shall vest the Buyer with all right, title, and interest of the Seller in and to the Ziphany Assets, free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever, including, without limitation, rights or claims based on any taxes or successor or transferee liability (other than any Liens created by the Buyer), as set forth in section 363(f) of the Bankruptcy Code.

11. On the Closing Date, the Seller's creditors and any other holder of a Lien, claim, encumbrance, or other interest of any kind or nature whatsoever (other than any Liens created by the Buyer), are authorized and directed to execute such documents and take all other actions as may be necessary to release their Liens, claims, encumbrances, or other interests in the Ziphany Assets, if any, as such Liens, claims, encumbrances, or other interests may have been recorded or may otherwise exist.

12. If any person or entity that has filed financing statements, mortgages, mechanic's Liens, lis pendens, or other documents or agreements evidencing a Lien, claim, encumbrance, or other interest (other than any Liens created by the Buyer) in the Ziphany Assets shall not have delivered to the Seller prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Liens, claims, encumbrances, or other interests that the person or entity has with respect to the Ziphany Assets, or otherwise, then (a) the Seller and the Buyer are each authorized to execute and file such statements, instruments, releases, and other documents on behalf of the person or entity with respect to the Seller and the Ziphany Assets, and (b) the Buyer is authorized to file, register, or otherwise record a certified copy of this Order, which shall constitute conclusive evidence of the release of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever in the Ziphany Assets.

13. On the Closing Date, all persons or entities in possession of any of the Ziphany Assets are directed to surrender possession of such Ziphany Assets to the Buyer.

14. Following the Closing Date, none of the Debtors, their affiliates, or any creditor or holder of any Lien, claim, encumbrance, or other interest of any kind or nature whatsoever (other than Liens created by the Buyer) shall interfere with the Buyer's title to, or use and enjoyment of, the Ziphany Assets, based on, or related to, any such Lien, claim,

encumbrance, or other interest, or based on any actions the Debtors may take in their bankruptcy cases or otherwise.

15. All persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Ziphany Assets to the Buyer in accordance with the APA and this Order; provided, however, that the foregoing restriction shall not prevent any person or entity from appealing this Order or opposing any appeal of this Order.

16. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may deny, revoke, suspend, or refuse to grant or renew any permit, license, or similar grant relating to the operation of the Ziphany Assets on account of the filing or pendency of the Chapter 11 Cases or the consummation of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts.

**Assumption and Assignment of the Assumed Contracts**

17. Except as otherwise expressly provided in the APA or this Order, upon the Closing Date, pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors are authorized to assume each of the Assumed Contracts free and clear of all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever (other than any Liens created by the Buyer).

18. The Buyer shall provide the Seller a list of those Contracts that it elects to have assumed and assigned (the "Designated Contracts") to the Buyer at least three (3) Business Days before the Closing Date (the "Designation Deadline"). The Buyer shall be entitled to remove certain Contracts from the list of Designated Contracts at any time prior to the Designation Deadline. In the event that the Buyer removes any of such Contracts from such list,

the Seller will provide the relevant counterparty written notice that the applicable Contract is no longer identified as a Designated Contract.

19. The Cure Amounts set forth on Exhibit 2 attached to this Order, are the sole amounts necessary to be paid upon assumption of the Assumed Contracts under sections 365(b)(1)(A) and (B) and 365(f)(2)(A) of the Bankruptcy Code. Upon the payment of the Cure Amounts, if any, by the Buyer, the Assumed Contracts shall remain in full force and effect, and no default shall exist under the Assumed Contracts nor shall there exist any event or condition which, with the passage of time or giving of notice, or both, would constitute such a default. The Cure Amounts shall not be subject to further dispute or audit, including, without limitation, any based on performance or lack thereof prior to the Closing Date, irrespective of whether such Assumed Contract contains an audit clause. After the payment of the Cure Amounts by the Buyer, none of the Debtors or the Buyer shall have any further liabilities to the counterparties to the Assumed Contracts other than the Buyer's obligations under the Assumed Contracts that become due and payable after the Closing Date. To the extent that an Assumed Contract constitutes an executory contract or unexpired lease under section 365 of the Bankruptcy Code, all requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors of such Assumed Contracts have been satisfied. Upon the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, (i) the Buyer shall be fully and irrevocably vested with all right, title and interest of the Debtors under the Assumed Contracts, (ii) the Buyer shall be deemed to be substituted for the Debtors as a party to the applicable Assumed Contracts, and (iii) the Debtors shall be relieved, pursuant to section 365(k) of the Bankruptcy Code, from any further liability under the Assumed Contracts.

20. The Buyer has provided adequate assurance of future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable), and 365(f)(2)(B) of the Bankruptcy Code.

21. There shall be no right to payment, termination, modification, acceleration or cancellation, assignment fees, increases, or any other fees charged to the Debtors or the Buyer as a result of the execution and delivery by Buyer of the APA or related documents, the consummation of the transactions contemplated therein, or the compliance by Buyer with any provisions in the APA. The validity of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale, and the assumption and assignment of the Assumed Contracts, shall not be affected by any dispute between any of the Debtors or their affiliates and another party to an Assumed Contract regarding the payment of any amount, including any cure amount under the Bankruptcy Code. Upon assignment to the Buyer, the Assumed Contracts shall be valid and binding, in full force and effect, and enforceable by the Buyer in accordance with their respective terms.

22. Pursuant to sections 105(a), 363, and 365 of the Bankruptcy Code, all counterparties to the Assumed Contracts are forever barred and permanently enjoined from raising or asserting against the Debtors or the Buyer any assignment fee, default, breach or claim of pecuniary loss, or condition to assignment, arising under or related to the Assumed Contracts and existing as of and including the Closing Date, or under the APA or arising by reason of the consummation of transactions contemplated by the APA, including, without limitation, the Ziphany Sale, and the assumption and assignment of the Assumed Contracts. Any party that may have had the right to consent to the assignment of an Assumed Contract is deemed to have consented to such assignment for purposes of section 365(e)(2)(A)(ii) of the Bankruptcy Code

and otherwise, if such party failed to object to the assumption and assignment of such Assumed Contract.

**No Successor or Transferee Liability**

23. None of the Buyer, its present or contemplated members, partners or shareholders, its respective successors or assigns, or any of the foregoing's respective affiliates, agents, officials, personnel, representatives, or advisors shall have any liability for any claim assertable against the Debtors or their estate or related to the Ziphany Assets. The Buyer shall not be deemed, as a result of any action taken in connection with the APA or any of the transactions or documents ancillary thereto or contemplated thereby, or in connection with the transfer of the Ziphany Assets, (a) to be a legal successor, or otherwise be deemed a successor to the Debtors, (b) to have, de facto or otherwise, merged with or into the Debtors, or (c) to be a mere continuation or substantial continuation of the Debtors or the enterprise of the Debtors. Without limiting the foregoing, the Buyer shall not have any successor, transferee, derivative, or vicarious liabilities of any kind or character for any claims, including, without limitation, under any theory of successor or transferee liability, de facto merger or continuity, environmental, tax, labor and employment, products, or antitrust liability, whether known or unknown as of the Closing Date, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated.

24. Effective upon the Closing Date, and except as otherwise expressly provided in this Order, all persons and entities are forever prohibited and enjoined from commencing or continuing in any manner any action or other proceeding, whether in law or equity, in any judicial, administrative, arbitral, or other proceeding, against the Buyer, its respective past, present, or contemplated members, partners or shareholders, its respective predecessors, its respective successors, assigns, or affiliates, or its respective assets, including,

without limitation, the Ziphany Assets, with respect to any claim against the Debtors, including, without limitation, the following actions: (a) commencing or continuing any action or other proceeding pending or threatened against the Debtors as against the Buyer, its respective past, present, or contemplated members or shareholders, its respective predecessors, its respective successors, assigns, or affiliates, or its respective assets, including, without limitation, the Ziphany Assets, (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Debtors as against the Buyer, its respective past, present, or contemplated members or shareholders, its respective predecessors, its respective successors, assigns, or affiliates, or its respective assets, including, without limitation, the Ziphany Assets, (c) creating, perfecting, or enforcing any Lien, claim, interest, or encumbrance against the Debtors as against the Buyer, its respective past, present, or contemplated members or shareholders, its respective predecessors, its respective successors, assigns, or affiliates, or its respective assets, including, without limitation, the Ziphany Assets, (d) asserting any setoff, right of subrogation, or recoupment of any kind for any obligation of any of the Debtors as against any obligation due the Buyer, its respective past, present, or contemplated members or shareholders, its respective predecessors, its respective successors, assigns, or affiliates, or its respective assets, including, without limitation, the Ziphany Assets (e) commencing or continuing any action, in any manner or place, that does not comply, or is inconsistent with, the provisions of this Order, or the agreements or actions contemplated or taken in respect thereof, or (f) revoking, terminating, or failing or refusing to renew any license, permit, or authorization to operate any of the Ziphany Assets or conduct any of the businesses operated with such assets.

25. Except for the Assumed Liabilities (solely in the case of the Buyer with respect to the Ziphany Assets) or as expressly provided in the APA or this Order, the Buyer shall not have any liability or responsibility for any liability or other obligation of the Seller or its



estate arising under or related to the Ziphany Assets. Without limiting the generality of the foregoing, and except as expressly provided in the APA or this Order, the Buyer shall not be liable for any Liens, claims, encumbrances, or other interests of any kind or nature against the Seller or its estate or any of their predecessors or affiliates, and the Buyer shall have no successor, transferee, or vicarious liabilities of any kind or character, including, without limitation, liabilities based on any theory of antitrust, environmental, tax, successor, or transferee liability, labor law, de facto merger, or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, asserted or unasserted, liquidated or unliquidated, with respect to the Seller or its estate or any obligations of the Seller or its Estate arising prior to the Closing Date.

26. Upon the Closing Date, the Seller shall have no liability or responsibility for the Assumed Liabilities associated therewith.

27. Without limiting the generality of the foregoing, none of the Buyer, its respective affiliates, its respective present or contemplated members, partners or shareholders, or the Ziphany Assets shall have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Liens, claims, encumbrances, and other interests relating to any U.S. federal, state, or local income tax liabilities, including, without limitation, any such tax liabilities that are attributable to the recapture of an excess loss account under Treasury Regulation Section 1.1502-19 (or any similar provision of state or local tax law), that the Debtors are obligated for or incur in connection with consummation of the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts.

28. This Order (a) shall be effective as a determination that, except for the Assumed Liabilities (solely in the case of the Buyer with respect to the Ziphany Assets), on or

prior to the Closing Date, all Liens, claims, encumbrances, and other interests of any kind or nature whatsoever existing as to the Seller with respect to the Ziphany Assets have been unconditionally released and terminated, and that the transfers described in this Order have been effected, and (b) shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Ziphany Assets.

29. Each and every federal, state, and local governmental agency or department is authorized to accept any and all documents and instruments necessary or appropriate to consummate the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts.

