

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

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**In re** : **Chapter 11**  
: **HAWKEYE RENEWABLES, LLC, et al.,<sup>1</sup>** : **Case No. 09-\_\_\_\_\_ ( )**  
: **Debtors.** : **(Joint Administration Requested)**  
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**APPLICATION OF THE DEBTORS PURSUANT TO  
28 U.S.C. § 156(c), BANKRUPTCY RULE 2002, AND  
LOCAL RULE 2002-1(f) FOR AUTHORIZATION TO (I) EMPLOY AND  
RETAIN EPIQ BANKRUPTCY SOLUTIONS, LLC AS CLAIMS  
AND NOTICING AGENT FOR THE DEBTORS AND (II) APPOINT EPIQ  
BANKRUPTCY SOLUTIONS, LLC AS AGENT OF THE BANKRUPTCY COURT**

Hawkeye Renewables, LLC ("Renewables") and its parent, Hawkeye Intermediate, LLC ("Intermediate"), as debtors and debtors in possession (collectively, the "Debtors"), hereby submit this application (the "Application") for an order pursuant to section 156(c) of title 28 of the United States Code, Rule 2002 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 2002-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules") for authorization to (i) employ and retain Epiq Bankruptcy Solutions, LLC ("Epiq") as claims and noticing agent for the Debtors and (ii) appoint Epiq as agent of the Court. In support of the Application, the Debtors respectfully represent:

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Hawkeye Renewables, LLC (3162) and Hawkeye Intermediate, LLC (5356). The Debtors' corporate headquarters and service address is: 224 S. Bell Avenue, Ames, Iowa 50010.

## Background

1. On the date hereof (the "Petition Date"), each of the Debtors commenced with this Court a voluntary case under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Contemporaneously herewith, the Debtors have filed a motion seeking joint administration of their chapter 11 cases pursuant to Bankruptcy Rule 1015(b).

2. Prior to the Petition Date, the Debtors solicited from their prepetition first lien lenders ("First Lien Class 3A") and prepetition second lien lenders ("Second Lien Class 4A") votes on the Debtors' *Joint Prepackaged Plan of Reorganization of Hawkeye Renewables, LLC, et al. under Chapter 11 of the Bankruptcy Code* (the "Prepackaged Plan") through their *Disclosure Statement for Debtors' Joint Prepackaged Plan of Reorganization under Chapter 11 of the Bankruptcy Code* (the "Disclosure Statement"), pursuant to sections 1125 and 1126(b) of the Bankruptcy Code. The Prepackaged Plan has been accepted by First Lien Class 3A in excess of the statutory thresholds specified in section 1126(c) of the Bankruptcy Code and has been rejected by Second Lien Class 4A. Notwithstanding the rejection of the Prepackaged Plan by Second Lien Class 4A, the Debtors believe that the Prepackaged Plan is confirmable under section 1129(b) of the Bankruptcy Code.

3. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to these chapter 11 filings is contained in the Declaration of Timothy B. Callahan in Support of the Debtors' Chapter 11 Petitions and Requests for First Day Relief (the "Callahan Declaration"), filed contemporaneously herewith.

### **Jurisdiction and Venue**

4. This Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

### **Relief Requested**

5. By this Application, the Debtors request, pursuant to section 156(c) of title 28 of the United States Code, Bankruptcy Rule 2002, and Local Rule 2002-1(f), authorization to (i) employ Epiq as claims and noticing agent for the Debtors and (ii) appoint Epiq as agent of the Court. Attached hereto as Exhibit A is that certain Standard Bankruptcy Services Agreement, executed as of July 31, 2009, including the fee structure attached thereto (the “Services Agreement”), setting forth the terms and conditions of the Debtors’ engagement of Epiq. The declaration of Daniel C. McElhinney (the “McElhinney Declaration”), Executive Director of Epiq, is attached hereto as Exhibit B.

### **The Retention of Epiq**

6. Section 156(c) of the Bankruptcy Code, which governs the staffing and expenses of the Court, authorizes the Court to use facilities other than those of the office of the clerk of the bankruptcy court (the “Clerk’s Office”) for the administration of bankruptcy cases.

It provides as follows:

Any court may utilize facilities or services, either on or off the court’s premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States.

28 U.S.C. § 156(c).

7. Moreover, Local Rule 2002-1(f) requires in all cases in which the debtor has more than 200 creditors that the debtor file a motion to retain a noticing agent on the first day of the bankruptcy case or within seven (7) days thereafter.

8. The Debtors estimate that their creditors in these chapter 11 cases number more than 1500, which far exceeds 200. It appears that noticing the large number of interested parties in these chapter 11 cases would be unduly time-consuming and burdensome for the Clerk's Office.

9. The Debtors believe that the retention of Epiq as the Court's outside agent is in the best interest of all parties in interest. Epiq is a nationally-recognized specialist in chapter 11 administration and has vast experience in noticing and claims administration in chapter 11 cases, including, among others: In re Panolam Holdings Co., Ch. 11 Case No. 09-13889 (MFW) (Bankr. D. Del. Nov. 4, 2009) [D.I. 44]; In re NTK Holdings, Inc., Ch. 11 Case No. 09-13611 (KJC) (Bankr. D. Del. Oct. 21, 2009) [D.I. 46]; In re Samsonite Co. Stores, Ch. 11 Case No. 09-13102 (PJW) (Bankr. D. Del. Sept. 2, 2009) [D.I. 32]; In re CCS Medical, Ch. 11 Case No. 09-12390 (CSS) (Bankr. D. Del. July 9, 2009) [D.I. 43]; In re Pac. Ethanol, Ch. 11 Case No. 09-11713 (KG) (Bankr. D. Del. May 19, 2009) [D.I. 30]; In re AbitibiBowater Inc., Ch. 11 Case No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009) [D.I. 71]; In re Indalex Holdings Finance, Inc., Ch. 11 Case No. 09-10982 (PJW) (Bankr. D. Del. Mar. 23, 2009) [D.I. 19]; In re Qimonda Richmond, LLC, Ch. 11 Case No. 09-10589 (MFW) (Bankr. D. Del. Feb. 23, 2009) [D.I. 32]; In re Pliant Corp., Ch. 11 Case No. 09-10443 (MFW) (Bankr. D. Del. Feb. 12, 2009) [D.I. 48]; In re Smurfit-Stone Container, Ch. 11 Case No. 09-10235 (BLS) (Bankr. D. Del. Jan. 27, 2009) [D.I. 51]; In re Merisant Worldwide, Ch. 11 Case No. 09-10059 (PJW) (Bankr. D. Del. Jan. 13, 2009) [D.I. 26]. Epiq has developed efficient and economical methods to properly

handle claims administration and voluminous mailing associated with the noticing of creditors and other parties in interest.

10. The appointment of Epiq as the Court's outside agent will relieve the Court and the Clerk's Office of heavy administrative and other burdens. Additionally, the retention of Epiq as the claims and noticing agent will promote the effective administration of the Debtors' estates.

#### Scope of Services

11. Subject to the Court's approval, Epiq has agreed to provide, at the Debtors' request, the following services, among others, in these chapter 11 cases, where applicable:<sup>2</sup>

- a. notifying all potential creditors of the filing of the Debtors' chapter 11 cases and of the setting of the first meeting of creditors pursuant to section 341(a) of the Bankruptcy Code;
- b. notifying parties in interest of requests for first day relief and the first day hearing agenda;
- c. serving other motions, applications, requests for relief, hearing agendas, and related documents on behalf of the Debtors in these chapter 11 cases;
- d. if necessary, preparing and maintaining an official copy of the Debtors' schedules of assets and liabilities and their statements of financial affairs (collectively, the "Schedules"), listing, among other things, the Debtors' known creditors and the amounts owed thereto;
- e. maintaining a website from which parties may obtain copies of relevant documents in these cases;
- f. notifying all potential creditors of the existence and amount of their respective claims as set forth in the Schedules;
- g. furnishing a form for the filing of proofs of claim, after approval of such notice and form by this Court, and providing notice of the bar date for filing such proofs of claim;

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<sup>2</sup> If the Prepackaged Plan is confirmed, many of these services will not be necessary.

- h. preparing an affidavit of service for the bar date notice, including a list of persons to whom it was mailed (in alphabetical order) and the date the notice was mailed;
- i. docketing all claims received, maintaining the official claims register (the "Claims Register") for the Debtors on behalf of the Clerk's Office, and providing the Clerk's Office with the certified duplicate unofficial Claims Register upon request;
- j. specifying in the applicable Claims Register the following information for each claim docketed: (i) the claim number assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, and (iv) the classification of the claim (e.g., secured, unsecured, priority, etc.);
- k. implementing necessary security measures to ensure the completeness and integrity of the Claims Register;
- l. relocating, by messenger, all of the actual proofs of claim filed with the Court, if necessary, to Epiq, not less than weekly;
- m. recording all transfers of claims and providing any notices of such transfers required by Bankruptcy Rule 3001;
- n. making changes in the Claims Register pursuant to Court Order;
- o. upon completion of the docketing process for all claims received to date by the Clerk's Office, turning over to the Clerk's Office copies of the Claims Register for review by the Clerk's Office;
- p. maintaining the official mailing list for each Debtor of all entities that have filed proofs of claim, which list shall be available upon request by a party in interest or the Clerk's Office;
- q. establishing and maintaining a case website with case information, including key dates, service lists, and free access to the case docket within three (3) days of docketing;
- r. if requested, assisting with, among other things, the solicitation and calculation of votes and distributions as required in furtherance of confirmation and consummation of plan(s) of reorganization;
- s. thirty (30) days prior to the close of the chapter 11 cases, submitting an order dismissing Epiq as the Court's outside agent and terminating the services of Epiq upon completion of its duties and responsibilities and upon the closing of the chapter 11 cases; and
- t. any other services required by the Local Rules or requested by the Debtors or the Clerk's Office.

12. In addition, Epiq shall perform the functions required by Local Rule 2002-1(f), as applicable to these chapter 11 cases.

#### **Compensation**

13. The Debtors request authority to compensate and reimburse Epiq in accordance with the terms of the Services Agreement for all services rendered and expenses incurred in connection with the Debtors' chapter 11 cases. The Debtors selected Epiq after a competitive process and believe that Epiq's compensation rates are reasonable and appropriate for services of this nature and comparable to those charged by other providers of similar services. In an effort to reduce the administrative expenses related to Epiq's retention, the Debtors seek authorization to pay Epiq's fees and expenses without the necessity of Epiq filing formal fee applications and without further order of the Court.

14. Epiq has advised the Debtors that it will perform its duties if retained in the Debtors' chapter 11 cases regardless of payment. To the extent that Epiq requires redress, it will seek appropriate relief from the Court. Epiq will continue to perform the services contemplated by the Services Agreement in the event the Debtors' chapter 11 cases are converted to chapter 7 cases, but nothing in the proposed order attached hereto or in the Services Agreement obligates a successor chapter 7 trustee or chapter 11 trustee to employ Epiq.