30. To the fullest extent permissible under applicable law, except as otherwise provided in the APA or this Order, the Debtors irrevocably and unconditionally release, remise, and forever discharge the Buyer and its affiliates, Vantage and its affiliates and EDFT and its affiliates from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, liabilities, interests or causes of action whatsoever, at law or in equity, known or unknown, which the Debtors, their estates and their affiliates might now or subsequently may have, based on, relating to or arising out of the Auction, the APA and this Order, the transactions contemplated by the APA and this Order, the ownership, use or operation of the Ziphany Assets or the condition, quality, status or nature of the Ziphany Assets.

31. The transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code, and were negotiated by the parties at arm's length, and accordingly, the reversal or modification on appeal of the authorization provided in this Order to consummate the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, shall not affect the validity of such transactions, unless such authorization is duly stayed pending such appeal. The Buyer is a purchaser in good faith and the Buyer, and its agents, officials, personnel, representatives, and advisors are entitled to all the protections afforded by section 363(m) of the Bankruptcy Code.

32. The Buyer has given fair and substantial consideration under the APA for the benefit of the Debtors and their creditors and estates. The consideration provided by the Buyer for the Ziphany Assets under the APA is greater than the liquidation value of the Ziphany Assets, and shall be deemed to constitute reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

33. The consideration provided by the Buyer for the Ziphany Assets under the APA is fair and reasonable, and the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, may not be avoided under section 363(n) of the Bankruptcy Code.

**Sale Proceeds and Cash Accounts**

34. Within two (2) business days following the Closing Date, the net proceeds from the Ziphany Sale shall be paid by the Debtors to Settlement Fund (as defined in the Global Settlement Order) in accordance with the Global Settlement Order.

**Related Relief**

35. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014, or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry. The Debtors are not subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and may, subject to the terms and conditions of the APA, and in their discretion and without further delay, close the transactions contemplated under the APA and immediately take any action and perform any act authorized under this Order.

36. The Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence; provided, however, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

37. The terms and provisions of the APA and this Order shall be binding in all respects upon the Debtors, their respective affiliates, estates, and creditors, all holders of equity interests in any of the Debtors, all holders of any Claims, all counterparties to each Assumed Contract, all interested parties in the Chapter 11 Cases and their respective successors and assigns, the Buyer and its successors and assignees, and any trustees, if any subsequently appointed in any of the Debtors' Chapter 11 Cases or upon a conversion to chapter 7 under the Bankruptcy Code of any of the Debtors' cases. This Order and the APA shall inure to the benefit of the Debtors, their estates and creditors, the Buyer, and their respective successors and assigns, and each of the foregoing's respective agents, officials, personnel, representatives, and advisors.

38. No law of any state or other jurisdiction relating to bulk sales or similar laws shall apply in any way to the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, the Motion, and this Order.

39. The terms and provisions of the APA and this Order shall inure to the benefit of the Debtors, their estates, and their creditors, the Buyer, and each of the foregoing's respective agents, officials, personnel, representatives, and advisors.

40. The failure to specifically include any particular provision of the APA in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the APA be authorized and approved in its entirety.

41. The APA and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtors' estates. Any such proposed modification, amendment, or supplement that does have a material adverse effect on the Debtors' estates shall be subject to further order of the Court, on ten (10) days' notice.

42. The provisions of this Order are non-severable and mutually dependent on each other.

43. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

44. To the extent that this Order is inconsistent with any prior order or pleading with respect to the Motion or the transactions contemplated by the APA, including, without limitation, the Ziphany Sale and the assumption and assignment of the Assumed Contracts, the terms of this Order shall govern.

45. This Court retains exclusive jurisdiction to enforce and implement the terms and provisions of this Order, the APA, all ancillary documents, all amendments thereto, any waivers and consents thereunder, and each of the agreements executed in connection therewith, in all respects, including, but not limited to, retaining jurisdiction to (a) compel delivery of the Ziphany Assets to the Buyer, (b) compel delivery of the Purchase Price or performance of other obligations owed by or to the Debtors, (c) resolve any disputes arising under or related to the APA, (d) interpret, implement, and enforce the provisions of this Order, and (e) protect the Buyer against the assertion of any Lien, claim, encumbrance, or other interest, of any kind or nature whatsoever, against the Ziphany Assets.

46. The Buyer shall pay Cure Amounts with respect to Assumed Contracts on the Closing Date.

47. Nothing herein or in the APA (i) releases, nullifies, precludes, or enjoins the enforcement of any environmental liability to a governmental unit that any entity would otherwise be subject to as the owner or operator of property after the Closing Date, (ii) authorizes the transfer or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization or (e) approval, or the discontinuance of any obligation thereunder, without compliance with applicable legal requirements under police or regulatory law, and (iii) divests any tribunal of any jurisdiction that it may have under environmental law to interpret this Order or to adjudicate any defense asserted under this Order.

Dated: January 7, 2015  
Wilmington, Delaware

  
\_\_\_\_\_  
CHRISTOPHER S. SONTCHI,  
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

APA

**ASSET PURCHASE AND SALE AGREEMENT**

**BY AND AMONG**

**ZIPHANY, L.L.C.**

**AND**

**JKMV ACQ LLC**

**Dated as of December 18, 2014**



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Exhibits

A Form of Bill of Sale

## ASSET PURCHASE AND SALE AGREEMENT

This ASSET PURCHASE AND SALE AGREEMENT, dated as of December 18, 2014 (this "Agreement"), is made and entered into by and among Ziphany, L.L.C. ("Ziphany" or the "Seller") and JKMV Acq LLC (the "Buyer"). Seller and Buyer are sometimes herein referred to collectively as (the "Parties") and individually as a ("Party.")

### WITNESSETH:

WHEREAS, on April 10, 2014 (the "Petition Date"), the Seller and its affiliated debtors commenced voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 et seq. (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), jointly administered under Case No. 14-10833 (collectively, the "Chapter 11 Cases");

WHEREAS, Seller is a debtor-in-possession under the Bankruptcy Code and manages its assets pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on June 19, 2014, the Bankruptcy Court entered an *Order Granting Joint Motion Of The Debtors And Official Committee Of Unsecured Creditors For Entry Of An Order Approving Settlement And Compromise Pursuant To 11 U.S.C. § 105(a) And Fed. R. Bankr. P. 9019* (the "Settlement Approval Order") [Docket No. 381];

WHEREAS, pursuant to the terms of the global settlement (the "Global Settlement") approved pursuant to the Settlement Approval Order, the Seller is required to conduct a sale (the "Secondary Sale") of all of its assets;

WHEREAS, on the terms and subject to the conditions hereinafter set forth and pursuant to the Secondary Sale Order (as defined herein) and sections 105(a), 363 and 365 of the Bankruptcy Code, the Parties desire to enter into this Agreement as a means of consummating the Secondary Sale;

WHEREAS, pursuant to the terms and subject to the conditions of this Agreement, at the Closing (as defined below), Seller shall sell and transfer to Buyer, and Buyer shall purchase and acquire from Seller, the Purchased Assets (as defined below), and Buyer shall assume from Seller and thereafter pay, discharge and perform the Assumed Liabilities (as defined herein); and

WHEREAS, the transactions contemplated by this Agreement are subject to approval by the Bankruptcy Court of this Agreement and will be consummated only pursuant to the Secondary Sale Order (as defined below);

NOW, THEREFORE, in consideration of the premises hereof and of the mutual covenants, representations, warranties and agreements herein contained, and intending to be legally bound hereby, the Parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

#### Section 1.1 Certain Definitions.

For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

“Action” means any action, suit, arbitration, claim, inquiry, proceeding or investigation by or before any Governmental Body of any nature, civil, criminal, regulatory or otherwise, in law or in equity.

“Affiliate” (and, with a correlative meaning “affiliated”) means, with respect to any Person, any direct or indirect subsidiary of such Person, and any other Person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with such first Person. As used in this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies (whether through ownership of securities or partnership or other ownership interests, by Contract or otherwise).

“Business Day” means a day other than a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by Law to close.

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

“Consent” means any consent, waiver, approval, order or authorization of, or registration, declaration or filing with or notice to, any Governmental Body or other Person.

“Contract” means (whether written or oral) any contract, indenture, note, bond, loan, instrument, lease, license, commitment or other agreement.

“Cure Costs” means any and all costs, expenses or actions that the Seller is required to pay or perform to assume any of the Assumed Contracts pursuant to section 365 of the Bankruptcy Code.

“Determined Cure Costs” means, in the aggregate, all Cure Costs payable in respect of the Assumed Contracts as determined pursuant to a Final Order and pursuant to section 365 of the Bankruptcy Code, which Order may be the Secondary Sale Order.

“Excluded Contracts” means (a) the Contracts that are not Assumed Contracts, (b) those Contracts listed on Schedule 1.1 (a), and/or (c) any other Contracts designated as Excluded Contracts pursuant to the terms of this Agreement.

“Excluded Matter” means any one or more of the following: (i) the effect of any change in the United States or foreign economies or securities or financial markets in general, except to the extent such changes have a disproportionate effect on the Seller relative to other

participants in the industry in which the Seller operates; (ii) the effect of any change that generally affects any industry in which the Seller operates, except to the extent such changes have a disproportionate effect on the Seller relative to other participants in the industry in which the Seller operates; (iii) the effect of any change arising in connection with earthquakes, hostilities, acts of war, sabotage or terrorism or military actions or any escalation or material worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date hereof, except to the extent such changes have a disproportionate effect on the Seller relative to other participants in the industry in which the Seller operates; (iv) the effect of any changes in applicable Laws or GAAP after the date hereof; (v) any effect resulting from the public announcement of this Agreement; or (vi) any effect resulting from the filing of the Bankruptcy Case.

“Final Determination” means (i) with respect to U.S. federal income Taxes, a “determination” as defined in Section 1313(a) of the Code, and (ii) with respect to Taxes other than U.S. federal income Taxes, any final determination of Liability in respect of a Tax that, under applicable Law, is not subject to further appeal, review or modification through proceedings or otherwise, including the expiration of a statute of limitations or a period for the filing of claims for refunds, amended Tax Returns or appeals from adverse determinations.

“Final Order” means an Order, judgment or other decree of the Bankruptcy Court or any other Governmental Body of competent jurisdiction that has not been reversed, vacated, modified or amended, is not stayed and remains in full force and effect; provided that such Order shall be considered a Final Order only after the time period for third parties seeking appeal has expired without the filing of any appeal or motion for reconsideration.

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

“Governmental Body” means any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to any United States or foreign, federal, state or local government, any governmental authority, agency, department, board, commission or instrumentality or any political subdivision thereof, and any tribunal or court or arbitrator(s) of competent jurisdiction, and shall include the Bankruptcy Court.

“Intellectual Property” means all worldwide intellectual property and rights wholly or jointly owned, assigned or registered to the Seller or any of its Subsidiaries arising from or in respect of the following: all (i) inventions, discoveries, industrial designs, business methods, patents and patent applications (including provisional and Patent Cooperation Treaty applications), including continuations, divisionals, continuations-in-part, reexaminations and reissues, extensions, renewals and any patents that may be issued with respect to the foregoing; (ii) trademarks, service marks, certification marks, collective marks, trade names, business names, assumed names, d/b/a's, fictitious names, brand names, trade dress, logos, symbols, Internet domain names and corporate names, and general intangibles of a like nature, whether registered, unregistered or arising by Law, and all applications, registrations, and renewals for any of the foregoing, together with the goodwill associated with and symbolized by each of the foregoing; (iii) published and unpublished works of authorship in any medium, whether copyrightable or not (including databases, data files and other compilations of information,

computer software, source code, object code, application programming interfaces, architecture, algorithms, and related specifications and other similar materials and Internet website content), copyrights and moral rights therein and thereto, and registrations and applications therefor, and all issuances, renewals, extensions, restorations and reversions thereof; and (iv) confidential and proprietary information, trade secrets, and know-how, including methods, processes, business plans, schematics, concepts, software and databases (including source code, object code and algorithms), formulae, drawings, prototypes, models, designs, devices, technology, research and development and customer information and lists.

“Intellectual Property Licenses” means (i) any Contract that contains any grant by the Seller to any third Person of any right to manufacture, use, offer to sell, sell, publish, perform or exploit any Intellectual Property owned by the Seller, and/or (ii) any Contract that contains any grant by any third Person to the Seller of a right to manufacture, use, offer to sell, sell, publish, perform or exploit a third Person’s intellectual property rights.

“Law” means any federal, state, local or foreign law (including common law), statute, code, ordinance, rule, or regulation or other requirement enacted, promulgated, issued or entered by a Governmental Body.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims or any proceedings by or before a Governmental Body.

“Liability” means any and all debts, losses, liabilities, claims (including “Claims” as defined in section 101(5) of the Bankruptcy Code), damages, expenses, Taxes, fines or other penalties, costs, royalties, proceedings, deficiencies or obligations (including those arising out of any action, such as any settlement or compromise thereof or judgment or award therein), of any nature, whether known or unknown, absolute, contingent, accrued or unaccrued, liquidated or unliquidated, or otherwise and whether due or to become due, and whether in contract, tort, strict liability or otherwise, and whether or not resulting from third party claims.

“Lien” means any lien, encumbrance, pledge, mortgage, deed of trust, security interest, claim, lease, charge, option, right of first refusal, right of first offer, easement, servitude, proxy, voting trust or agreement, transfer restriction under any shareholder or similar agreement or encumbrance or any other restriction or limitation whatsoever.

“Material Adverse Effect” means (i) a material adverse effect on the Purchased Assets (taken as a whole) or (ii) a material adverse effect on the ability of Seller to consummate the Transactions or perform its obligations under this Agreement or any other Transaction Document, in each case other than an effect resulting from an Excluded Matter.

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Seller’s business consistent with past practice.

“Organizational Documents” means, with respect to any Person (other than an individual), (a) the certificate or articles of incorporation or organization and any joint venture,

limited liability company, operating or partnership agreement and other similar documents adopted or filed in connection with the creation, formation or organization of such Person and (b) all bylaws and similar documents, instruments or agreements relating to the organization or governance of such Person, in each case, as amended or supplemented.

“Permits” means any approvals, authorizations, consents, licenses, permits, certificates of, or granted by, a Governmental Body.

“Person” means and includes natural persons, corporations, limited partnerships, limited liability companies, general partnerships, joint stock companies, joint ventures, associations, companies, trusts, banks, trust companies, land trusts, business trusts or other organizations, whether or not legal entities, and all Governmental Bodies.

“Purchased Intellectual Property” means all Intellectual Property to the extent such Intellectual Property constitutes a Purchased Asset.

“Released Liens” means (i) any Lien that, pursuant to section 363(f) of the Bankruptcy Code, will be released from the Purchased Assets upon entry of the Secondary Sale Order; and (ii) other Liens that will be released on or prior to Closing at no cost or expense to Buyer.

“Representatives” means, with respect to any Person, its officers, directors, managers, employees, attorneys, investment bankers, accountants and other agents and representatives.

“Secondary Sale Order” means a Final Order of the Bankruptcy Court issued pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code in form and substance acceptable to Buyer and to the Seller, each in its sole discretion, approving this Agreement and all of the terms and conditions hereof and approving and authorizing the Seller to consummate the transactions contemplated hereby.

“Seller’s Knowledge” means the actual knowledge of those officers and directors of the Seller identified on Schedule 1.1(b).

“Subsidiary” or “subsidiary” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (a) beneficially owns, either directly or indirectly, more than fifty percent (50%) of (i) the total combined voting power of all classes of voting securities of such entity entitled, under ordinary circumstances, to vote in the election of directors or other governing body of such Person, (ii) the total combined equity interests, or (iii) the capital or profit interests, in the case of a partnership; or (b) otherwise has the power to vote or to direct the voting of sufficient securities to elect a majority of the board of directors or similar governing body of such Person.

“Tax” means all federal, state, provincial, territorial, municipal, local or foreign income, profits, franchise, gross receipts, environmental (including taxes under Section 59A of the Code), alternative or add on minimum, customs, duties, net worth, sales, use, goods and services, withholding, value added, ad valorem, employment, social security, escheat, disability, occupation, pension, real property, personal property (tangible and intangible), stamp, transfer,



conveyance, severance, production, excise and other taxes (including payments in lieu of taxes), withholdings, duties, levies, imposts, fees and other similar charges and assessments (including any and all interest, fines, penalties and additions attributable to, or otherwise imposed on or with respect to, any such taxes, withholdings, duties, levies, imposts, fees and other similar charges and assessments) imposed by or on behalf of any Governmental Body or Tax Authority, including any obligation to indemnify or otherwise to assume or succeed to the Tax liability of any other Person.

“Tax Authority” means any federal, state, local or foreign government, or agency, instrumentality or employee thereof, charged with the determination, assessment, regulation, collection or administration of any Tax or of Law relating to Taxes.

“Tax Return” means all returns, declarations, reports, estimates, information returns and statements filed or required to be filed in respect of any Taxes, including all attachments and schedules thereto and amendments thereof.

“Transaction Documents” means this Agreement, the Bill of Sale, and the Secondary Sale Order.

“Transactions” means the transactions contemplated by this Agreement and the other Transaction Documents.

Section 1.2 Terms Defined Elsewhere in this Agreement.

For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated:

<u>Term</u>	<u>Section</u>
Affiliated Group	Section 5.7
Agreement	Preamble
Allocation Schedule	Section 3.3
Accounts Receivable	Section 2.6
Assumed Contracts	Section 2.3
Assumed Liabilities	Section 2.2
Assumption Notice	Section 7.3(a)
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bill of Sale	Section 4.2(a)
Chapter 11 Cases	Recitals
Closing	Section 4.1
Closing Date	Section 4.1
Cure Schedule	Section 2.3
Designated Contract	Section 7.3(b)
Designation Deadline	Section 7.3(b)
Licensed Intellectual Property	Section 5.8(a)
Owned Intellectual Property	Section 5.8(a)

<u>Term</u>	<u>Section</u>
Party	Preamble
Petition Date	Recitals
Purchase Price	Section 3.1
Purchased Assets	Section 2.1
Required Consents	Section 2.5(a)
Seller	Preamble
Seller Documents	Section 5.2
Tax Contest	Section 9.1(b)
Termination Date	Section 4.4(a)
Transfer	Section 2.5(a)
Transfer Taxes	Section 9.1(a)
Transferred IP Licenses	Section 2.1(h)
Buyer Documents	Section 6.2

Section 1.3 Other Definitional and Interpretive Matters.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the referenced end date shall be excluded in calculating such period. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(ii) Dollars. Any reference in this Agreement to \$ shall mean U.S. dollars.

(iii) Exhibits/Schedules. The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any matter or item disclosed on one schedule shall be deemed to have been disclosed on each other schedule to the extent that the relevance of any such information to such other schedule is readily apparent from the text of such disclosure and without independent examination of documents referred to therein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference to a gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(v) Headings. The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Section" are to the corresponding Section of this Agreement unless otherwise specified.

(vi) Herein. The words such as "herein," "hereinafter," "hereof" and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(vii) Including. The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(viii) Amendments and Successors. Any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. References to a Person are also to the Person's successors and permitted assigns, as applicable.

(ix) Jointly Drafted. This Agreement is the product of negotiations among the Parties, each of which is represented by legal counsel, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement. Rules of construction relating to interpretation against the drafter of an agreement shall not apply to this Agreement and are expressly waived by each Party.

## ARTICLE II

### PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

#### Section 2.1 Purchase and Sale of the Purchased Assets.

On the terms and subject to the conditions set forth in this Agreement, and subject to Section 7.3, at the Closing, the Seller shall transfer, assign and deliver to the Buyer, and the Buyer shall accept from the Seller, free and clear of any and all Liens (other than Liens created by the Buyer) to the maximum extent permitted by Section 363(f) of the Bankruptcy Code, all of the Seller's right, title and interest in, to and under, the Purchased Assets (as defined below).

The term "Purchased Assets" shall mean, collectively, all assets of the Seller, (other than the Excluded Contracts), including, without limitation:

(a) all Intellectual Property, including all rights of the Seller in, to and under any Intellectual Property Licenses in effect as of the Closing to the extent transferable to the Buyer (the "Transferred IP Licenses");

(b) all Information Technology and all other all furniture, fixtures, equipment, machinery, tools, vehicles, supplies and other tangible personal property;

(c) all Contracts listed on Schedule 2.1(k), except to the extent that any Contract listed on Schedule 2.1(k) constitutes an Excluded Contract;

(d) originals, or where not available, copies, of all books and records of the Seller relating to the Purchased Assets listed above and/or the Assumed Liabilities, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, customer complaints and inquiry files, research and development files, correspondence and filings with any Governmental Bodies, sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and other files and information relating to the Purchased Assets listed above ("Books and Records");

(e) all accounts receivable, and

(f) all goodwill and all going concern value.

#### Section 2.2 Assumption of Liabilities.

On the terms and subject to the conditions set forth in this Agreement, at the Closing, Buyer shall assume the Assumed Liabilities (as defined below) and shall agree to pay, discharge, perform and otherwise satisfy such Assumed Liabilities in accordance with their respective terms from and after the Closing, subject to any defenses or claimed offsets asserted in good faith against the obligee to whom such Assumed Liabilities are owed. The term "Assumed Liabilities" shall mean any and all obligations of Seller arising on or after the Closing under the Assumed Contracts, and all Determined Cure Costs in respect of the Assumed Contracts, and any and all Transfer Taxes.

Other than the Assumed Liabilities, Buyer shall not assume any of Seller's liabilities of any nature whatsoever, whether accrued, absolute, contingent or otherwise, whether known or unknown, whether due or to become due, and regardless of when or by whom asserted.