15. The Debtors request that in the event that Epiq's services are terminated, Epiq perform its duties until the occurrence of a complete transition with the Clerk's Office or any successor claims/noticing agent; provided, however, that Epiq be entitled to the fees and expenses it incurs during such transition period in accordance with the Services Agreement.

#### **Epiq's Disinterestedness**

16. The Debtors are advised that, except as set forth more fully in the McElhinney Declaration, (i) Epiq has no connection with the Debtors, their creditors, or other

parties in interest in these chapter 11 cases, and (ii) Epiq does not hold or represent an interest adverse to the Debtors' estates.

17. Although the Debtors do not propose to retain Epiq under section 327 of the Bankruptcy Code, to the best of the Debtors' knowledge, Epiq is a "disinterested person" as such term is defined in section 101(14) of the Bankruptcy Code, as modified by section 1107(b) of the Bankruptcy Code. Epiq has represented to the Debtors that it will not represent any entities or individuals other than the Debtors in these chapter 11 cases or in connection with any matters that would be adverse to the interests of the Debtors, except upon written consent by the Debtors.

18. As compensation for its services, Epiq will charge rates comparable to those charged by other providers of similar services. These rates are at least as favorable as those charged by Epiq to other chapter 11 debtors for similar services. Prior to the Petition Date, Epiq received a retainer from the Debtors in the amount of \$20,000. Such retainer was used to provide prepetition services related to the solicitation of the Prepackaged Plan and preparation for these chapter 11 cases. To the extent that any unused portion of the retainer remains as of the date of the Petition Date, the retainer will be applied in satisfaction of Epiq's postpetition invoices until depleted. As set forth in the McElhinney Declaration, there are no outstanding amounts owed by the Debtors to Epiq.

19. Epiq advised the Debtors that Epiq will conduct an ongoing review of its files to ensure that no conflicts or other disqualifying circumstances exist or arise. If any new facts or circumstances are discovered, Epiq will supplement its disclosure to the Court.



20. Epiq advised the Debtors that, other than with its own partners, affiliates and employees, Epiq will not share with any person or firm the compensation to be paid for professional services rendered in connection with these chapter 11 cases.

21. Because the claims-related services are necessary in these chapter 11 cases and in light of Epiq's qualifications, the Debtors believe that the employment of Epiq for the services set forth above would be appropriate and in the best interests of the Debtors' estates. Therefore, the Debtors request authority to employ and retain Epiq on the terms and conditions set forth herein and to have Epiq appointed as the Court's outside agent.

#### **Notice**

22. No trustee, examiner, or creditors' committee has been appointed in these chapter 11 cases. The Debtors shall serve notice of this Application on: (a) the United States Trustee for the District of Delaware, (b) the Debtors' thirty (30) largest unsecured creditors (on a consolidated basis), and (c) counsel to the agents for the Debtors' prepetition secured lenders (collectively, the "Notice Parties"). As this Application is seeking first-day relief, notice of this Application and any order entered hereon will be served on all parties required by Local Rule 9013-1(m). The Debtors submit that no other or further notice need be provided.

#### **No Previous Request**

23. No previous request for the relief sought herein has been made to this or any other Court.

WHEREFORE the Debtors respectfully request entry of an order, substantially similar to the proposed form of order attached hereto as Exhibit C, granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: December 21, 2009  
Wilmington, Delaware

HAWKEYE RENEWABLES, LLC  
(for itself and on behalf of its affiliated Debtor and Debtor  
in Possession)

By:   
Timothy B. Callahan  
Chief Financial Officer

**Exhibit A**  
**Services Agreement**



## EPIQ BANKRUPTCY SOLUTIONS, LLC

### STANDARD BANKRUPTCY SERVICES AGREEMENT

Between Epiq Bankruptcy Solutions, LLC (formerly known as Bankruptcy Services LLC), a New York limited liability company ("Epiq"), and Hawkeye Renewables, LLC (the "Customer" or "Debtor"), dated as of July 31, 2009.

In consideration of the premises herein contained and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### General Terms and Conditions

##### 1. Services.

In accordance with the charges, terms and conditions contained in this Agreement and in the schedule attached hereto (the "Agreement"), Epiq agrees to furnish Customer with computerized bankruptcy support services and bankruptcy administrative services according to the pricing schedule annexed hereto (the "Schedule"). This Schedule sets forth individual unit pricing for services provided by Epiq. The price listed for each service represents a bona fide proposal for that service and the Customer may accept separate Service components or may accept the Services listed in their entirety. Services will be provided when requested by the Customer. Services are mutually exclusive and are deemed delivered and accepted when provided by Epiq.

##### 2. Term.

This Agreement shall become effective on the later of (i) the date of its acceptance by Epiq and (ii) the date of entry of an order by the Bankruptcy Court approving this Agreement (or such earlier date set by the Bankruptcy Court). **The Agreement shall remain in effect until terminated by the Customer on one (1) month's prior written notice received by Epiq and entry of an order of the Court discharging Epiq as claims agent or by Epiq upon three (3) month's prior written notice received by the Customer and entry of an order of the Court discharging Epiq as claims agent.**

##### 3. Charges.

3.1 For services and materials furnished by Epiq under this Agreement, Customer shall pay the charges set forth in the schedule annexed hereto attached hereto and made a part of this Agreement. Epiq will bill Customer monthly. All invoices shall be due and payable upon receipt.

3.2 Epiq reserves the right to reasonably increase its prices, charges and rates annually on January 2nd of each year. However, if such increases exceed 10%, Epiq will be required to give sixty (60) days prior written notice to Customer.

3.3 Customer agrees to pay Epiq for all materials necessary for Epiq's performance under this Agreement, other than computer hardware and software, and any reasonable out of pocket expenses including, without limitation, transportation, long distance communications, printing, postage and related items.

3.4 In addition to all charges for services and materials hereunder, Customer shall pay to Epiq all taxes, however designated, levied or based that are applicable to this Agreement or are measured directly by payments made under this Agreement and are required to be collected by Epiq or paid by Epiq to taxing authorities. This provision, includes but is not limited to, sales, use and excise taxes, but does not include personal property taxes or taxes based on net income.



3.5 In addition to all other charges for services and materials hereunder, Customer shall pay to Epiq any actual charges related to, arising out of or as a result of any Customer error or omission, as mutually agreed by Epiq and Customer. Such charges shall include but not be limited to re-runs and any additional clerical work billed at the Epiq then prevailing standard rates, supplies, long distance phone calls, travel expenses and overtime expenses for work chargeable at the rates set forth on the schedule annexed hereto.

3.6 [Intentionally Left Blank.]

3.7 In the event of termination due to Customer's default, Customer shall be liable for all amounts then owing.

3.8 Customer shall pay Epiq a retainer in the amount of \$20,000 to be applied immediately in satisfaction of obligations incurred pursuant to this agreement.

#### 4. Confidentiality.

All of Customer's data given to Epiq will be safeguarded by Epiq to the same extent that Epiq safeguards data relating to its own business; provided, however, that if data is publicly available, was already in Epiq's possession or known to it, or was rightfully obtained by Epiq from a third party, Epiq shall bear no responsibility for disclosure. Customer agrees that Epiq shall not be liable for damages or losses of any nature whatsoever arising out of the unauthorized acquisition or use of any material supplied by Customer to Epiq in the performance of this Agreement to the extent Epiq is entitled to indemnification for such damages or losses pursuant to section 7.4 hereof.

#### 5. Title to Property.

Epiq reserves all property rights in and to all materials, concepts, know-how, techniques, programs, systems and other information, including, without limitation, data processing programs, specifications, applications, routines, sub-routines, procedural manuals and documentation furnished or developed by Epiq for itself or for use by the Customer ("Property"). Charges paid by Customer do not vest in Customer any rights to the Property, it being expressly understood that the Property is made available to Customer under this Agreement solely for Customer's use during and in connection with each use of the Epiq equipment and services. Customer agrees not to copy or permit others to copy any of the Property.

#### 6. Disposition of Data.

Any data, programs, storage media or other materials furnished by the Customer to Epiq in connection with this Agreement may be retained by Epiq until the services provided herein are paid for, or until this Agreement is terminated with the services provided herein having been paid for in full. Customer shall remain liable for all charges imposed under this Agreement as a result of data or physical media maintained by Epiq. Epiq shall dispose of the data and media in the manner requested by Customer. Customer agrees to pay Epiq for reasonable expenses incurred as a result of the disposition of the data or media. After giving Customer thirty (30) days advance notice, Epiq reserves the right to dispose of data or media maintained by Epiq for Customer if Customer has not utilized the services provided herein for a period of at least ninety (90) days or if Customer has not paid all charges due to Epiq.

#### 7. Limitation of Liability, Warranty and Indemnity.

7.1 [Intentionally Left Blank.]

7.2 Customer is responsible for the accuracy of the programs and data it submits for processing to Epiq and for the output. Customer agrees to initiate and maintain backup files that would allow Customer to regenerate or duplicate all programs and data submitted by Customer to Epiq.

**7.3 Customer agrees that Epiq makes no representations or warranties, express or implied, including but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or**



**use, quality, productiveness or capacity.**

7.4 The Customer shall indemnify and hold Epiq, its affiliates and each of their respective officers, members, directors, agents, consultants and employees (each an "Indemnified Person") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys' fees) and expenses as incurred (collectively, "Losses"), to which any Indemnified Person may become subject or involved in any capacity arising out of or relating to this Agreement or Epiq's rendering of services pursuant hereto, regardless of whether any of such Indemnified Persons is a party thereto, other than Losses resulting from Epiq's gross negligence or willful misconduct. Without limiting the generality of the foregoing, "Losses" includes any liabilities resulting from claims by third persons against any Indemnified Person. The Customer shall notify Epiq in writing promptly of the commencement, institution, threat, or assertion of any claim, action or proceeding of which the Customer is aware with respect to the services provided by Epiq under this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Customer and shall survive the termination of this Agreement until the expiration of all applicable statutes of limitation with respect to Epiq's liabilities.

#### 8. Bank Accounts

[Intentionally Left Blank]

#### 9. Confidential On-Line Workspace

Upon request of the Customer, Epiq shall be authorized to: (a) establish a confidential on-line workspace with an outside vendor in connection with the provision of its services to the Customer pursuant to this Agreement; and (b) with the consent of the Customer and/or its designees, publish documents and other information to such confidential workspace. By publishing documents and other information to this confidential workspace in accordance with the foregoing, Epiq shall not be considered in violation of any of the provisions of this Agreement, including, but not limited to, Section 4 (Confidentiality).

#### 10. General

10.1 No waiver, alteration, amendment or modification of any of the provisions of this Agreement shall be binding upon either party unless signed in writing by a duly authorized representative of both parties.