#### Section 2.3 Determined Cure Costs.

Prior to the date hereof, the Seller shall have provided to Buyer a schedule listing each assignable Contract to which the Seller is a party and setting forth a good faith estimate of all Cure Costs for each such Contract (the "Cure Schedule"). Pursuant to Section 7.3(b), Buyer

shall be entitled, in its sole discretion, by written notice to the Seller up to three (3) Business Days prior to the Closing Date, to elect not to purchase or assume one or more of such assignable Contracts, in which case, notwithstanding anything in this Agreement or any other Transaction Document to the contrary, such Contract shall be considered an Excluded Contract (and not included in the Purchased Assets) for all purposes of this Agreement and Buyer shall not have any obligation to satisfy or pay any Cure Costs or other Liabilities with respect to such Excluded Contract. Each assignable Contract listed by the Seller on the Cure Schedule that otherwise falls within the definition of Purchased Assets and that Buyer does not elect to identify as an Excluded Contract pursuant to the preceding sentence shall be an "Assumed Contract". Buyer agrees to promptly satisfy all Determined Cure Costs in respect of each Assumed Contract as and when such Determined Cure Costs become due under the Secondary Sale Order and pursuant to Section 7.3 hereof.

Section 2.4 Further Conveyances and Assumptions.

(a) From time to time following the Closing, the Seller and the Buyer shall, and shall cause their respective controlled Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be reasonably necessary or appropriate to assure fully to Buyer and its successors or assigns, all of the properties, rights, title, interests, estates, remedies, powers and privileges intended to be conveyed to Buyer under this Agreement and the Transaction Documents and to otherwise make effective the Transactions.

(b) Nothing in this Agreement nor the consummation of the Transactions shall be construed as an attempt or agreement to transfer or assign any Purchased Asset, including any Contract, Permit or other right, (i) which is not capable of being assigned pursuant to section 365 of the Bankruptcy Code or transferred pursuant to section 363 of the Bankruptcy Code to Buyer at the Closing, or (ii) the transfer or assignment of which would result in a violation of any applicable Law.

Section 2.5 Assignment of Contracts and Rights.

(a) To the extent that, as of the Closing, any Contract, Permit or other asset to be sold, transferred, conveyed or assigned (any such sale, transfer, conveyance or assignment, a "Transfer") to Buyer pursuant to the terms of Section 2.1 is not capable of being Transferred to Buyer (after giving effect to the Secondary Sale Order), in each case without the Consent of a third Person, or if such Transfer or attempted Transfer would constitute a breach of the relevant Contract or Permit or a violation of any Law, nothing in this Agreement or in any document, agreement or instrument delivered pursuant to this Agreement will constitute a Transfer or an attempted Transfer thereof prior to the time at which all Consents necessary for such Transfer or provision of service (such Consents, "Required Consents") have been obtained unless a Final Order of the Bankruptcy Court effects such Transfer without any such Required Consents.

(b) To the extent that any Required Consent with respect to any Designated Contract is not obtained by the Closing, the Seller will use its reasonable best efforts, and Buyer shall use its commercially reasonable efforts to cooperate with the Seller, to obtain such Required Consent, and the Seller will, from and after the Closing and until the date on which

such Required Consent is obtained, use commercially reasonable efforts during the term of such Contract to (i) provide to Buyer the benefits under such Contract, (ii) cooperate in any reasonable and lawful arrangement (including holding such Contract in trust for Buyer pending receipt of the Required Consent) designed to provide such benefits to Buyer, and (iii) enforce for the account of Buyer any rights of the Seller under such Contract (including the right to elect to terminate such Contract in accordance with the terms thereof upon the direction of Buyer); provided, however, that in carrying out its obligations under this Section 2.5(b), no Party shall be obligated to provide any financial accommodation or other consideration of any nature to any Person to facilitate obtaining any Required Consent. Buyer will cooperate with the Seller in order to enable the Seller to provide to Buyer hereunder the benefits contemplated by this Section 2.5(b) and, provided that such benefits are conferred upon Buyer, Buyer will pay on behalf of the Seller, any amount Buyer would have been required to pay under any such Contract had the Contract been assigned (after obtaining all Required Consents) to Buyer at the Closing.

Section 2.6 Receivables.

If, following the Closing, the Seller shall receive payment in respect of any accounts receivable that are included in the Purchased Assets (collectively, "Accounts Receivable"), then the Seller shall hold such amounts in trust for Buyer and shall promptly forward such payment to Buyer.

Section 2.7 Relinquishment of Control.

Subject to Sections 2.5(b) and 2.6, at the Closing, the Seller shall turn over actual possession and control of all of the Purchased Assets (including, for the avoidance of doubt, the Books and Records related to such Purchased Assets) to Buyer by taking such action that may be required or reasonably requested by Buyer to effect such transfer of possession and control.

### ARTICLE III

#### CONSIDERATION

Section 3.1 Consideration.

The aggregate consideration for the sale, transfer, assignment, conveyance and delivery by the Seller of the Purchased Assets (the "Purchase Price") shall be Two Hundred Sixty-Five Thousand Dollars (\$265,000.00).

Section 3.2 Payment of Purchase Price.

The Purchase Price shall be payable at Closing in cash.

Section 3.3 Purchase Price Allocation.

As promptly as reasonably practicable, but no later than ninety (90) days after the Closing Date, Buyer shall deliver to the Seller a schedule (the "Allocation Schedule") allocating the Purchase Price and all other capitalized costs of Buyer (including, for avoidance of doubt,

Assumed Liabilities, Determined Cure Costs and any other items that are treated as additional consideration for Tax purposes) among the Purchased Assets. The Allocation Schedule shall be reasonable and shall be prepared in accordance with Section 1060 of the Code and the Treasury Regulations promulgated thereunder. If, within fifteen (15) days after delivery of such Allocation Schedule, the Seller notifies Buyer in writing that the Seller objects to the allocation set forth on the Allocation Schedule, the Seller and Buyer shall use their respective good faith efforts to resolve such dispute. If the Seller and Buyer are unable to resolve such dispute, the Parties shall submit such dispute to the Bankruptcy Court for resolution. Upon final determination of the Allocation Schedule (whether by agreement or dispute resolution as set forth above), the Seller shall return an executed copy thereof to Buyer. Buyer, on the one hand, and Seller, on the other hand, each agree to file IRS Form 8594 (Asset Acquisition Statement Under Section 1060), and all U.S. federal, state, local and foreign Tax Returns, in accordance with the Allocation Schedule, and to take no position contrary thereto, unless (and then only to the extent) otherwise required by a Final Determination. Buyer, on the one hand, and Seller, on the other hand, each agree to provide the other promptly with any information required to complete IRS Form 8594. If the Allocation Schedule is questioned or disputed by any Governmental Body, the Party receiving notice of such question or dispute will promptly notify the other Parties hereto. The Seller and the Buyer shall cooperate in good faith in responding to any such question or dispute.

#### ARTICLE IV

##### CLOSING AND TERMINATION

###### Section 4.1 Closing Date.

Subject to the satisfaction of the conditions set forth in Section 10.1, Section 10.2 and Section 10.3 (or the waiver thereof by the applicable Parties entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II hereof (the "Closing") shall take place at the offices of Squire Patton Boggs (US) LLP, 2550 M St. NW, Washington, DC 20037 (or at such other place as the Parties may designate in writing) at 10:00 AM (Eastern Time) on the date that is the first Business Day following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions), unless another time or date, or both, are agreed to in writing by the Parties. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the Parties in writing, the Closing shall be deemed effective and all right, title and interest of the Seller in the Purchased Assets shall be considered to have passed to Buyer as of 12:01 a.m. (Eastern Time) on the Closing Date.

Section 4.2 Deliveries by the Seller. At the Closing, the Seller shall deliver to Buyer:

- (a) a duly executed bill of sale and assignment agreement in the form attached hereto as Exhibit A (the "Bill of Sale") in favor of Buyer with respect to the Purchased Assets;
- (b) the officer's certificate required to be delivered pursuant to Section 10.1(a)

and Section 10.1(b);

(c) a certified copy of the Secondary Sale Order; and

(d) all other agreements, certificates and instruments of conveyance and transfer, in form and substance reasonably acceptable to Buyer, as may be necessary to convey the Purchased Assets to Buyer or reasonably requested by Buyer.

Section 4.3 Deliveries by Buyer. At the Closing, Buyer shall deliver, or cause to be delivered, to the Seller:

(a) the Bill of Sale duly executed by Buyer; and

(b) the officer's certificate required to be delivered pursuant to Section 10.2(a) and Section 10.2(b).

Section 4.4 Termination of Agreement.

This Agreement may be terminated at any time prior to the Closing (by written notice from the terminating Party to the other Party) as follows:

(a) by Buyer or Seller if the Closing shall not have occurred by January 31, 2015 (the "Termination Date"); provided, however, that if the Closing shall not have occurred on or before the Termination Date due to a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Buyer, on the one hand, or Seller, on the other hand, then the breaching party may not terminate this Agreement pursuant to this Section 4.4(a);

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

(c) by Buyer if any of the conditions to the obligations of Buyer set forth in Section 10.1 and Section 10.3 shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement, and such condition is not waived by Buyer;

(d) by the Seller if any condition to the obligations of the Seller set forth in Section 10.2 and Section 10.3 shall have become incapable of fulfillment other than as a result of a breach by the Seller of any covenant or agreement contained in this Agreement, and such condition is not waived by the Seller;

(e) by Buyer if there shall be a material breach by the Seller of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.1 or Section 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) Business Days after the giving of written notice by Buyer to Seller of such breach and (ii) the Termination Date;

(f) by Buyer if the Secondary Sale Order with respect to the Transactions has been entered and all other conditions to Closing have been satisfied or waived by the applicable



Party and (i) Buyer has provided Seller with written notice that it is prepared to consummate the Transactions and (ii) the Closing Date does not occur within two (2) Business Days of Buyer providing Seller with such notice;

(g) by Seller if there shall be a material breach by Buyer of any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Section 10.2 or Section 10.3 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) Business Days after the giving of written notice by Seller to Buyer of such breach and (ii) the Termination Date;

(h) by Seller or Buyer if there shall be in effect a final non-appealable Order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions; or

(i) by Buyer if the Secondary Sale Order has not been entered by the Bankruptcy Court on or before January 28, 2015;

(j) by Buyer if the Secondary Sale Order is modified in any manner that is materially adverse to Buyer without the consent of Buyer (which consent may be withheld or waived in Buyer's sole discretion); or

(k) by Seller if the Secondary Sale Order is modified in any manner that is materially adverse to the Seller without the consent of the Seller (which consent may be withheld or waived in the Seller's sole discretion);

provided, however, that in each case the right to terminate this Agreement under this Section 4.4 will not be available to any Party to this Agreement whose material breach of any of its obligations under this Agreement has been a principal cause of, or resulted in, the failure of a condition to the Closing pursuant to Article X.

Section 4.5 Return of Documents Upon Termination.

If this Agreement is terminated as provided herein, each Party shall redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether so obtained before or after the execution hereof, to the Party furnishing the same.

Section 4.6 Effect of Termination.