10.2 This Agreement may not be assigned by Customer without the express written consent of Epiq, which consent shall not be unreasonably withheld. The services provided under this Agreement are for the sole benefit and use of Customer, and shall not be made available to any other persons.

10.3 This Agreement shall be governed by the laws of the State of New York, without regard to that state's provisions for choice of law.

10.4 The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties which supersedes all proposals or prior agreements, oral or written, and all other communications between the parties relating to the subject matter of this Agreement.



10.5 Notices to be given or submitted by either party to the other, pursuant to this Agreement, shall be sufficiently given or made if given or made in writing and sent by certified mail, postage prepaid, and addressed as follows:

If to Epiq:

Epiq Bankruptcy Solutions, LLC  
757 Third Avenue, Third Floor  
New York, New York 10017  
Attn: Ron Jacobs

If to Customer:

Tim Callahan  
Hawkeye Renewables, LLC  
224 S. Bell Ave  
Ames, IA 50010

With a copy to:

Sherri Toub, Esq.  
Weil Gotshal & Manges LLP  
767 Fifth Avenue  
New York, New York 10153



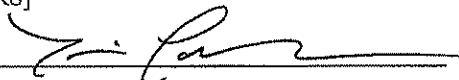
10.6 This Agreement shall be subject to approval of the United States Bankruptcy Court for the District of Delaware.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

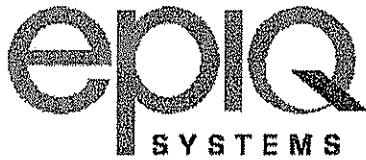
EPIQ BANKRUPTCY SOLUTIONS, LLC

Name: Daniel C. McElhinney  
Title: Executive Director

[DEBTORS]

By:   
Name: T. Callahan  
Title: CFO





## Pricing

### Case Management Services:

<u>Title</u>	<u>Rate Range</u>	<u>Average Rate</u>
Clerk	\$34 - \$51 per hour	\$ 42.50
Case Manager (Level 1)	\$106 - \$148 per hour	\$127.00
IT Programming Consultant	\$119 - \$161 per hour	\$140.00
Case Manager (Level 2)	\$157 - \$187 per hour	\$172.00
Senior Case Manager	\$191 - \$233 per hour	\$212.00
Senior Consultant	TBD	TBD*

The level of Senior Consultant activity will vary by engagement. If such services are required, the usual average rate is approximately \$250 per hour. Please note that any additional professional services not specifically covered by this proposal will be charged at hourly rates, including any outsourced data input services performed under our supervision and control. Outside vendors may charge a premium for weekend and overtime work.

### Claims Management Services:

Database and System Access (No restriction on number of users)	\$ .10 per record per month
Data Transfer	\$ .10 per creditor
Manual Claims Input	\$ .35 per claim plus hourly rates
Document Storage	Waived



## Pricing

### Printing, Mailing and Noticing:

Set up	Waived
Printing	\$ .10 per image and/or page including the envelope face)
Collate, fold and/or insert	\$ .10 each piece
Postage and overnight delivery	At cost
Electronic noticing	\$ .02 per page
Legal notice publishing	Quote prior to publishing
Claim acknowledgement card	\$ .25 per notice
Fax	\$ .20 per page

### Document Management/Imaging:

Electronic imaging (scanning/bar coding)	\$ .30 per image
Additional OCR capture	\$ .10 per image
CD burning (mass document storage)	Varies upon requirements
Stand Alone Case Website Construction	\$150.00 per hour
Hosting Case Specific Site	\$200.00 per month
Case Data Web Traffic	Waived

### Confidential Document Management:

Standard Confidential on-line workspace	\$1.30 per page per 9 months
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### Call Center Services:

Standard Call Center Setup	\$2,500
Call Center Operator	\$75 per hour
Voice Recorded Message	\$.19 per minute
Standard Call Center Support/Maintenance	\$200 per month

Additional call center services not specifically covered by this proposal will be charged at hourly rates or at a unit price to be determined. Specifically, such tasks as reviewing and managing traffic reports, assigning and supervising staff, call auditing, quality control testing, training and the like will be billed at the applicable hourly rate.



## Pricing

### Voting Tabulation and Reports:

Set-up, tabulation and vote verification	Applicable consulting fees only
Printing and mailing of ballots	Subject to unit pricing for mailing and noticing above
Solicitation and Notification of Public Securities Holders	Varies upon requirements

Please note that Epiq will coordinate outside services for notice publication, printing and scanning upon request. Reimbursable expenses including travel, envelopes and courier services are billed at cost. Postage is payable in advance of any mailings.

### Disbursements:

#### Transaction fees:

Per check or Form 1099	\$1.50 each
Per record to transfer agent	\$ .25 each



**Exhibit B**

**Declaration of Daniel C. McElhinney**

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE**

-----X  
**In re** : **Chapter 11**  
: **HAWKEYE RENEWABLES, LLC, et al.,<sup>1</sup>** : **Case No. 09-\_\_\_\_\_ ( )**  
: **Debtors.** : **(Joint Administration Requested)**  
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**DECLARATION OF DANIEL C. MCELHINNEY IN SUPPORT OF THE APPLICATION OF  
THE DEBTORS PURSUANT TO 28 U.S.C. § 156(c), BANKRUPTCY RULE 2002,  
AND LOCAL RULE 2002-1(f) FOR AUTHORIZATION  
TO (I) EMPLOY AND RETAIN EPIQ BANKRUPTCY SOLUTIONS, LLC  
AS CLAIMS AND NOTICING AGENT FOR THE DEBTORS AND (II) APPOINT  
EPIQ BANKRUPTCY SOLUTIONS, LLC AS AGENT OF THE BANKRUPTCY COURT**