To the extent that this Agreement is validly terminated as provided herein, this Agreement shall become wholly void and of no further force and effect and such termination shall be without liability to Buyer or Seller, or any of their respective Affiliates or Representatives, and each shall be fully released and discharged from any Liability arising under this Agreement after the date of such termination; provided, however, that the provisions of Article I, Section 4.5, this Section 4.6, Section 8.5, Article XI and Article XII of this Agreement shall survive any such termination and shall be enforceable hereunder.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF SELLER

The Seller hereby represents and warrants to Buyer as follows:

#### Section 5.1 Organization and Good Standing.

The Seller is a limited liability company duly organized, validly existing and, except as a result of the commencement of the Chapter 11 Cases, in good standing under the Laws of the jurisdiction of its organization, and, subject to obtaining the approval of the Bankruptcy Court, has all necessary power and authority to enter into this Agreement and each of the other Transaction Documents, to carry out its obligations hereunder and thereunder and to consummate the Transactions. The Seller has all necessary power and authority to own, lease, operate and conduct its businesses, properties and assets as now being conducted. The Seller is duly licensed or qualified to do business and is in good standing in each jurisdiction in which the properties owned or leased by it or the operation of its business makes such licensing or qualification necessary, except to the extent that the failure to be so licensed, qualified or in good standing has resulted from the commencement or continuance of the Chapter 11 Cases.

#### Section 5.2 Authorization and Enforceability of Agreement.

Subject to the entry of the Secondary Sale Order by the Bankruptcy Court, the execution and delivery of this Agreement and each of the other Transaction Documents to be executed by the Seller (the "Seller Documents"), the performance by the Seller of its obligations under this Agreement and each Seller Document, and the consummation by the Seller of the Transactions have been duly authorized by all requisite action on the part of the Seller and no other action or proceeding on the part of the Seller is necessary to authorize the execution and delivery of this Agreement and each of the other Seller Documents by the Seller, or the consummation of the Transactions. This Agreement has been, and upon their execution, the other Seller Documents will be at or prior to Closing, duly executed and delivered by the Seller, and (assuming due authorization, execution and delivery by Buyer), subject to the approval of the Bankruptcy Court, this Agreement constitutes, and, upon their execution, the other Seller Documents shall constitute, legal, valid and binding obligations of the Seller, enforceable against the Seller in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

#### Section 5.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Seller of this Agreement or any of the other Seller Documents, the consummation of the transactions contemplated hereby or thereby, or compliance by the Seller with any of the provisions hereof or thereof will materially conflict with, or result in any material violation of or material default (with or without notice or lapse of time, or both) under, or give rise to a right of termination or cancellation under any

provision of (i) the Organizational Documents of the Seller; (ii) subject to entry of the Secondary Sale Order, any Contract or Permit to which the Seller is a party or by which any of the properties or assets of the Seller are bound; (iii) subject to entry of the Secondary Sale Order, any Order of any Governmental Body applicable to the Seller or any of the properties or assets of the Seller as of the date hereof; or (iv) subject to entry of the Secondary Sale Order, any applicable Law.

(b) No material consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person is required on the part of the Seller in connection with the execution and delivery of this Agreement or the other Seller Documents, the compliance by the Seller with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by the Seller of any other action contemplated pursuant to the Transaction Documents, except for the entry of the Secondary Sale Order.

Section 5.4 Title to Purchased Assets.

Other than any Licensed Intellectual Property, the Seller owns each of the Purchased Assets, and, subject to the entry of the Secondary Sale Order, Buyer will be vested to the fullest extent permissible under Section 363(f) of the Bankruptcy Code with good title to the Purchased Assets free and clear of all Liens.

Section 5.5 Litigation.

There are no Legal Proceedings or Actions pending or, to Seller's Knowledge, threatened that relate to, or could otherwise affect, any of the Purchased Assets or Assumed Liabilities, before any Governmental Body that are not stayed under Section 362 of the Bankruptcy Code or that would affect the Purchased Assets after the entry of the Secondary Sale Order.

Section 5.6 Compliance with Laws.

The Seller is, and has, during the past three years, been in material compliance with all Laws applicable to its operations or assets. The Seller has not received any written notice of or been charged with the violation of any Laws.

Section 5.7 Taxes.

(a) The Seller and its Affiliates, each affiliated group (within the meaning of Section 1504 of the Code) or consolidated, combined or unitary group (under state or local Law) of which the Seller, or any of its Affiliates is or has been a member (each, an "Affiliated Group") have (i) timely filed, or have caused to be timely filed, with the appropriate Tax Authorities all Tax Returns required to be filed by or with respect to the Seller, Affiliate or Affiliated Group or with respect to the Purchased Assets (taking into account any validly obtained extensions of time to file), and (ii) timely paid all amounts of Taxes owing, regardless of whether shown on a filed Tax Return. All such Tax Returns are true, correct and complete.

(b) No issues were raised by a Tax Authority in any audit, investigation or administrative or judicial proceeding of the Seller or any of its Affiliates or an Affiliated Group

relating to Taxes that would reasonably be expected to recur in a future Tax period with respect to the Purchased Assets.

(c) No Tax allocation, Tax sharing or Tax indemnity or similar agreement or arrangement is in effect with respect to the Purchased Assets that would, in any manner, bind, obligate or otherwise restrict Buyer.

Section 5.8 Intellectual Property.

(a) Schedule 5.8(a) sets forth a true and complete list of (i) all registered Intellectual Property exclusively used or held by the Seller (the "Owned Intellectual Property"); and (ii) all intellectual property that the Seller is licensed or otherwise permitted to use by other Persons (the "Licensed Intellectual Property").

(b) Schedule 5.8(b) sets forth a true and complete list of all material written Intellectual Property Licenses.

(c) Except as set forth on Schedule 5.8(c):

(i) The Seller owns all Owned Intellectual Property listed on Schedule 5.8(a) and has valid rights in and to, including rights to manufacture, use, offer to sell, sell, publish, perform or exploit, as applicable, all other Purchased Intellectual Property as such Intellectual Property is used in the Ordinary Course of Business, in each case, free and clear of all Liens (other than Released Liens).

(ii) No Owned Intellectual Property is the subject of any ownership, validity, use or enforceability challenge and is maintained up to the Closing Date, and is not subject to any outstanding order, judgment or decree restricting its use or adversely affecting the Seller's rights thereto.

(iii) To Seller's Knowledge, the Seller is not violating and has not, in the past three (3) years, violated any third person's intellectual property rights and there are no Actions or Legal Proceedings, pending or threatened, concerning any claim that the Seller has infringed, diluted, misappropriated, or otherwise violated any intellectual property rights of any other Person.

(iv) The Seller has not received any written notice of any default or any event that with notice or lapse of time, or both, would constitute a default under any Contract providing for Licensed Intellectual Property and to which the Seller is a party or by which it is bound. To Seller's Knowledge, no Person is infringing, diluting, misappropriating or otherwise violating any Purchased Intellectual Property.

(v) No Person other than the Seller has any ownership interest in, or a right to receive a royalty or similar payment with respect to, any of the Owned Intellectual Property.

(vi) The Seller has not entered into any agreement to indemnify any other Person against any charge of infringement of any third party intellectual property, including Licensed Intellectual Property, except for customary infringement indemnities agreed to in the Ordinary Course of Business and included as part of any contracts for the license or sale of intellectual property, products or services, copies of which have been provided to Buyer. The Seller has not entered into any agreement granting any third party the right to bring infringement actions or otherwise to enforce rights with respect to the Owned Intellectual Property or pursuant to which the Seller has agreed not to sue or otherwise enforce any legal rights with respect to Owned Intellectual Property.

(vii) The Seller has used commercially reasonable efforts to protect the confidentiality of any material trade secrets and other material confidential and proprietary information included in the Purchased Intellectual Property.

Section 5.9 No Other Representations or Warranties; AS IS WHERE IS.

EXCEPT AS OTHERWISE EXPRESSLY SET FORTH IN THIS AGREEMENT: (I) THE SELLER EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND OR NATURE, EXPRESS OR IMPLIED, AS TO THE CONDITION, VALUE, QUALITY OR PROSPECTS OF THE PURCHASED ASSETS; (II) THE SELLER SPECIFICALLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES OF MERCHANTABILITY, USAGE, SUITABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE WITH RESPECT TO THE PURCHASED ASSETS, (III) IT IS UNDERSTOOD THAT THE PURCHASED ASSETS ARE BEING ACQUIRED "AS IS, WHERE IS" ON THE CLOSING DATE, AND IN THEIR PRESENT CONDITION, AND BUYER SHALL RELY ON ITS OWN EXAMINATION AND INVESTIGATION THEREOF, (IV) THE SELLER EXPRESSLY DISCLAIMS ALL LIABILITY AND RESPONSIBILITY FOR ANY REPRESENTATION, WARRANTY, PROJECTION, FORECAST, STATEMENT, OR INFORMATION MADE, COMMUNICATED, OR FURNISHED (ORALLY OR IN WRITING) TO BUYER OR ITS AFFILIATES OR REPRESENTATIVES (INCLUDING ANY OPINION, INFORMATION, PROJECTION, OR ADVICE THAT MAY HAVE BEEN OR MAY BE PROVIDED TO BUYER BY ANY DIRECTOR, OFFICER, EMPLOYEE, AGENT, CONSULTANT, OR REPRESENTATIVE OF SELLER OR ANY OF ITS AFFILIATES), AND (V) SELLER MAKES NO REPRESENTATIONS OR WARRANTIES TO BUYER REGARDING THE PROBABLE SUCCESS OR PROFITABILITY OF THE SELLER'S BUSINESS. THE DISCLOSURE OF ANY MATTER OR ITEM IN ANY SCHEDULE HERETO SHALL NOT BE DEEMED TO CONSTITUTE AN ACKNOWLEDGMENT THAT ANY SUCH MATTER IS REQUIRED TO BE DISCLOSED OR IS MATERIAL OR THAT SUCH MATTER WOULD REASONABLY BE EXPECTED TO RESULT IN A MATERIAL ADVERSE EFFECT.

## ARTICLE VI

### REPRESENTATIONS AND WARRANTIES OF BUYER

Buyer hereby represents and warrants to Seller as follows:

#### Section 6.1 Organization and Good Standing.

Buyer is a corporation, limited partnership or limited liability company, as the case may be, duly organized, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, formation or organization, and has all necessary power and authority to own, lease, operate and conduct its businesses, properties and assets as now being conducted.

#### Section 6.2 Authorization of Agreement.

Buyer has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other Transaction Document to be executed by it in connection with the consummation of the Transactions (the "Buyer Documents") and to consummate the Transactions. The execution, delivery and performance by Buyer of this Agreement and the Buyer Documents have been duly authorized by all necessary corporate, partnership, or limited liability company action on behalf of Buyer. This Agreement has been, and, upon its execution, each Buyer Document will be at or prior to the Closing, duly executed and delivered by Buyer and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and, upon their execution, the Buyer Documents will, when so executed and delivered, constitute, the legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

#### Section 6.3 Conflicts; Consents of Third Parties.

(a) None of the execution and delivery by Buyer of this Agreement or the Buyer Documents, the consummation of the Transactions or the compliance by Buyer with any of the provisions hereof or thereof will materially conflict with, or result in any material violation of or material default (with or without notice or lapse of time, or both) under, or give rise to a right of payment, termination, modification, acceleration or cancellation under any provision of (i) the Organizational Documents of Buyer, (ii) any Contract or Permit to which Buyer is a party or by which Buyer or its properties or assets are bound or (iii) any Order of any Governmental Body applicable to Buyer or by which any of the properties or assets of Buyer are bound, (iv) any applicable Law, except in the case of each of clauses (i) through (iv) above, as would not reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement or to consummate the Transactions.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the

part of Buyer in connection with the execution and delivery of this Agreement or the Buyer Documents, the compliance by Buyer with any of the provisions hereof or thereof, the consummation of the Transactions or the taking by Buyer of any other action contemplated hereby or thereby, except for the entry of the Secondary Sale Order.

Section 6.4 Litigation.

There are no Legal Proceedings pending or, to the knowledge of Buyer, threatened by or against Buyer, or to which Buyer is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement or to consummate the Transactions. Buyer is not subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to have a material adverse effect on the ability of Buyer to perform its obligations under this Agreement or to consummate the Transactions.

Section 6.5 Brokers.

Buyer has not retained any broker, finder or investment banker in connection with the transactions contemplated by this Agreement or any other Transaction Document for which Seller will be held responsible.

## ARTICLE VII

### BANKRUPTCY COURT MATTERS

Section 7.1 Bankruptcy Court Approval.

This Agreement is subject to approval by the Bankruptcy Court.

Section 7.2 Bankruptcy Court Filings.

Buyer agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining the entry of the Secondary Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" Buyer under section 363(m) of the Bankruptcy Code. Seller shall use its commercially reasonable efforts to pursue the entry by the Bankruptcy Court of the Secondary Sale Order, which Secondary Sale Order shall provide for the transfer of the Purchased Assets and the Assumed Liabilities to Buyer free from all successor or transferee liability to the extent permitted by Section 363 of the Bankruptcy Code. Seller shall use its commercially reasonable efforts to comply (or obtain an Order from the Bankruptcy Court waiving compliance) with all requirements under the applicable provisions of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, and the Local Bankruptcy Rules for the District of Delaware in obtaining the entry by the Bankruptcy Court of the Secondary Sale Order. Seller shall use its commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Secondary Sale Order by [DATE]. Seller further covenants and agrees that, after entry by the Bankruptcy Court of the Secondary Sale Order, the terms of any other proposed order submitted

by Seller to the Bankruptcy Court shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement. In the event that the Secondary Sale Order shall be appealed, subject to the Parties' respective rights to terminate this Agreement pursuant to Section 4.4, Seller and Buyer shall use their respective reasonable efforts to defend such appeal.

Section 7.3 Assumption of Assigned Contracts.

(a) On or about November 28, 2014, the Seller shall file a notice of assumption (the "Assumption Notice") with the Bankruptcy Court and serve such notice on each counterparty to a Contract listed thereon (other than any Contract which has been rejected or which is the subject of a pending motion to reject pursuant to Section 365 of the Bankruptcy Code). The Assumption Notice shall identify all Contracts that the Seller and Buyer believe may be assumed and assigned in connection with the sale of the Purchased Assets and set forth a good faith estimate of the amount of cure costs applicable to each such Contract (and if no cure cost is estimated to be applicable with respect to any particular Contract, the amount of such cure cost designated for such Contract shall be "\$0.00"). The Seller reserves the right to supplement such list of Contracts and provide additional notice of assumption, and to remove a Contract from the list of Contracts, up to five (5) Business Days prior to the Closing Date.

(b) On or before the date that is three (3) Business Days before the Closing Date (the "Designation Deadline"), Buyer shall provide to the Seller a list of those Contracts (if any) that it elects to have assumed and assigned to Buyer on the Closing Date (the "Designated Contracts"). Buyer shall be entitled to remove any Contract from the list of Designated Contracts at any time prior to the Designation Deadline. In the event that Buyer removes any such Contracts from such list, the Seller will provide the relevant counterparty written notice that the applicable Contract is no longer identified as a Designated Contract. For the avoidance of doubt, only those executory Contracts that remain identified as Designated Contracts as of the Closing Date will constitute Assumed Contracts and will be assumed by the Seller and assigned to Buyer pursuant to the Secondary Sale Order. There shall be no adjustment to the Purchase Price as a result of Buyer's election to exclude any one or more of such Contracts from the list of Designated Contracts pursuant to this Section 7.3(b) except that Buyer shall not be required to make any payments for Determined Cure Costs or any other amounts for any such Excluded Contracts. Subject to the approval of the Bankruptcy Court pursuant to the Secondary Sale Order or other such Order of the Bankruptcy Court, Seller shall assume and then assign to Buyer all Designated Contracts.

(c) Subject to the terms of Section 2.3 and Section 7.3(a) and (b), Buyer shall make provision for the payment of the Determined Cure Costs in cash in accordance with the Secondary Sale Order. Seller shall use its commercially reasonable efforts, including the filing and prosecution of any and all appropriate proceedings in the Bankruptcy Court, to establish the Determined Cure Costs, if any, for each Designated Contract, in accordance with Section 7.3(a).

(d) On or prior to the date hereof, Seller shall have delivered to Buyer true and complete copies of all Contracts identified on the Cure Schedule, or otherwise provided Buyer with access to such true and complete copies of such Contracts.



(e) Notwithstanding any provision in this Agreement to the contrary, Buyer shall have no obligation to purchase, acquire or assume any Contract (or any Liabilities thereunder) if a true and complete copy of such Contract has not been made available by Seller to Buyer in accordance with Sections 2.3, Section 7.3(a), Section 7.3(c) and Section 7.3(d) above. Notwithstanding any provision in this Agreement to the contrary, from and after the date hereof through the Closing Date, Seller will not reject or take any action (or fail to take any action that would result in rejection by operation of Law) to reject, withdraw, repudiate or disclaim any Contract without the prior written consent of Buyer.

## ARTICLE VIII

### COVENANTS

#### Section 8.1 Access to Information.

Seller agrees that, prior to the Closing Date, Buyer shall be entitled, through its officers, employees and Representatives, to make such investigation of the Purchased Assets and the Assumed Liabilities, and to make such examination (and copies) of the books and records of the Seller and its controlled Affiliates related thereto as Buyer or its Representatives reasonably request. Any such investigation and examination shall be conducted during regular business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. The Seller shall cause its Representatives to cooperate with Buyer and its Representatives and Buyer shall cooperate with the Seller and its Representatives and use their commercially reasonable efforts to minimize any disruption to the Seller's business. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require the Seller or any of its Subsidiaries to disclose information where such disclosure would jeopardize the protection of attorney-client privilege or conflict with any confidentiality obligations by which the Seller or any of its Subsidiaries is bound; provided, however, that the Seller and any of its Subsidiaries shall use commercially reasonable efforts to obtain a waiver of any such confidentiality provisions and to otherwise cause such information to be provided in a manner that would not result in such jeopardy or conflict. No investigation by Buyer or its Representatives prior to or after the date of this Agreement shall diminish or obviate any of the representations, warranties, covenants or agreements of the Seller contained in this Agreement or any of the other Transaction Documents.

Section 8.2 Conduct of the Seller's Business Pending the Closing. Prior to the Closing, the Seller shall:

(a) use its commercially reasonable efforts to (A) preserve the present business operations, organization and goodwill of the Seller's business, and (B) preserve the present relationships with Persons having business dealings with the Seller;

(b) use its commercially reasonable efforts to (A) maintain the books, accounts and records of the Seller in the Ordinary Course of Business, (B) continue to operate billing procedures and collect accounts receivable utilizing normal procedures and without discounting or accelerating payment of such accounts and (C) pay accounts payable and comply with all contractual and other obligations applicable to the operation of the Seller's business;

(c) use its commercially reasonable efforts to maintain the Purchased Assets in their current condition, ordinary wear and tear excepted;

(d) use its commercially reasonable efforts to maintain in full force and effect any Permits and operate its business in compliance therewith; and

(e) comply with applicable Laws, other than with respect to any failure to comply that would not reasonably be expected to have, individually or in the aggregate with other failures, a Material Adverse Effect.

### Section 8.3 Consents.

The Seller shall use its commercially reasonable efforts, and Buyer shall use its commercially reasonable efforts to cooperate with Seller, to obtain at the earliest practicable date all Required Consents, including, without limitation, the Consents referred to in Section 5.3(b), and any other Consents required to consummate the Transactions; provided, however, that no Party shall be obligated to (a) pay any consideration therefor to any third party from whom a Consent is requested (other than filing fees with any Governmental Body), (b) agree to any restrictions on its ability to operate the Purchased Assets or hold or exercise ownership over the Purchased Assets (other than as contemplated by this Agreement), or (c) initiate any litigation or Legal Proceedings to obtain any such Consent.

### Section 8.4 Confidentiality.

(a) For the period from the date hereof until Closing, Buyer shall not directly or indirectly disclose to the public or to any third party any material non-public information concerning or relating to Seller, other than with the express prior written consent of Seller, except as may be required by applicable Law or the Bankruptcy Court, in which event the Party seeking to make such disclosure shall provide prior written notice to Seller of the content, form, timing and manner of any proposed disclosure; provided, however, that notwithstanding anything to the contrary contained in this Agreement, Buyer may disclose such information (a) to any of its stockholders, members, Affiliates, agents, Representatives and existing and potential financing sources who need to know such information for the sole purpose of evaluating, negotiating or implementing the Transactions and who are bound by confidentiality and non-disclosure obligations to Buyer or (b) where such disclosure is required under any applicable Law. For the avoidance of doubt, as of the Closing, material non-public information with respect to the Purchased Assets and the Assumed Liabilities shall be deemed the confidential information of Buyer, and Seller shall maintain the confidentiality thereof in accordance with the terms of this Section 8.4 from and after the Closing Date.

(b) For the period from the date hereof until Closing, the Seller shall not directly or indirectly disclose to the public or to any third party any material non-public information concerning or relating to Buyer, other than with the express prior written consent of Buyer, except as may be required by applicable Law or the Bankruptcy Court, in which event the Party seeking to make such disclosure shall to the extent practical and permissible by Law, provide prior written notice to Buyer of the content, form, timing and manner of any proposed disclosure; provided, however, that notwithstanding anything to the contrary contained in this

Agreement, the Seller may disclose such information where such disclosure is required under any applicable Law.

Section 8.5 Waiver of Certain Claims.

Effective as of the Closing, the Seller waives all rights under section 506(c) of the Bankruptcy Code against the Purchased Assets.

Section 8.6 Notification of Certain Matters.

Prior to Closing, the Seller shall give prompt notice to Buyer, on the one hand, and Buyer shall give prompt notice to Seller, on the other hand, of (i) the occurrence or non-occurrence of any event which would cause any of the representations or warranties in this Agreement of Seller or Buyer, respectively, to be untrue or inaccurate in any material respect at or prior to the Closing Date and (ii) any material failure of Seller or Buyer, respectively, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it under this Agreement; provided, however, that the delivery of any notice pursuant to this Section 8.6 shall not limit or otherwise affect the remedies available to the Party receiving such notice under this Agreement.

## ARTICLE IX

### TAX MATTERS

Section 9.1 Tax Matters.

(a) Buyer shall be responsible for all sales, use, stamp, documentary stamp, filing, recording, transfer, goods and services, value added, or similar Taxes payable in connection with the Transactions (but not any income tax) ("Transfer Taxes"), regardless of whether such Transfer Taxes are levied on Seller, Buyer or the Purchased Assets. Except as otherwise required by applicable Law, Buyer shall prepare and file all Tax Returns with respect to Transfer Taxes; provided, however, that if Seller is required under applicable Law to file any Tax Return with respect to Transfer Taxes, Seller shall deliver a copy of such Tax Return to Buyer for Buyer's review and comment and shall reflect thereon any reasonable comments submitted by Buyer at least ten (10) days before the due date for filing such Tax Return, and shall file such Tax Return and provide a copy of such filing to Buyer. Buyer shall reimburse Seller for any reasonable and documented costs and expenses associated with the filing of any such Tax Return. The Parties shall cooperate and consult with each other prior to filing any Tax Returns in respect of Transfer Taxes and cooperate and otherwise use commercially reasonable efforts to obtain any exemptions, exclusions or available refunds with respect to Transfer Taxes.

(b) Buyer and Seller shall (i) provide each other with such assistance as may be reasonably requested in connection with the preparation of any Tax Return or any claim or request for a refund, rebate, abatement or other recovery for Taxes, or in resolving any Tax claim, action, suit, litigation, proceeding, arbitration, investigation, audit or controversy (a "Tax Contest") and (ii) retain (and provide the other party with reasonable access to) all records or information which may be relevant with respect to any such Tax matter. Any information

obtained pursuant to this Section 9.1 shall be kept confidential, except as may be otherwise necessary in connection with the filing of any Tax Return or claim or request for refund, rebate, abatement or other recovery for Taxes or in resolving any Tax Contest.

(c) The obligations of the Parties under this Section 9.1 shall survive the Closing.

## ARTICLE X

### CONDITIONS TO CLOSING

#### Section 10.1 Conditions Precedent to Obligations of Buyer.

The obligations of Buyer to consummate the Transactions or to take the other actions required to be taken by Buyer at the Closing, is subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in whole or in part, only if Buyer consents to such waiver in writing):

(a) the representations and warranties of Seller set forth in this Agreement shall be true and correct at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, however, that in the event of a breach of a representation or warranty, the condition in this Section 10.1(a) shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together has resulted in, or would reasonably be expected to result in, a Material Adverse Effect, and Buyer shall have received a certificate signed by an authorized officer of the Seller (in form and substance reasonably satisfactory to Buyer), dated the Closing Date, to such effect;

(b) Seller shall have performed and complied in all material respects with all obligations and agreements required in this Agreement to be performed or complied with by it prior to the Closing Date, and Buyer shall have received a certificate signed by an authorized officer of the Seller, dated the Closing Date, to the foregoing effect;

(c) There shall have not been commenced any proceeding or investigation by a Governmental Body of competent jurisdiction for the purpose of restraining, enjoining, delaying or otherwise materially restricting the consummation of the Transactions or materially limiting or materially restricting the conduct of Buyer or any of its Affiliates following consummation of the Transactions or requiring Buyer or any of its Affiliates to divest or hold separate any assets or businesses; and

(d) Seller shall have delivered, or caused to be delivered, to Buyer all of the items set forth in Section 4.2.

#### Section 10.2 Conditions Precedent to Obligations of Seller.

The obligations of Seller to consummate the Transactions are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Seller in whole or in part to the extent permitted by applicable Law):

(a) the representations and warranties of Buyer set forth in this Agreement shall be true and correct at and as of the Closing, except to the extent such representations and warranties expressly relate to an earlier date (in which case such representations and warranties shall be true and correct on and as of such earlier date); provided, however, that in the event of a breach of a representation or warranty, the condition in this Section 10.2(a) shall be deemed satisfied unless the effect of all such breaches of representations and warranties taken together result in a material adverse effect on the ability of Buyer to perform its obligations under this Agreement or to consummate the Transactions, and Seller shall have received a certificate signed by an authorized officer of Buyer (in form and substance reasonably satisfactory to Seller), dated the Closing Date, to such effect;

(b) Buyer shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by it on or prior to the Closing Date, and Seller shall have received a certificate signed by an authorized officer of Buyer, dated the Closing Date, to the foregoing effect; and

(c) Buyer shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 4.3.

Section 10.3 Conditions Precedent to Obligations of Buyer and Seller.

The respective obligations of Buyer and Seller to consummate the Transactions are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived by agreement of Buyer and Seller in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Order by a Governmental Body of competent jurisdiction restraining, enjoining, delaying or otherwise materially restricting the consummation of the Transactions; and

(b) the Bankruptcy Court shall have entered the Secondary Sale Order on or before January 28, 2015.

Section 10.4 Frustration of Closing Conditions.

Neither the Seller nor the Buyer may rely on the failure of any condition set forth in Section 10.1, Section 10.2, or Section 10.3 as the case may be, if such failure was primarily caused by such Party's failure to comply with any provision of this Agreement.

## ARTICLE XI

### NON-SURVIVAL OF REPRESENTATIONS AND WARRANTIES

#### Section 11.1 Non-Survival of Representations and Warranties.

The representations, warranties, covenants and agreements (other than covenants and agreements that, by their terms, survive the Closing or termination of this Agreement) in this Agreement shall terminate at the Closing, or upon termination of this Agreement pursuant to Section 4.4, and, following the Closing or the termination of this Agreement, as the case may be, no Party shall make any claim whatsoever for any breach of any such representation, warranty or covenant hereunder, subject to Section 4.6. All covenants and agreements contained in this Agreement that, by their terms, survive the Closing or termination of this Agreement shall survive such Closing or termination in accordance with their respective terms; provided, that any covenant or agreement contained in this Agreement that, by its terms, survives the Closing or termination of this Agreement and whose survival is not limited by its terms shall survive until fully performed in accordance with its terms.

## ARTICLE XII

### MISCELLANEOUS

#### Section 12.1 Remedies.

The Parties acknowledge and agree that, prior to the Closing, (a) the sole and exclusive remedy available to Buyer in the event of Seller's breach of any representation, warranty, covenant or agreement of the Seller in this Agreement (including a willful breach) shall be to terminate this Agreement pursuant to and in accordance with Section 4.4; and (b) the sole and exclusive remedy available to Seller in the event of a breach by Buyer of any representation, warranty, covenant or agreement by Buyer in this Agreement shall be to terminate this Agreement pursuant to and in accordance with Section 4.4. It is understood and agreed by the Parties that, from and after the Closing, money damages would not be a sufficient remedy for any breach of this Agreement by any Party and each non-breaching Party should be entitled to specific performance and injunctive or other equitable relief as a remedy of such a breach in addition to any other rights which such Party may have at law, in equity or pursuant to this Agreement.

#### Section 12.2 Non-Recourse.

The Parties acknowledge and agree that no past, present or future director, officer, employee, incorporator, member, partner, stockholder, agent, attorney, Representative or Affiliate of any of the Parties to this Agreement shall, in such capacity, have any liability or responsibility (in contract, tort or otherwise) for any Liabilities of Buyer or Seller, as applicable, under this Agreement or for any claim based on, in respect of, or by reason of, the Transactions.

Section 12.3 Submission to Jurisdiction; Consent to Service of Process.

(a) Without limiting any Party's right to appeal any Order of the Bankruptcy Court, (i) the Bankruptcy Court shall retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any other Transaction Document, any breach or default hereunder or thereunder, or the Transactions, and (ii) any and all proceedings related to the foregoing shall be filed and maintained only in the Bankruptcy Court, and the Parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and shall receive notices at such locations as indicated in Section 12.8 hereof; provided, however, that if the Chapter 11 Cases have closed, the Parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. The Parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the Parties agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the Parties hereby consents to process being served by any Party to this Agreement in any suit, action or proceeding by delivery of a copy thereof by personal delivery, prepaid overnight courier or certified mail in accordance with the provisions of Section 12.8.

Section 12.4 Waiver of Right to Trial by Jury.

THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT THAT THEY MAY HAVE TO TRIAL BY JURY OF ANY CLAIM OR CAUSE OF ACTION, OR IN ANY PROCEEDING, DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE TRANSACTIONS (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY). EACH PARTY (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT, OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 12.4.

Section 12.5 Time of Essence.

With regard to all dates and time periods set forth or referred to in this Agreement, time is of the essence.

Section 12.6 Entire Agreement; Amendments and Waivers.

This Agreement (including the Schedules and Exhibits hereto) and the other Transaction Documents represent the entire understanding and agreement between the Parties with respect to the subject matter hereof and supersede all prior discussions and agreements between the Parties with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed only by written instrument making specific reference to this Agreement and executed by Buyer and the Seller. Any provision hereof can be waived only by written instrument making specific reference to this Agreement and signed by Buyer (if it is the waiving Party) or the Seller. No action taken pursuant to this Agreement, including without limitation, any investigation by or on behalf of any Party, shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

Section 12.7 Governing Law.

THIS AGREEMENT, THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER, AND ANY CLAIM OR CONTROVERSY (WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER THEORY) DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF THIS AGREEMENT OR THE NEGOTIATION, EXECUTION OR PERFORMANCE OF THIS AGREEMENT (INCLUDING ANY CLAIM OR CAUSE OF ACTION BASED UPON, ARISING OUT OF OR RELATED TO ANY REPRESENTATION OR WARRANTY MADE IN OR IN CONNECTION WITH THIS AGREEMENT OR AS AN INDUCEMENT TO ENTER INTO THIS AGREEMENT), INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, SHALL IN ALL RESPECTS BE GOVERNED BY AND INTERPRETED, CONSTRUED, AND DETERMINED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK (WITHOUT REGARD TO ANY CONFLICT OF LAWS PROVISION THAT WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION OTHER THAN THE PRINCIPLES SET FORTH IN SECTION 5-1401 OF THE GENERAL OBLIGATIONS LAW OF THE STATE OF NEW YORK) AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.

Section 12.8 Notices.

All notices and other communications under this Agreement shall be in writing and shall be deemed duly given (i) when delivered personally or by prepaid overnight courier, with a record of receipt, (ii) the fourth day after mailing if mailed by certified mail, return receipt requested, or (iii) the day of transmission, if sent by email, facsimile or telecopy prior to 5:00 p.m. eastern prevailing time on any Business Day or the Business Day after transmission, if sent



after such time (with a copy promptly sent by prepaid overnight courier with record of receipt or by certified mail, return receipt requested), to the Parties at the following addresses, email addresses or facsimile numbers (or to such other address, email address or facsimile number as a Party may have specified by notice given to the other Parties pursuant to this Section 12.8):

If to Seller, to:

Ziphany, LLC  
24 Massachusetts Route 6A  
Sandwich, Massachusetts 02563  
Attention: Chip Cummins

With copies (which shall not constitute notice) to:

Alan M. Noskow  
Squire Patton Boggs (US) LLP  
2550 M St. NW  
Washington, DC 20037  
Telephone: 202-457-6000

And

Donald J. Bowman, Jr.  
Young Conaway Stargatt & Taylor, LLP  
Rodney Square  
1000 N. King Street  
Wilmington, DE 19801  
Telephone: 302-571-6600

If to Buyer, to:

JKMV Acq LLC  
Attn: Kevin LaGuardia  
3 Cory Ct.  
Mountainside, NJ 07092

With copies (which shall not constitute notice) to:

Gonzalez Legal & Consulting  
4100 SE Hawthorne Blvd., #743  
Portland, Oregon 97214  
[rene@gonzalezlc.com](mailto:rene@gonzalezlc.com)

Section 12.9 Severability.

If any term or provision of this Agreement is invalid, illegal, or incapable of being enforced by any law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the Transactions is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner in order that the Transactions may be consummated as originally contemplated to the greatest extent possible.

Section 12.10 Binding Effect; Assignment.

(a) This Agreement shall be binding upon the Parties and their respective successors (including any trustee, receiver, receiver-manager, interim receiver or monitor or similar officer appointed in respect of Seller in the Chapter 11 Cases) and permitted assigns.

(b) No assignment of this Agreement or of any rights or obligations hereunder may be made by the Seller or Buyer (other than by operation of Law) without the prior written consent of the other Parties and any attempted assignment without the required consents shall be void; provided, however, that Buyer shall have the right to assign its rights and/or delegate its obligations hereunder (A) prior to or after the Closing, to any Affiliate(s) (in which event Buyer shall continue to bound by its obligations under this Agreement and any Assumed Contracts), (B) contemporaneous with or after the Closing, to any financing sources for collateral purposes or (C) after the Closing, to any subsequent Buyer of all or any portion of the stock or assets of Buyer. Upon any such permitted assignment, the references in this Agreement to Buyer shall also apply to any such assignee unless the context requires otherwise.

Section 12.11 No Third Party Beneficiaries.

This Agreement shall inure solely to the benefit of the Parties and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any Person that is not a Party (or a successor or permitted assign of any such Party) any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

Section 12.12 Counterparts.

This Agreement and the closing documents contemplated by Section 4.2 and/or 4.3 may be executed and delivered (including by electronic transmission) in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

Section 12.13 Release.

(a) Except for the rights and obligations of the Parties specifically set forth in this Agreement, effective as of Closing, the Seller, on its own behalf and on behalf of its Affiliates, to the extent permitted by Law, hereby irrevocably and unconditionally releases,

remises and forever discharges Buyer and its Affiliates and all such parties' past, present and future shareholders, partners, members, board of directors and/or supervisors, managers, officers, employees, agents, representatives and advisors from any and all suits, legal or administrative proceedings, claims, demands, damages, losses, costs, Liabilities, interest or causes of action whatsoever, at Law or in equity, known or unknown, which the Seller or its Affiliates might now or subsequently may have, based on, relating to or arising out of this Agreement, the transactions contemplated hereby, the ownership, use or operation of the Purchased Assets or the condition, quality, status or nature of the Purchased Assets, including rights to contribution under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, breaches of statutory or implied warranties, nuisance or other tort actions, rights to punitive damages, common law rights of contribution and rights under insurance maintained by Buyer or any of its Affiliates.

[REMAINDER OF PAGE INTENTIONALLY BLANK]

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed by its respective officers thereunto duly authorized, as of the date first written above.

**ZIPHANY, L.L.C., as Seller**

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

**JKMV ACQ LLC, as Buyer**

**By: JKMV, Inc., its Managing Member**

By: <sup>DocuSigned by:</sup> *Kevin LaGuardia*  
\_\_\_\_\_  
0282C0B016764B3  
Name: Kevin LaGuardia  
Title: President

**EXHIBIT A**  
**FORM OF BILL OF SALE**  
**[ATTACHED]**

**SCHEDULE 1.1(a)**

**EXCLUDED CONTRACTS**

Health Insurance Agreement with BlueCross BlueShield of WNY (with listed Cure Amount of \$3,393.80)

UK Datacenter Communication, Layer 2 Lease with Cogent Communications UK Ltd. (with Listed Cure Amount of \$2,400.00)

UK Datacenter Space with Equinix UK Ltd. (with listed Cure Amount of \$17,193.38)

Commercial Package & Workers Compensation with Fireman's Fund (with listed Cure Amount of \$0)

Professional Liability Insurance with M&T Insurance Agency Inc. (with Cure Amount of \$0)

State representation with National Registered Agents Inc. (with listed Cure Amount of \$0)

Payroll Services with Paychex (with listed Cure Amount of \$0)

Postage Machine Rental with Pitney Bowes (with listed Cure Amount of \$0)

401K Services with Principal Financial Group (with listed Cure Amount of \$0)

Communication Services with Voiceshot (with listed Cure Amount of \$0)

**SCHEDULE 2.1(K)**

**CONTRACTS**

Server Leases with Cisco Systems Capital Corporation (with listed Cure Amount of \$2,792.59)

Buffalo Datacenter Communication with Cogent Communications, Inc. – Account #ZIPHANYL00001 (with listed Cure Amount of \$200.85)

Cleveland Datacenter Communication Cogent Communications, Inc. – Account #ZIPHANYL00002 (with listed Cure Amount of \$0)

Server Lease with Dell Financial Services – Lease #002 (with listed Cure Amount of \$105.20)

Server Lease with Dell Financial Services – Lease #003 (with listed Cure Amount of \$30.75)

Server Lease with Dell Financial Services – Lease #004 (with listed Cure Amount \$39.91)

Server Lease with Dell Financial Services – lease #005 (with listed Cure Amount of \$47.65)

Server Lease with Dell Financial Services – Lease #008 (with listed Cure Amount of \$92.44)

Server Lease with Dell Financial Services – Lease #009 (with listed Cure Amount of \$134.01)

Server Lease with Dell Financial Services – Lease #010 (with listed Cure Amount of \$96.49)

Buffalo & Cleveland Datacenter Space with Equinix, Inc. (365 Operating Company) (with listed Cure Amount of \$8,618.31)

DDE Services in ISO-NE with ISO New England (with listed Cure Amount of \$0)

MV90 Software license and Maintenance Agreement with Itron, Inc. (with listed Cure Amount of \$0)

Telecommunication Services with KORE Telematics, Inc. (with listed Cure Amount of \$2,680.84)

E-mail Hosting and Office Software with Microsoft Office 365 (with listed Cure Amount of \$0)

Rent – Primary Office Space with One Fusion LLC (with listed Cure Amount of \$7,974.38)

24X7 Monitoring Services with Shatter IT (with listed Cure Amount of \$0)

Wireless Phone Services with Verizon Wireless (with listed Cure Amount of \$0)

Data Services with Weatherbank, Inc. (with listed Cure Amount of \$0)

Reseller Service Agreement with 360 Energy, Inc. (fka Canadian Niagara Energy Solutions) (with listed Cure Amount of \$0)

Master Services Agreement with Aztec Energy Partners (with Cure Amount of \$0)

Hosted Services License Agreement with Hess Corporation (with listed Cure Amount of \$0)

Master Services Agreement with Hess Corporation (with listed Cure Amount of \$0)

Work Order #6 to the Master Services Agreement with Hess Corporation (with listed Cure Amount of \$0)

Master Services Agreement with Innoventive Power (with listed Cure Amount of \$0)

Master Service Agreement with Great Plains Energy Services, Inc. (with listed Cure Amount of \$0)

Statement of Work Pursuant to Master Services Agreement with Great Plains Energy Services, Inc. (with listed Cure Amount of \$0)

Managed Service Agreement with Pace University (with listed Cure Amount \$0)

Master Services Agreement with Itron (with listed Cure Amount of \$0)



Exhibit 2

Cure Amounts

**Ziphany LLC****Assignment Schedule**

<b>Counterparty</b>	<b>Contract/Agreement</b>	<b>Contract Date</b>	<b>Cure Amount (1)</b>
360 Energy Inc. (fka Canadian Niagara Energy Solutions)	Reseller Service Agreement	8/11/2004	\$ -
Aztec Energy Partners	Master Services Agreement	5/31/2011	\$ -
BlueCross BlueShield of WNY	Health Insurance	7/1/2014	\$ 3,393.80
Cisco Systems Capital Corporation	Server Leases	7/18/2012	\$ 2,792.59
Cogent Communications, Inc. - Account #ZIPHANYL00001	Buffalo Datacenter Communication	8/1/2012	\$ 200.85
Cogent Communications, Inc. - Account #ZIPHANYL00002	Cleveland Datacenter Communication	8/1/2012	\$ -
Cogent Communications UK Ltd	UK Datacenter Communication, Layer 2 Lease	11/22/2012	\$ 2,400.00
Dell Financial Services - Lease #002	Server Lease	3/16/2009	\$ 105.20
Dell Financial Services - Lease #003	Server Lease	3/19/2009	\$ 30.75
Dell Financial Services - Lease #004	Server Lease	9/4/2009	\$ 39.91
Dell Financial Services - Lease #005	Server Lease	4/14/2010	\$ 47.65
Dell Financial Services - Lease #008	Server Lease	10/21/2011	\$ 92.44
Dell Financial Services - Lease #009	Server Lease	7/18/2012	\$ 134.01
Dell Financial Services - Lease #010	Server Lease	9/23/2013	\$ 96.49
Equinix UK Ltd	UK Datacenter Space	11/15/2012	£ 17,193.38
Equinix, Inc. (365 Operating Company)	Buffalo & Cleveland Datacenter Space	11/1/2012	\$ 8,618.31
Fireman's Fund	Commercial Package & Workers Compensation	10/1/2014	\$ -
Great Plains Energy Services, Inc.	Master Service Agreement	3/15/2014	\$ -
Great Plains Energy Services, Inc.	Statement of Work Pursuant to Master Services Agreement	2/12/2014	\$ -
Hess Corporation	Hosted Services License Agreement	9/1/2011	\$ -
Hess Corporation	Master Services Agreement	6/1/2011	\$ -
Hess Corporation	Work Order #6 to the Master Services Agreement	2/3/2013	\$ -
Innovative Power	Master Services Agreement	9/12/2006	\$ -
ISO New England	DDE Services in ISO-NE	N/A	\$ -
Itron	Master Services Agreement	2/18/2008	\$ -
Itron, Inc.	MV90 Software License and Maintenance Agreement	8/1/2014	\$ -
KORE Telematics, Inc.	Telecommunication Services	7/7/2011	\$ 2,680.84
M&T Insurance Agency Inc.	Professional Liability Insurance	9/1/2014	\$ -
Microsoft Office 365	Email Hosting and Office Software	N/A	\$ -
National Registered Agents, Inc.	State Representation	6/1/2014	\$ -
One Fusion LLC	Rent - Primary Office Space	3/7/2011	\$ 7,974.38
Pace University	Managed Service Agreement	2/1/2005	\$ -
Paychex	Payroll Services	N/A	\$ -
Pitney Bowes	Postage Machine Rental	8/10/2012	\$ -
Principal Financial Group	401K Services	1/1/2007	\$ -
Shatter IT	24x7 IT Monitoring Services	N/A	\$ -
Verizon Wireless	Wireless Phone Services	2/13/2013	\$ -
Voiceshot	Communication Services	N/A	\$ -
WeatherBank, Inc.	Data Services	N/A	\$ -

(1) Cure amounts include both prepetition and postpetition amounts outstanding as of 11/24/2014