Daniel C. McElhinney makes this declaration under 28 U.S.C. § 1746, and states:

1. I am the Executive Director of Epiq Bankruptcy Solutions, LLC (“Epiq”), which is engaged in chapter 11 administration and claims consulting and analysis. I submit this declaration in support of the application (the “Application”)<sup>2</sup> of Hawkeye Renewables, LLC and Hawkeye Intermediate, LLC in the above-referenced chapter 11 cases, as debtors and debtors in possession (collectively, the “Debtors”), for entry of an order pursuant to 28 U.S.C. § 156(c), Bankruptcy Rule 2002, and Local Rule 2001(f) for authorization to (i) employ and retain Epiq as claims and noticing agent for the Debtors and (ii) appoint Epiq as agent of the Bankruptcy Court.

2. The services Epiq proposes to render as Claims Agent are described in the Application and are set forth in that certain Standard Bankruptcy Services Agreement, executed

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor’s federal tax identification number, are: Hawkeye Renewables, LLC (3162) and Hawkeye Intermediate, LLC (5356). The Debtors’ corporate headquarters and service address is: 224 S. Bell Avenue, Ames, Iowa 50010.

<sup>2</sup> Capitalized terms not otherwise defined have the meaning ascribed to them in the Application.

as of July 31, 2009, including the fee structure attached thereto (the “Services Agreement”), annexed to the Application as Exhibit A and incorporated herein by reference.

3. Epiq specializes in providing consulting and data processing services to chapter 11 debtors in connection with the administration, reconciliation, and negotiation of claims and solicitation of votes to accept or reject plans of reorganization. Epiq also specializes and has expertise in serving as outside claims agent to the United States Bankruptcy Court with respect to all aspects of claims administration, including docketing and storage of claims, maintenance of claims registers, and related noticing services. Epiq is providing and has provided identical or substantially similar services to chapter 11 debtors in other cases in this District, including, among others: In re Panolam Holdings Co., Ch. 11 Case No. 09-13889 (MFW) (Bankr. D. Del. Nov. 4, 2009) [D.I. 44]; In re NTK Holdings, Inc., Ch. 11 Case No. 09-13611 (KJC) (Bankr. D. Del. Oct. 21, 2009) [D.I. 46]; In re Samsonite Co. Stores, Ch. 11 Case No. 09-13102 (PJW) (Bankr. D. Del. Sept. 2, 2009) [D.I. 32]; In re CCS Medical, Ch. 11 Case No. 09-12390 (CSS) (Bankr. D. Del. July 9, 2009) [D.I. 43]; In re Pac. Ethanol, Ch. 11 Case No. 09-11713 (KG) (Bankr. D. Del. May 19, 2009) [D.I. 30]; In re AbitibiBowater Inc., Ch. 11 Case No. 09-11296 (KJC) (Bankr. D. Del. Apr. 17, 2009) [D.I. 71]; In re Indalex Holdings, Finance, Inc., Ch. 11 Case No. 09-10982 (PJW)(Bankr. D. Del. Mar. 23, 2009) [D.I. 19]; In re Qimonda Richmond, LLC, Ch. 11 Case No. 09-10589 (MFW) (Bankr. D. Del. Feb. 23, 2009) [D.I. 32]; In re Pliant Corp., Ch. 11 Case No. 09-10443 (MFW) (Bankr. D. Del. Feb. 12, 2009) [D.I. 48]; In re Smurfit-Stone Container, Ch. 11 Case No. 09-10235 (BLS) (Bankr. D. Del. Jan. 27, 2009) [D.I. 51]; In re Merisant Worldwide, Ch. 11 Case No. 09-10059 (PJW) (Bankr. D. Del. Jan. 13, 2009) [D.I. 26]. Accordingly, I believe Epiq is well qualified to act as claims agent in these chapter 11 cases.

4. Although the Debtors do not propose to retain Epiq under section 327 of the Bankruptcy Code, Epiq has nonetheless conducted a conflicts analysis. To the best of my knowledge, information, and belief, insofar as I have been able to ascertain after reasonable inquiry, neither Epiq nor any of its employees holds or represents an interest adverse to the Debtors' estates nor has a connection to the Debtors, their creditors, the Office of the United States Trustee or any employees thereof, or any party in interest herein, except as provided below, with respect to any matter for which Epiq will be employed.

5. Epiq may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which Epiq serves or has served in a neutral capacity as claims, noticing, and/or balloting agent for another chapter 11 debtor. Specifically, Epiq serves as claims and noticing agent in the Lehman Brothers Holdings Inc. chapter 11 cases. It appears that one of the Lehman debtors may be a creditor of the Debtors. To the best of my knowledge, such relationships are completely unrelated to these chapter 11 cases.

6. Additionally, Epiq employees may, in the ordinary course of their personal affairs, have relationships with certain creditors or other parties in interest of the Debtors. For example, one or more of Epiq's employees may have obligations outstanding with financial institutions that are creditors of the Debtors or may have used the Debtors' services. However, to the best of my knowledge, such relationships, to the extent they exist, are of a personal financial nature and completely unrelated to these chapter 11 cases. Epiq has and will continue to represent clients in matters unrelated to these chapter 11 cases. Finally, Epiq has had, and will continue to have, relationships in the ordinary course of its business with certain vendors, professionals, and other parties in interest that may be involved in the Debtors' cases in matter unrelated to these chapter 11 cases.

7. Epiq shares a corporate parent with certain companies that provide integrated technology products and services to the legal profession for electronic discovery, class action settlements, financial transactions, chapter 7 and 13 bankruptcy, litigation, and regulatory compliance. Given the legal and operational separateness of Epiq from its affiliates and the administrative nature of the services performed by such companies, Epiq does not believe that a conflict would arise solely from any relationship or claim of an Epiq affiliate or its corporate parent.


8. Should Epiq discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Epiq will use reasonable efforts to file promptly a supplemental declaration.

9. As compensation for its services, Epiq will charge rates comparable to those charged by other providers of similar services. These rates are at least as favorable as those charged by Epiq to other chapter 11 debtors for similar services.

10. Epiq will comply with all requests of the clerk of the Court and follow the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c).

I declare under penalty of perjury that, to the best of my knowledge, and after reasonable inquiry, the foregoing is true and correct.

Executed this 14 day of December, 2009.



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Daniel C. McElhinney  
Executive Director  
Epiq Bankruptcy Solutions, LLC



**Exhibit C**

**Proposed Order**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

-----X  
In re : Chapter 11  
HAWKEYE RENEWABLES, LLC, *et al.*,<sup>1</sup> : Case No. 09-\_\_\_\_\_ ( )  
Debtors. : (Jointly Administered)  
-----X

**ORDER PURSUANT TO 28 U.S.C. § 156(c),  
BANKRUPTCY RULE 2002, AND LOCAL RULE 2002-1(f)  
AUTHORIZING (I) THE EMPLOYMENT AND RETENTION  
OF EPIQ BANKRUPTCY SOLUTIONS, LLC AS CLAIMS AND NOTICING  
AGENT FOR THE DEBTORS AND (II) THE APPOINTMENT OF EPIQ  
BANKRUPTCY SOLUTIONS, LLC AS AGENT OF THE BANKRUPTCY COURT**

Upon the application (the "Application")<sup>2</sup> of Hawkeye Renewables, LLC and Hawkeye Intermediate, LLC as debtors and debtors in possession in the above-referenced chapter 11 cases (collectively, the "Debtors"), pursuant to section 156(c) of title 28 of the United States Code, Bankruptcy Rule 2002, and Local Rule 2002-1(f) for authorization to (i) employ and retain Epiq Bankruptcy Solutions, LLC ("Epiq") as claims and noticing agent for the Debtors and (ii) appoint Epiq as agent of the Court, all as more fully set forth in the Application; and upon consideration of the Declaration of Daniel C. McElhinney sworn to on December 14, 2009, and annexed to the Application as Exhibit B; and the Debtors having estimated that they have more than 200 creditors, many of whom may file proofs of claim in these chapter 11 cases; and it appearing that noticing, receiving, docketing, and maintaining proofs of claim in this volume would be unduly time-consuming and burdensome for the office of the clerk of the

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four (4) digits of each Debtor's federal tax identification number, are: Hawkeye Renewables, LLC (3162) and Hawkeye Intermediate, LLC (5356). The Debtors' corporate headquarters and service address is: 224 S. Bell Avenue, Ames, Iowa 50010.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Application.

bankruptcy court (the “Clerk’s Office”); and the Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtors’ expense, outside agents and facilities to provide notices to parties in chapter 11 cases and to receive, docket, maintain, photocopy, and transmit proofs of claim; and the Court being satisfied that Epiq has the capability and experience to provide such services and that Epiq is a disinterested person and does not hold or represent an interest adverse to the Debtors or their estates with respect to the matters upon which it is to be engaged; and the Court having jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Application and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Application having been provided to the Notice Parties, and no other or further notice being necessary; and the Court having determined that the relief sought in the Motion is in the best interests of the Debtors and their respective estates, their creditors, and all parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor, it is

ORDERED that the Application is granted to the extent set forth herein; and it is further

ORDERED that the Debtors are authorized to retain and employ Epiq to perform the services described in the Application and the Services Agreement, and to receive, maintain, record, and otherwise administer any proofs of claim filed in these chapter 11 cases, effective as of the Petition Date; and it is further

ORDERED that Epiq is appointed as agent for the Clerk's Office and custodian of court records and, as such, is designated as the authorized repository for all proofs of claim filed in the above-captioned chapter 11 cases and is authorized and directed to maintain an official claims register for the Debtors and to provide the Clerk's Office with a certified duplicate thereof on a weekly basis unless otherwise directed by the Clerk's Office; and it is further

ORDERED that, consistent with the Services Agreement, at the Debtors' request Epiq shall perform the following services, where applicable:

- a. notifying all potential creditors of the filing of the Debtors' chapter 11 cases and of the setting of the first meeting of creditors pursuant to section 341(a) of the Bankruptcy Code;
- b. notifying parties in interest of requests for first day relief and the first day hearing agenda;
- c. serving other motions, applications, requests for relief, hearing agendas, and related documents on behalf of the Debtors in these chapter 11 cases;
- d. if necessary, preparing and maintaining an official copy of the Debtors' schedules of assets and liabilities and their statements of financial affairs (collectively, the "Schedules"), listing, among other things, the Debtors' known creditors and the amounts owed thereto;
- e. maintaining a website from which parties may obtain copies of relevant documents in these cases;
- f. notifying all potential creditors of the existence and amount of their respective claims as set forth in the Schedules;
- g. furnishing a form for the filing of proofs of claim, after approval of such notice and form by this Court, and providing notice of the bar date for filing such proofs of claim;
- h. preparing an affidavit of service for the bar date notice, including a list of persons to whom it was mailed (in alphabetical order) and the date the notice was mailed;
- i. docketing all claims received, maintaining the official claims register (the "Claims Register") for the Debtors on behalf of the Clerk's Office, and providing the Clerk's Office with the certified duplicate unofficial Claims Register upon request;
- j. specifying in the applicable Claims Register the following information for each claim docketed: (i) the claim number

- assigned, (ii) the date received, (iii) the name and address of the claimant and agent, if applicable, who filed the claim, and (iv) the classification of the claim (e.g., secured, unsecured, priority, etc.);
- k. implementing necessary security measures to ensure the completeness and integrity of the Claims Register;
  - l. relocating, by messenger, all of the actual proofs of claim filed with the Court, if necessary, to Epiq, not less than weekly;
  - m. recording all transfers of claims and providing any notices of such transfers required by Bankruptcy Rule 3001;
  - n. making changes in the Claims Register pursuant to Court Order;
  - o. upon completion of the docketing process for all claims received to date by the Clerk's Office, turning over to the Clerk's Office copies of the Claims Register for review by the Clerk's Office;
  - p. maintaining the official mailing list for each Debtor of all entities that have filed proofs of claim, which list shall be available upon request by a party in interest or the Clerk's Office;
  - q. establishing and maintaining a case website with case information, including key dates, service lists, and free access to the case docket within three (3) days of docketing;
  - r. if requested, assisting with, among other things, the solicitation and calculation of votes and distributions as required in furtherance of confirmation and consummation of plan(s) of reorganization;
  - s. thirty (30) days prior to the close of the chapter 11 cases, submitting an order dismissing Epiq as the Court's outside agent and terminating the services of Epiq upon completion of its duties and responsibilities and upon the closing of the chapter 11 cases; and
  - t. any other services required by the Local Rules or requested by the Debtors or the Clerk's Office;

and it is further

ORDERED that Epiq shall perform the functions required by Local Rule 2002-1(f), as applicable to these chapter 11 cases; and it is further

ORDERED that the Debtors are authorized to compensate Epiq on a monthly basis, in accordance with the Services Agreement, annexed to the Application as Exhibit A, upon the receipt of reasonably detailed invoices setting forth the services provided by Epiq in the prior month and the rates charged for such services, and to reimburse Epiq for all reasonable and

necessary expenses it may incur upon the presentation of appropriate documentation and without the necessity for Epiq to file an application for compensation or reimbursement with the Court; provided, however, that at the time invoices are delivered to the Debtors, Epiq shall also serve a copy of the invoices upon the Office of the U.S. Trustee; provided further, that this Court retains jurisdiction to resolve any disputes between Epiq and the aforementioned parties with respect to such invoices; and it is further

ORDERED that the Debtors' indemnification obligations set forth in the Services Agreement are approved, subject during the pendency of these chapter 11 cases to the following:

- a. Epiq shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Services Agreement for services other than those described in the Services Agreement, the Application, or this Order, unless such services, and the indemnification, contribution, or reimbursement therefor, are approved by the Court;
- b. the Debtors shall have no obligation to indemnify Epiq, or provide contribution or reimbursement to Epiq, for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Epiq's gross negligence, willful misconduct, breach of fiduciary duty, if any, bad faith, or self-dealing; (ii) for a contractual dispute in which the Debtors allege the breach of Epiq's contractual obligations unless the Court determines that indemnification, contribution, or reimbursement would be permissible pursuant to In re United Artists Theatre Co., 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination as to Epiq's gross negligence, willful misconduct, breach of fiduciary duty, bad faith, or self-dealing but determined by the Court, after notice and a hearing, to be a claim or expense for which Epiq should not receive indemnity, contribution, or reimbursement under the terms of the Services Agreement, as modified by this Order;
- c. if, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal), and (ii) the entry of an order closing these chapter 11 cases, Epiq believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution, and/or reimbursement obligations under the Services Agreement (as modified by this Order), including, without limitation, the

advancement of defense costs, Epiq must file a motion therefor in this Court, and the Debtors may not pay any such amounts to Epiq before the entry of an order by this Court approving the payment. This subparagraph (c) is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Epiq for indemnification, contribution, or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Epiq. All parties in interest shall retain the right to object to any demand by Epiq for indemnification, contribution, or reimbursement; and

- d. any limitation on liability or any amounts to be contributed by the parties to the Services Agreement under the terms of the Services Agreement shall be eliminated;

and it is further;

ORDERED that Epiq is authorized to take such other action as is reasonably necessary to comply with all duties set forth in the Application, the Services Agreement, and this Order; and it is further

ORDERED that neither the Debtors (or their successor(s)) nor Epiq shall terminate Epiq's engagement prior to the effective date of (a) confirmed plan(s) of reorganization without further order of this Court. In the event that Epiq's engagement is terminated, Epiq shall cooperate with any successor claims agent and the Clerk's Office to ensure the proper transfer of claims and other engagement-related data; and it is further

ORDERED that nothing herein or in the Services Agreement obligates a successor chapter 7 trustee or chapter 11 trustee to employ Epiq; and it is further

ORDERED that this Court retains jurisdiction to interpret and enforce this Order.

Dated: \_\_\_\_\_, 2009  
Wilmington, Delaware

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE