

UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:)
)
PHARMACOGENETICS DIAGNOSTIC)
LABORATORY, LLC)
)
Debtor) CASE NO. 16-33404-thf
_____)

EXPEDITED MOTION FOR AN ORDER (I) APPROVING (A) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS, (B) BIDDING PROCEDURES IN CONNECTION WITH THE SALE, AND (C) BREAK-UP FEE AND BIDDING PROTECTIONS IN CONNECTION THEREWITH, (II) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF

* * * * *

Comes now the Debtor, Pharmacogenetics Diagnostic Laboratory, LLC (“PGXL” or “Debtor” or “Seller”), by counsel, and moves the Court to approve the bidding and sale procedure for Debtor’s assets, subject to final confirmation of the sale and in support hereof respectfully shows the Court as follows:

I. FACTUAL BACKGROUND

1. On November 8, 2016 (the “Petition Date”), the Debtor filed its voluntary petition for relief under Chapter 11 of the Bankruptcy Code. Pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate its business and manage its property as a debtor in possession.

2. No trustee, examiner or creditors committee has yet been appointed in this case.

3. The court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for relief are sections 105, 363, 1107, and 1108 of the Bankruptcy Code.

5. PGXL is a Kentucky limited liability company founded in 2004 by Dr. Roland Valdes, Jr. and Dr. Mark W. Linder. Dr. Valdes is a professor and senior vice-chairman of the Department of Pathology and Laboratory Medicine, professor of biochemistry and molecular biology, and holds the appointment of Distinguished University Scholar at the University of Louisville. Dr. Linder is a professor in the Department of Pathology and Laboratory Medicine at the University of Louisville and is the director of Clinical Chemistry and Toxicology at the University of Louisville Hospital.

6. PGXL is a commercial and research laboratory for pharmacogenetics working to bring genetic drug sensitivity testing into the medical mainstream. It offers molecular diagnostic testing and interpretive services to physicians, clinics, and hospitals. PGXL's principal office is located at The Nucleus Building, 201 E. Jefferson Street, Suite 309, Louisville, Kentucky 40202.

7. In March 2011, University of Louisville Foundation, Inc. ("ULF") made a capital contribution to Debtor and was admitted as a member of it. Debtor's membership interests are owned as follows: Dr. Valdes, 59.68%, Dr. Linder, 8.15%, and ULF, 32.17%. Debtor's Board of Directors are: Dr. Valdes, Dr. Linder, and Robert Proulx as elected by the Board.

8. The Debtor's assets are comprised primarily of the Debtor's equipment, fixtures, inventory, tangible and intangible property. Debtor desires to conduct an expedited asset sale ("Asset Sale") with the goal of keeping the business in operation.

9. The Debtor has selected a stalking horse bidder (“Purchaser”) for the purchase for Debtor’s assets for the purpose of establishing a minimum acceptable bid with which to begin bidding at the auction. A copy of the Asset Purchase Agreement (the “APA”) tendered by the Purchaser is attached hereto as Exhibit “A.”

10. The Purchaser is Prescient Medicine Holdings, LLC, a Delaware limited liability company with its principal place of business located in Hummelstown, Pennsylvania (“PM”). PM provides pharmacogenetic testing for medical providers and direct patient services.

11. Debtor’s financial condition has continued to deteriorate during the course of this bankruptcy case. Debtor has shown losses for nearly every month of this bankruptcy case. Debtor reasonably believes that it can continue to operate in its current financial state for sixty (60) more days.

12. Debtor believes that an auction (“Auction”) utilizing the LOI from PM as the stalking horse bid and offering certain protections to PM as the stalking horse bidder for an expedited sale (“Asset Sale”) of Debtor is in the best interest of its estate and creditors. Debtor also believes the expedited sale is in the best interest of the local community.

II. RELIEF REQUESTED

13. By this Motion, Debtor requests that the Court enter an Order (the “Procedures Order”) approving the (i) bidding procedures (“Bidding Procedures”) for the Auction, (ii) the bidding protections (the “Bidding Protections”), including the Break-Up Fee of up to \$53,000.00 to be paid to PM under certain circumstances, including but not limited to, the sale of the Assets to a party other than PM, (iii) the setting of a hearing to authorize and approve the Asset Sale (the “Sale Hearing”), and (iv) the form of notice of the Auction and Sale Hearing (the “Notice of

Auction and Sale Hearing”). The Debtor requests an expedited hearing on the Bidding Procedures Order (the “Bidding Procedures Hearing”).

14. Debtor further requests that at the Sale Hearing, the court enter an order (the “Sale Order”) authorizing Debtor to (i) sell substantially all of the Assets, free and clear of all liens, claims, and interests (other than certain specified assumed liabilities), on substantially the terms set forth in the APA; (ii) assume certain of the executory contracts and unexpired leases associated with Debtor’s business (the “Assumed Contracts”); (iii) assign the Assumed Contracts to PM or the Successful Bidder; and (iv) allow PM or the Successful Bidder to pay the amounts, if any, necessary to cure existing defaults or arrearages under the Assumed Contracts.

III. BASIS FOR RELIEF

A. Background

15. As noted above, the Debtor’s financial condition continues to deteriorate. Pursuant to the operating reports filed for November 2016 through April 2017, Debtor has been operating at a loss nearly every month. Debtor’s staff has been reduced from twenty-one (21) at the inception of the case to just four (4) as of the date of this motion.

16. PM has performed and will continue to perform due diligence regarding the purchase. The parties have negotiated, in good faith and at arm’s length, the terms of a definitive agreement, and PM and Debtor desire to enter into the LOI and subsequently an asset purchase agreement.

17. The LOI contemplates a sale of substantially all of the Assets to PM or its designee. Debtor believes the Asset Sale is the best way to preserve the value of Debtor’s business, and is in the best interest of Debtor’s estate and creditors, including its employees, customers, vendors, and

subcontractors. Accordingly, Debtor seeks approval of the Procedures Order and the subsequent approval of the LOI at the Sale Hearing.

B. The Asset Purchase Agreement

18. Pursuant to the APA, Debtor will (i) sell substantially all of the Assets used in its operations, free and clear of all liens, claims, interests, and encumbrances and (ii) assume and assign to PM the Assumed Contracts.

19. The APA was negotiated at arm's length and in good faith by Debtor and PM, after meeting with Debtor's largest Prepetition Lender, following thorough consideration of Debtor's possible restructuring alternatives. Debtor believes the consideration to be received from the Asset Sale as set forth in the APA, subject to the ability of interested parties to submit competing proposals for the Assets, will result in the highest and best value for Debtor's estates, creditors, and interest holders.

20. The executed APA generally provides the following:

- a) Purchase Price. On the Closing Date, PM will (i) pay to Debtor \$500,000.00 upon closing of the sale and \$150,000.00 from earnings over the next three years for a total purchase price of \$650,000.00 in cash, and (ii) assume certain liabilities of Debtor.
- b) Assets. The proposed sale will include the Assets (as more specifically defined in the LOI and subsequent asset purchase agreement), which comprise substantially all of the value of Debtor.
- c) Sale Free and Clear. The Assets are to be transferred free and clear of all Encumbrances (as defined in the APA) other than the Assumed Liabilities pursuant to section 363(f) of the Bankruptcy Code.

- d) Assumption of Executory Contracts and Leases. Seller shall assume and assign to the Buyer all of Seller's rights under, title to, and interest in the Assumed Contracts. PM may on any business day up to July 28, 2017, provide written notice to Debtor of any Designated Contract PM desires to be an Assumed Contract. There are not any past defaults under the Assumed Contracts, or the existence of no past defaults is a condition to the closing of the Asset Sale..
- e) Conditions to Closing. Conditions to consummation of the Asset Sale will include, among other things (i) entry of the Procedures Order, (ii) approval by this court of the Asset Sale; (iii) closing of the transaction by August 31, 2017; and (iv) receipt of necessary third-party approvals.
- f) Break-Up Fee. The APA provides for payment of a break-up fee up to the amount of fifty-three thousand dollars (\$53,000.00) (the "Break-Up Fee") to Buyer in the event the court authorizes the sale of the Assets to an entity other than Buyer.

This summary of the APA is intended to be for convenience only. To the extent the summary differs from the actual terms of the APA, the terms of the APA shall be controlling.

21. Other than PM, no purchaser willing to execute a definitive purchase agreement has emerged during the course of the bankruptcy case, but the Debtor has received another letter of intent for a lesser amount. Debtor has determined the proposed structure for the Bidding Procedures is the one most likely to maximize the realizable value of the Assets for the benefit of Debtor's estate and creditors and other interested parties. In addition, the APA requires Debtor to obtain the Procedures Order as a means of implementing the Asset Sale to PM. Accordingly, Debtor seeks approval of the Bidding Procedures set forth below.

22. Under the Bidding Procedures, only a qualified bidder (“Qualified Bidder”) may submit bids for the Assets or otherwise participate in the Auction. A Qualified Bidder is a person who (i) has delivered to Debtor an executed confidentiality agreement in form and substance substantially the same as the one executed by PM and Debtor, (ii) has delivered to Debtor a Qualified Bid (as defined below) (including an indication of the Assets sought to be acquired and a purchase price) that Debtor’s board of directors determines, in good faith, would result in a transaction more favorable to Debtor than the Asset Sale to PM, and (iii) is reasonably likely (based on availability of financing, experience, and other considerations) to be able to consummate a transaction based on the Competing Proposal if it is selected as the Successful Bidder.

23. Any Qualified Bidder who desires to make a competing offer for all or some of the Assets must submit a written copy of its bid to the undersigned counsel, who shall then distribute copies of the bid(s) to (i) counsel for PM and (ii) Debtor. A qualified competing bid (a “Qualified Bid”) is a competing proposal (a) the value of which must be greater than \$725,000.00; (b) that has substantially the same terms and conditions as the APA and proposes to purchase substantially all of the Assets; and (c) is accompanied by satisfactory evidence of committed financing or other ability to perform.

24. If Debtor receives a Qualified Bid, Debtor will conduct the Auction at the offices of Kaplan & Partners LLP, 710 W. Main Street, 4th Floor, Louisville, Kentucky 40202, on the date determined by the Court at the Bidding Procedure Hearing. Bidding at the Auction will commence with the highest Qualified Bid and continue in increments of not less than \$25,000.00 until each bidding party makes its final offer. At the conclusion of the bidding, Debtor will announce its determination as to the person or entity (the “Successful Bidder”) submitting highest or best bid

for the Assets (the “Successful Bid”). In making that determination, Debtor will consider, among other things, the total consideration to be received by its estate.

25. If Debtor does not receive any Qualified Bids, Debtor will report same to the Court at the Sale Hearing and proceed with the Asset Sale with PM under the APA. If, however, Debtor receives one or more Qualified Bids and the Auction is conducted, Debtor will notify the Court of the results of the Auction and proceed with the sale of the Assets with the Successful Bidder.

26. Debtor will be deemed to have accepted a Qualified Bid only when the Court has approved such Bid at the Sale Hearing. Upon failure to consummate the Asset Sale because of a breach or failure on the part of the Successful Bidder, Debtor may select, in its business judgment, the next highest or otherwise best Qualified Bid to be the Successful Bid without further order of the Court. By making a Bid, a qualified Bidder shall be deemed to have agreed to keep its offer open until the consummation of the Asset Sale.

27. Debtor may: (a) determine, in its business judgment, which Qualified Bid is the highest or otherwise best offer; and (b) reject at any time before entry of an order of the Court approving a Qualified Bid, any Bid that, in Debtor’s sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA, or (iii) contrary to the best interests of Debtor, its estate, and/or its creditors.

D. Bidding Procedures

28. PM has expended, and likely will continue to expend, considerable time, money, and energy pursuing the Asset Sale and has engaged in extended arm’s length and good faith negotiations. In recognition of this expenditure of time, energy, and resources, and the benefits of securing a stalking-horse or minimum bid, Debtor has agreed to provide the Bidding Protections

to PM. Specifically, the Bidding Protections: (i) require Court approval of the Break-Up Fee up to the amount of \$53,000.00, (ii) provide that PM's claim to the Break-Up Fee be entitled to superpriority administrative claim treatment in Debtor's case, senior to all other superpriority claims, (iii) establish a date by which initial Qualified Bids must be submitted, (iv) establish the Sale Hearing procedures for an auction at which only Qualified Bidders who have previously submitted a Qualified Bid may bid, (v) set the minimum incremental bid amount at the Auction at \$25,000.00, (vi) require Debtor to promptly provide a copy of any Qualified Bid to PM and to any Qualified Bidder who has submitted a Qualified Bid and (vii) provide that notwithstanding the definition of "Qualified Bidder" the Prepetition Lender may not credit bid the secured debt of Debtor held by such lender.

29. The Bidding Protections were a material inducement for, and a condition of, PM's entry into the APA. Debtor believes they are fair and reasonable in view of, among other things: (a) the intensive analysis, due diligence investigation, and negotiation undertaken by PM in connection with the Asset Sale, and (b) the fact that the efforts of PM have increased the chances Debtor will receive the highest and best offer for the Assets, to the benefit of the Debtor, its estate, its creditors, and all other parties in interest.

30. PM is unwilling to commit to hold open its offer to purchase the Assets under the terms of the APA unless the Procedures Order authorizes payment of the Break-Up Fee. Thus, absent entry of the Procedures Order and approval of the Bidding Protections, Debtor may lose the opportunity to obtain what it believes to be the highest and best, and perhaps the only, available offer for the Assets.

31. Debtor thus requests that the Court authorize the Bidding Protections, including payment of the Break-Up Fee, pursuant to the terms and conditions of the APA.

32. As set forth more fully below, Debtor believes that the Bidding Procedures and Bidding Protections are fair and reasonable and, combined with PM's offer to acquire the Asset, will work to maximize the value realized by Debtor's estate.

E. Notice of Sale Hearing

33. Debtor will serve a copy of this Motion upon Debtor's secured creditors, the twenty-largest unsecured creditors, and all creditors having requested notice, and all governmental units that are creditors of the Debtor.

F. Assumption and Assignment of Contracts

34. As part of the Motion, Debtor also seeks authority to assume and assign the Assumed Contracts to PM or the Successful Bidder.

35. With respect to the Assumed Contracts, Debtor will file with the Court and serve on each party to an Assumed Contract notice of Debtor's intention to assume and assign that party's contract to PM or the Successful Bidder (the "Assignment Notice"). Debtor will mail the Assignment Notice and the Motion no later than July 31, 2017. The Assignment Notice will set forth the monetary amount Debtor believes to be necessary to cure any and all monetary defaults with respect to the Assumed Contract pursuant to section 365 of the Bankruptcy Code (the "Cure Amount") and provide the contracting parties with an opportunity to object to (i) the assumption and assignment, (ii) the Cure Amount, or (iii) both. If no objection is filed with the Court no later than the day prior to the Sale Hearing, the Cure Amount set forth in the Assignment Notice will be controlling notwithstanding anything to the contrary in any Assumed Contract or other document, and the non-debtor party to the Assumed Contract will be forever barred from asserting any other claim arising prior to the assignment against Debtor or PM or the Successful Bidder as to such Assumed Contract. If an objection to the assumption and assignment is made, such

objection will be heard at the Sale Hearing. If an objection by the non-debtor contracting party is made only with respect to the Cure Amount, a hearing to fix the Cure Amount will be set contemporaneously with the Sale Hearing; provided, however, that Debtor reserves its right to reject any executory contract until such time as the Cure Amount is fixed and accepted, and PM is not obligated under the APA to close the Asset Sale if the Cure Amount is greater than \$0.00.

36. The effective date of any assumption and assignment of any Assumed Contract shall be the date on which the Asset Sale closes. Accordingly, any Cure Amounts to be paid under any Assumed Contract will also be paid upon the closing of the Asset Sale or as soon thereafter as the Cure Amount is fixed and accepted by PM.

IV. APPLICABLE AUTHORITY

A. The Asset Sale is Within Debtor's Sound Business Judgment.

37. Bankruptcy Code section 363(b)(1) provides, in relevant part: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate..." Bankruptcy Code section 105(a) provides in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."

38. A sale of a debtor's assets should be authorized pursuant to Bankruptcy Code section 363 if a sound business purpose exists for doing so. See, *Comm. of Equity Sec. Holders. V Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063 (2nd Cir. 1983); *Myers v. Martin* (In re Martin), 91 F.3d 389 (3rd Cir. 1996).

39. Courts have applied four factors in determining whether a sound business justification exists: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been

proposed and negotiated in good faith; and (iv) adequate and reasonable notice is provided. See, *Comm. of Equity Sec. Holders v. Lionel Corp.* (In re Lionel Corp.), 722 F.2d 1063, 1071 (2nd Cir. 1983)(setting forth the “sound business purpose” test); *In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 145-147 (3rd Cir. 1986) (adding “good faith” requirement to *Lionel’s* test).

40. Debtor believes the Asset Sale is the best way to preserve the enterprise value of the Assets and maximize the value of Debtor’s estate for the benefit of Debtor’s creditors and other parties in interest.

i.) The Sale of the Assets Satisfies the Sounds Business Purpose Test.

41. There is more than adequate business justification to sell the Assets to PM or the Successful Bidder. As set forth above, Debtor believes the proposed Asset Sale in accordance with the procedures set forth in the Bidding Procedures maximizes recovery to the estate. See, *In re Tempo Technology Corp.*, 202 B.R. 363 (D. Del. 1996), *aff’d*, 141 F.3d 1155 (3rd Cir. 1998) (sale of substantially all of a chapter 11 debtor’s assets pursuant to a section 363(b) motion where the debtor “faced a severe cash shortfall and had no readily available source of investment capital or loans,” and would shortly have run out of cash absent the debtor-in-possession financing provided by the prospective purchaser); See Also, *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 177 (D.Del. 1991) (affirming bankruptcy court’s approval of sale of substantially all assets where debtor would have been “in liquidation mode if required to delay a sale until after filing a disclosure statement and obtaining approval for a reorganization plan”); *Titusville Country Club v. Pennbank* (In re Titusville Country Club), 128 B.R. 396 (Bankr. W.D. Pa. 1991) (bankruptcy court granted expedited hearing on 363(b) motion based on “deterioration” of debtor’s assets); *Coastal Indus., Inc. v. IRS* (In re Coastal Indus., Inc.), 63 B.R. 361, 366-69 (Bankr. N.D. Ohio 1986) (approving expedited 363(b) sale five weeks postpetition to buyer with “the name recognition required by [the

debtor's] customers" where debtor was suffering operating losses and lacked financing to continue its operations).

42. Based upon an analysis of Debtor's ongoing and future business prospects, Debtor's management and Board of Directors have concluded that, given the company's continuing cash losses, its inability to obtain additional financing, and the declining number of employees, the best way to maximize the value of Debtor's estate is to sell immediately its assets as a going business concern, thereby preserving the substantial goodwill of the business.

43. PM has offered substantial value for the assets and is willing to close within sixty (60) days, and thereby enable Debtor to reduce the risk that the Debtor's value will further deteriorate. Moreover, by selling the Assets now, Debtor will relieve itself of certain ongoing costs and expenses, thereby minimizing administrative expenses and maximizing creditor recoveries. Accordingly, well-articulated business reasons exist for approving the Asset Sale, such that the "business purpose" test under Bankruptcy Code section 363 is met. See, *Lionel*, 722 F.2d at 1071 ("[M]ost important [] perhaps, [is] whether the asset is increasing or decreasing in value.").

ii) The Consideration Offered by PM is Fair and Reasonable.

44. Debtor submits that a sale of the Assets pursuant to the APA will provide fair and reasonable consideration to Debtor's estate. The APA requires PM to pay a minimum of \$650,000.00 for the Assets as well as to assume certain liabilities. Debtor respectfully submits that such consideration in exchange for the Assets is both fair and reasonable.

45. Moreover, to dispel any doubt, the Asset Sale is subject to the solicitation of competing bids, thereby ensuring Debtor will receive the highest and best value for the Assets. Consequently, the fairness and reasonableness of the consideration to be received by Debtor will ultimately be demonstrated by a "market check" and auction process – the best means for

establishing whether a fair and reasonable price is being paid. Accordingly, the consideration to be paid for the Assets will be both fair and reasonable and should be deemed to have satisfied the strictures of Bankruptcy Code section 363(n).

iii) The APA was Negotiated in Good Faith.

46. The APA is the product of extensive arm's length negotiations between PM and Debtor. These negotiations have involved substantial time and energy by the parties and their professionals, and the APA reflects give-and-take and compromises by both sides.

47. Moreover, the Bidding Procedures ensure a prospective purchaser will not be able to exert any undue influence over Debtor. Under the circumstances, this Court should therefore find that: (i) the sale of the Assets is the result of good faith arm's length negotiations, and (ii) PM or the Successful Bidder is entitled to all of the protections of Bankruptcy Code section 363(m) & (n).

iv) Adequate Notice of the Asset Sale is Being Provided.

48. The final element for approval of a sale under Bankruptcy Code section 363 is the requirement that interested parties receive adequate notice. Debtor intends to serve this Motion or notice of this Motion on all secured creditors, all governmental units that are creditors, the top 20 largest unsecured creditors, all creditors having requested notice, and any other interested party not otherwise included in the bankruptcy case which has expressed an interest in purchasing the Debtor's Assets.

B. The Bidding Protections are Warranted.

49. To compensate PM for serving as a "stalking-horse" whose bid will be subject to higher or better offers, Debtor and PM seek authority for Debtor to provide PM with the Bidding Protections in the event it is not the Successful Bidder. Debtor and PM believe the Bidding

Protections are reasonable, given the benefits to the estate of having a definitive APA and the risk to PM that a third-party offer ultimately may be accepted, and that the Bidding Protections are necessary to preserve and enhance the value of Debtor's estate.

50. Bidding incentives encourage a potential purchaser to invest the requisite time, money, and effort to negotiate with a debtor and perform the necessary due diligence attendant to the acquisition of a debtor's assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Bidding Protections under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. See, *In re Integrated Res.*, 147 B.R. 650, 657 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2nd Cir. 1993) (establishing three basic factors for determining whether to permit such fees in bankruptcy: (1) whether relationship of parties who negotiated break-up fee is tainted by self-dealing or manipulation; (2) fee hampers, rather than encourages, bidding; and (3) amount of fee is unreasonable relative to purchase price).

51. The Court should apply the established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In *Calpine Corp. v. O'Brien Envtl. Energy, Inc.* (In re O'Brien Envtl. Energy; Inc.), 181 F.3d 527 (3rd Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of Bankruptcy Code section 503(b) govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the debtor's estate. See *Id.* at 533.

52. The *O'Brien* court identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if "assurance of a break-up fee promoted

more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited.” *Id.* at 537. Second, where the availability of bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum or floor bid on which other bidders can rely, “the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth.” *Id.*

53. Under the “business judgment rule” the Bidding Protections pass muster. The APA and the Bidding Protections are the product of extended good faith, arm’s length negotiations between Debtor and PM. They are fair and reasonable in amount, particularly in view of PM’s efforts to date, the risk to PM of being used as a “stalking-horse,” and the stabilizing effect that the execution of the APA is expected to have on Debtor’s business (thereby preserving value for creditors and increasing the likelihood of additional bidding). The Bidding Protections thus have “induc[ed] a bid that otherwise would not have been made and without which bidding would [be] limited.” *Id.* at 537. Similarly, PM’s offer, which was formulated only after an expedited, but substantial due diligence review of the Assets and their value, provides a minimum bid on which other bidders can rely, thereby increasing the likelihood that the price at which the [Assets will be] sold will reflect [their] true worth.” *Id.* Finally, the mere existence of the Bidding Protections permits Debtor to insist that competing bids for the Assets be materially higher or otherwise better than the offer set forth in the APA, a clear benefit to Debtor’s estate.

54. In sum, Debtor’s ability to offer the Bidding Protections enables it to ensure the sale of the Assets to a contractually-committed bidder at a price it believes to be fair while, at the same time, providing the potential of even greater benefit to the estate. Accordingly, the Bidding Protections should be approved.

C. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(f) for a Sale Free and clear of Liens, Encumbrances, and Interests.

55. Under Bankruptcy Code section 363(f), a debtor in possession may sell property of the estate free and clear of any lien or interest of an entity in such property if, among other things:

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

11 U.S.C. § 363(f).

56. Because Bankruptcy Code section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice as justification to approve the sale of the Assets free and clear of liens and other interests (collectively, the “Interests”). *See* 11 U.S.C. § 363(f); *Mich. Employment Sec. Comm’n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (section 363(f) written in disjunctive; court may approve sale “free and clear” provided at least one of the subsections is met); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343 (E.D. Pa. 1988) (same).

57. Debtor believes that the only entities holding a lien on the Assets are: Stock Yards Bank & Trust, the Commonwealth of Kentucky, Dell Financial Services, Marlin Business Bank, MB Financial Bank, N.A, PNC Equipment Finance, LLC, and Technology Investment Partners LLC. The APA would provide for partial payment to the secured lenders only upon consent of the secured lenders, thereby satisfying Bankruptcy Code section 363(f)(2). Moreover, to the extent there exist other possible holders of Interests, Debtor submits that one of the subsections of Bankruptcy Code section 363(f) applies, and that any such Interest will be adequately protected

by having it attach to the net proceeds of the sale, subject to any claims and defenses Debtor or Successful Bidder may possess with respect thereto.

58. Accordingly, the sale should be approved under Bankruptcy Code section 363(f).

D. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized.

59. Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

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

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

(B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

60. Under Bankruptcy Code section 365(a), a debtor, “subject to the court’s approval, may assume or reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a).

Bankruptcy Code section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

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

(A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of

assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;

(B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and

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

11 U.S.C. § 365(b)(1).

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

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

63. As set forth in the APA, to the extent any defaults exist under any executory contract or unexpired lease that is assumed and assigned, PM or the Successful Bidder will cure any such default in connection with the assumption and assignment.

64. Moreover, Debtor will adduce facts at the Sale Hearing to show the financial wherewithal of either PM or the Successful Bidder, experience in the industry, and willingness and ability to perform under the contracts to be assumed and assigned to it.

65. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of PM or the Successful Bidder to provide adequate assurance of future performance under the contracts to be assumed, as required under Bankruptcy Code section 365(b)(1)(C). The Court should therefore authorize Estate Representative to assume and assign contracts as set forth herein.

V. CONCLUSION

WHEREFORE, Debtor respectfully requests that this Court enter an order approving (a) the Bidding Procedures; (b) the Bidding Protections; and (c) the form of the Notice of Auction and Sale Hearing. In addition, Debtor respectfully requests that this Court, at the Sale Hearing, enter an order (a) approving the APA; (b) authorizing Debtor to (i) sell the Assets free and clear of all Interests; and (ii) assume and assign the Assumed Contracts; and (c) granting such other and further relief as is just and proper.

A proposed Order is tendered herewith.

Respectfully submitted,

/s/ James E. McGhee III
CHARITY B. NEUKOMM
JAMES E. MCGHEE III
KAPLAN & PARTNERS LLP
710 West Main Street
Fourth Floor
Louisville KY 40202
Telephone: 502-540-8285
Facsimile: 502-540-8282
E-mail: cneukomm@kplouisville.com

CERTIFICATE OF SERVICE

It is hereby certified that on June 30, 2017, a true and correct copy of the foregoing was (a) mailed electronically through the U.S. Bankruptcy Court's ECF system at the electronic addresses as set forth in the ECF system to the U.S. Trustee and all other persons receiving electronic notifications in this case, and (b) mailed, first-class, postage prepaid, to those persons, if any, identified in the Court's Notice of Electronic Filing who do not receive electronic notice but are entitled to be served.

/s/ James E. McGhee III
James E. McGhee III

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

THIS AGREEMENT FOR PURCHASE AND, SALE OF ASSETS, dated as of _____ (the “*Agreement*”), is entered into by and among Prescient Medicine Holdings, LLC (“*Purchaser*”) and Pharmacogenetics Diagnostic Laboratory, LLC d/b/a PGxL Laboratories (the “*Seller*”).

WITNESSETH:

WHEREAS, Purchaser desires to acquire from Seller certain of Seller’s assets pursuant to a purchase of assets out of bankruptcy under Section 363 of Chapter 11 of Title 11 of the United States Code (the “*Bankruptcy Code*”);

WHEREAS, to effect such purchase and sale, Purchaser and Seller are entering into this Agreement, and promptly thereafter Seller will file a motion in its proceeding under Chapter 11 of the Bankruptcy Code in the Western District of Kentucky (the “*Bankruptcy Court*”), Case Number 16-33404-thf; and

WHEREAS, Seller will seek approval of the bid procedures by the Bankruptcy Court and conduct a related auction in the Bankruptcy Court.

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. PURCHASE AND SALE OF ASSETS

1.1 **Purchase and Sale**. On the terms and subject to the conditions contained herein, at Closing (as hereinafter defined), Seller agrees to sell, transfer, convey, and assign to Purchaser, and Purchaser agrees to purchase and acquire from Seller, all of Seller’s right, title, and interest in and to substantially all of the tangible and intangible assets and properties of Seller including those listed in Schedule 1.1 (collectively, the “*Transferred Assets*”) free and clear of any and all Liens other than Permitted Liens. Notwithstanding Seller’s representations and warranties set forth in this Agreement, at the Closing, the Transferred Assets that are being sold and transferred by the Seller (as identified in Schedule 1.1), shall be conveyed to and accepted by Purchaser in an “as is,” “where is” and “with all faults” condition, free of any warranties or representations whatsoever, whether express or implied, patent or latent and Seller EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT THERETO. The Transferred Assets shall include any and all rights of Seller under, and in respect of, the Assigned Contracts (as defined in Section 1.3), including rights of action, whether arising before or after the Closing. The Transferred Assets shall include all prospective business, proposals, bids with educational and governmental entities. Schedule 1.1 may be revised and amended up to the deadline for the submission of competitive bids by Purchaser in its sole discretion by giving written notice to Seller of such revision or amendment. Schedule 1.1 may be revised and amended up to the Closing Date with the consent of the Purchaser and the Seller.

1.2 **Excluded Assets.** Notwithstanding anything to the contrary herein, the Transferred Assets shall not include any assets listed on Schedule 1.2 (the “*Excluded Assets*”). Schedule 1.2 may be revised and amended up to the deadline for the submission of competitive bids by Purchaser in its sole discretion by giving written notice to Seller of such revision or amendment. Schedule 1.2 may be revised and amended up to the Closing Date with the consent of the Purchaser and the Seller.

1.3 **No Assumption of Liabilities.** Except for the executory obligations (including any cure costs or amounts as determined under the Bankruptcy Code), but not the antecedent obligations, of Seller under those contracts listed on Schedule 1.1 (the “*Assigned Contracts*”) and the assumed liabilities set forth on Schedule 1.3 (the “*Assumed Liabilities*”), Purchaser will not assume any other liabilities or obligations of Seller, or of any affiliate or related person or entity of Seller, of any type or nature whatsoever. Without limiting the generality of the foregoing and notwithstanding anything in this Agreement to the contrary, Purchaser shall not assume any obligation or liability of Seller arising out of or relating to (a) any product liability claim, (b) any claim for breach by Seller of warranty or contract including, without limitation, those of Seller’s customers and/or subscribers, (c) any claim predicated on strict liability or any similar legal theory, (d) the violation of any law, ordinance or regulation, (e) any liability of Seller, including for expenses or Taxes (as hereinafter defined), if any, in connection with, resulting from or arising out of this Agreement or the transactions contemplated herein, (f) any liability of Seller for any other Taxes, (g) any claim of a creditor arising after Closing pursuant to Section 502(h) of the Bankruptcy Code, (h) any post-petition obligations of Seller, or claim for administrative expenses (including attorneys’ fees or fees of other professionals in the Bankruptcy Case, trustee’s fees or claims of any party arising after the filing date of Seller’s petitions), (i) any liability, claim, demand, account or other obligation not expressly and specifically assumed hereunder, or (j) any liability or obligation of Seller based upon Seller’s acts or omissions occurring at or prior to the Closing, all of which shall remain after Closing the obligation of Seller. Notwithstanding any other provision of this Agreement, the obligations of Seller pursuant to this Section 1.3 shall survive the Closing and the transactions contemplated herein. Schedule 1.3 may be revised and amended up to the deadline for the submission of competitive bids by Purchaser in its sole discretion by giving written notice to Seller of such revision or amendment. Schedule 1.3 may be revised and amended up to the Closing Date with the consent of the Purchaser and the Seller.

1.4 **Sales Taxes.** Seller shall be responsible for the payment of all sales, use, excise, transfer, value added, and similar taxes imposed by any governmental authority in any jurisdiction in connection with the transactions contemplated herein, except insofar as both Seller and Purchaser are relieved of any responsibility for such taxes under the provisions of the Approval Order (as defined in Section 6.6) and applicable provisions of the Bankruptcy Code.

1.5 **Allocation.** The parties agree that prior to the Closing Date, they or their representatives shall in good faith allocate the Purchase Price among the Transferred Assets in conformity with Section 1060(b) of the Internal Revenue Code of 1986, as amended (the “*Code*”) and the regulations promulgated thereunder. Seller agrees to cooperate in good faith in filing all information required by Section 1060(b) of the Code and the regulations thereunder, and to take no position on any income tax return, report or filing inconsistent with such allocation.

1.6 **Purchase Price.** Schedule 1.6 describes the entire consideration (the “*Total Purchase Price*”) of the transactions contemplated by this Agreement. The *Cash Purchase Price* (as defined in Schedule 1.6) shall be computed in accordance with Schedule 1.6 and will be paid by Purchaser at the Closing in accordance with Section 1.8(a)(iii).

1.7 **Closing and Closing Date.** The consummation of the transactions contemplated in this Agreement (the “*Closing*”) shall take place at the offices of Kaplan & Partners LLP located at 710 West Main Street, Fourth Floor, Louisville KY 40202 or at such other place as agreed to by the parties, on a business day mutually acceptable to the parties after the day on which all conditions to the obligation of the parties set forth in Article 6 and Article 7 of this Agreement are first satisfied and/or waived; provided that such date shall be promptly following the issuance of the Approval Order (the “*Closing Date*”).

1.8 **Closing Deliveries.**

(a) At the Closing:

(i) Seller shall sell, transfer, convey, and assign to Purchaser all of Seller’s right, title and interest in and to the respective Transferred Assets, free and clear of liens, interests, claims, demands, charges, encumbrances, assessments, security and other interests, leases, licenses, and restrictions of any kind or character (“*Liens*”), except such Liens as may be expressly permitted by Purchaser (the “*Permitted Liens*”), and in furtherance thereof Seller shall deliver to Purchaser a General Assignment and Bill of Sale in customary form for transactions of this type (the “*Bill of Sale*”), together with such other deeds, bills of sale, assignments, powers of attorney, certificates of title, documents and other instruments of transfer and conveyance as Purchaser and its legal counsel shall reasonably request, including, without limitation, assignments of patents, patent applications, trademarks, service marks, copyrights and other intellectual property in form and substance satisfactory to Purchaser;

(ii) Seller shall deliver to Purchaser, and Purchaser shall execute and deliver to Seller an Assumption Agreement in customary form for transactions of this type (the “*Assumption Agreement*”); and

(iii) Upon such deliveries by Seller and Purchaser, Purchaser shall pay the Cash Purchase Price at Closing by delivering to Seller the Cash Purchase Price by wire transfer of immediately available funds to an account specified in writing by Seller.

(b) All deliveries, payments, and other transactions and documents relating to the Closing shall be interdependent, and none shall be effective unless and until all are effective (except to the extent that the party entitled to the benefit thereof has waived satisfaction or performance thereof as a condition precedent to Closing).

(c) Each party shall, at the request of Purchaser from time to time and at any time, whether on or after the Closing Date, and without further consideration, execute and deliver such assignments, transfers, assumptions, conveyances, powers of attorney, receipts, acknowledgments, acceptances

and assurances as may be reasonably necessary to procure for for the party so requesting, and its successors and assigns, or for aiding and assisting in collecting and reducing to possession, any and all of the Transferred Assets, or otherwise to satisfy and perform the obligations of the parties hereunder.

2. ADDITIONAL AGREEMENTS

2.1 **Purchaser's Access and Inspection.** From and after the date hereof until the earlier of (i) the Closing or (ii) the termination of this Agreement, Seller shall provide Purchaser and its authorized representatives full access, at all reasonable times and as Purchaser may reasonably request, to the Transferred Assets, the books and records relating to the Transferred Assets, and properties and employees of Seller for the purpose of making such investigation relating to the Transferred Assets. Seller shall provide access to its attorneys, accountants, and other outside consultants with knowledge of the Transferred Assets. No investigation made heretofore or hereafter by Purchaser shall limit or affect the representations, warranties, and covenants of Seller hereunder, each of which shall survive any such investigation.

2.2 **Cooperation; Bankruptcy Court Approvals.** The parties shall cooperate fully with each other and with their respective legal counsel and accountants in connection with any steps required to be taken as part of their respective obligations under this Agreement (including, without limitation, the obtaining of the approval of the Bankruptcy Court for the transactions contemplated herein), and all parties shall use their best efforts to consummate the transactions contemplated herein and to fulfill their obligations hereunder. Without limiting the generality of the foregoing, within five (5) business days after the date hereof, Seller shall file a motion with the Bankruptcy Court seeking entry of the Bid Procedures Order and the Approval Order (each, as defined in Section 6.6). Seller shall use its best efforts to obtain entry of the Bid Procedures Order and the Approval Order. Purchaser and Seller each agrees to use its commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper, or advisable to satisfy the conditions to the other parties' obligation to consummate and make effective the transactions contemplated by this Agreement.

2.3 **Expenses.** Unless otherwise set forth in this Agreement, specifically including the provisions of Section 6.6 herein, all expenses incurred by Purchaser in connection with the authorization, preparation, execution, and performance of this Agreement, including, without limitation, all fees and expenses of agents, representatives, counsel, and accountants for Purchaser, shall be paid by Purchaser. All expenses incurred by Seller in connection with the authorization, preparation, execution, and performance of this Agreement, including, without limitation, all fees and expenses of agents, representatives, counsel, and accountants for Seller shall be paid by Seller.

2.4 **Brokers.** Except as described on Schedule 2.4, each party hereto represents and warrants to the other party that no broker or finder has acted on its behalf in connection with this Agreement or the transactions contemplated herein. Seller shall indemnify Purchaser and hold Purchaser harmless from and against any and all claims or demands for commissions or other compensation by any broker, finder or similar agent claiming to have been employed by or on behalf of Seller. Purchaser

shall indemnify Seller and hold Seller harmless from and against any and all claims or demands for commissions or other compensation by any broker, finder or similar agent claiming to have been employed by or on behalf of Purchaser.

2.5 Publicity. Except as required by law or regulatory authorities, no party to this Agreement shall issue any press releases or otherwise make any public statements with respect to this Agreement or the transactions contemplated hereby without the prior consent of the other party.

(a) Except as set forth in the Retention Plan (as hereinafter defined) and notwithstanding anything to the contrary herein, Purchaser shall not be liable for severance obligations (including without limitation, obligations to provide health or retirement benefits), if any, to any of Seller's employees resulting from or arising out of the transactions contemplated by this Agreement.

(b) Notwithstanding the foregoing, Purchaser is hereby authorized, subject to the provisions of Section 2.5, to contact any employee of Seller after the effective date of this Agreement to discuss such employee's potential employment with Purchaser following the Closing; provided, however, that the parties acknowledge and agree that Purchaser shall have no obligation to offer employment to any officer or employee of Seller following the Closing.

2.6 Confidentiality.

(a) Except as otherwise provided herein, required by applicable law, or mutually agreed upon by the parties in writing, no Receiving Party (as hereinafter defined) may disclose to any person or entity or use any Confidential Information (as hereinafter defined) that the Receiving Party learned from the Disclosing Party before or after the date of this Agreement. For purposes of this Section 2.6, the term "***Confidential Information***" means any confidential, secret, or proprietary information of or regarding the other party, including, but not by way of limitation, any information obtained by any Receiving Party during its due diligence investigation of the Disclosing Party; the term "***Receiving Party***" shall include any party that has received, or whose directors, officers, partners, employees, agents, accountants, lawyers, lenders, investment bankers, or other financial or professional advisors or consultants (each a "***Representative***") have received, Confidential Information of or relating to it or the other party; and the term "***Disclosing Party***" shall include any party that has, or whose Representatives have, disclosed Confidential Information of or relating to it to the other party. Following the Closing, all Confidential Information of Seller included in the Transferred Assets or otherwise used in connection with Seller's business prior to Closing shall be deemed to be the property of Purchaser and will be subject to the protections set forth herein.

(b) The Receiving Party shall hold all Confidential Information of the Disclosing Party in confidence and shall protect the same with reasonable care.

(c) The Receiving Party shall use the Confidential Information solely for the purposes relating to the transactions contemplated hereby and shall restrict disclosure of Confidential Information of the Disclosing Party solely to its Representatives for purposes relating to the transactions contemplated hereby. The Receiving Party shall at all times cause its Representatives to comply

with the terms of this Section 2.6 and shall be liable for any breach of those terms by any of its Representatives.

(d) If this Agreement terminates, the Receiving Party will, and will cause its Representatives to, (i) return to the Disclosing Party all Confidential Information provided to the Receiving Party or its Representatives and all copies thereof or (ii) certify to the destruction of all such Confidential Information.

(e) For the purposes of this Agreement, Confidential Information will not include information (i) that is in the public domain, (ii) that becomes generally available to the public other than as a result of disclosure by the Receiving Party in violation of this Section 2.6, (iii) that was in the possession of the Receiving Party on a non-confidential basis prior to its disclosure to the Receiving Party by the Disclosing Party, or (iv) that is required to be disclosed by order of any court or other tribunal of competent jurisdiction, including, without limitation, the Bankruptcy Court.

2.7 Cooperation. Each party hereto shall diligently and in good faith cooperate with the other parties hereto, and take all actions necessary, to transfer the Transferred Assets to Purchaser in accordance with the terms and conditions of this Agreement.

3. SCHEDULES AND REPRESENTATIONS AND WARRANTIES OF SELLER

To induce Purchaser to enter into this Agreement and to purchase the Transferred Assets, Seller represents, warrants, and covenants to Purchaser as follows:

3.1 Schedules. Attached hereto are Schedules containing certain information regarding Seller, the business of Seller as heretofore conducted, and the Transferred Assets. All information set forth in the Schedules is true, correct, complete and set forth in a manner that is not misleading. The information contained in the Schedules shall be deemed to be part of and qualify only those representations and warranties contained in this Section 3 or elsewhere in this Agreement that make specific reference to the Schedules. Unless otherwise indicated, all capitalized terms used in the Schedules shall have the same meanings as in this Agreement. At all times prior to and including the Closing Date, Seller shall promptly provide Purchaser with written notification of any event, occurrence or other information of any kind whatsoever that materially affects, or may materially affect, the continued truth, correctness or completeness of any representation, warranty or covenant made in this Agreement or the Schedules to this Agreement. All of such written notifications shall specifically identify any and all of the representations, warranties, or covenants materially affected by the event, occurrence or information that necessitated the giving of such notice. No such notification or other disclosure shall be deemed (i) to amend or supplement the Schedules to this Agreement or this Agreement or (ii) to affect Purchaser's right not to close the purchase of the Transferred Assets contemplated hereby because of a breach of a representation, warranty, or covenant made hereunder by Seller, provided however, if Purchaser has received such written notice and nonetheless elects to proceed with the Closing, Purchaser shall be deemed to have waived any claim against Seller relating to a breach of such a representation, warranty, or covenant.

3.2 **Organization and Compliance**. Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the Commonwealth of Kentucky. Seller has all requisite limited liability company power and authority to (i) conduct its business as presently conducted and (ii) own the Transferred Assets. Seller does not own, and does not have any right or obligation to acquire, any equity interest of any type in any other entity or business enterprise.

3.3 **Enforceability of Agreement**. Subject to the entry of the Approval Order, Seller has the full limited liability company power and authority to enter into and execute and deliver this Agreement and the other Transaction Documents (as hereinafter defined) and to carry out the transactions contemplated hereby and thereby in accordance with their respective terms. No outstanding contracts, demands, commitments, or other agreements or arrangements exist under which Seller is or may become obligated to sell, transfer or assign any of the Transferred Assets. This Agreement and the other Transaction Documents and all transactions required hereunder and thereunder to be performed by Seller will, in accordance with the Approval Order, have been duly and validly authorized and approved by all necessary corporate action of Seller. Subject to the Approval Order, each of this Agreement and the other Transaction Documents constitutes the valid and legally binding obligation of Seller, and is enforceable against Seller in accordance with its terms. “*Transaction Documents*” means this Agreement, the Bill of Sale, the Assumption Agreement, and all other agreements, instruments, documents and certificates to be executed and/or delivered pursuant to this Agreement or in connection with the transactions contemplated hereby as to which Seller is a party.

3.4 **No Inconsistent Obligations**. Neither the execution and delivery of this Agreement or any other Transaction Document, nor the consummation of the transactions contemplated herein or therein in accordance with the Approval Order, will result in a violation or breach of, or constitute a default under (a) the certificate of formation, as amended, the bylaws, or other organizational documents of Seller, (b) any term or provision of any indenture, note, mortgage, bond, security agreement, loan agreement, guaranty, pledge, or other instrument, contract, agreement, or commitment of Seller, (c) any writ, order, judgment, decree, law, rule, regulation, or ordinance, (d) any applicable ruling or order of any administrative or governmental body, or (e) any other commitment or restriction to which Seller is a party or by which it or any of the Transferred Assets is subject or bound; nor will such actions result in (i) the creation of any Lien on any of the Transferred Assets, (ii) the acceleration or creation of any obligation of Seller, or (iii) the forfeiture of any material right or privilege of Seller, which, in any event referred to in this Section 3.4, would cause a material adverse effect to the Transferred Assets, except for such terms which need not be complied with pursuant to the Bankruptcy Code or Order of Court.

3.5 **Consents**. The execution and delivery by Seller of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby in accordance with the Approval Order, (a) will not require the consent, approval or action of, or any filing with or notice to, any Person or any public, governmental, judicial, or regulatory authority, other than the Bankruptcy Court, (b) will not require the consent or approval of members of the board of directors or shareholders of Seller pursuant to any business combination, takeover, or other similar law, rule, regulation or ordinance except for those that have been or will be obtained

prior to Closing, and (c) will not impose any other term, condition or restriction on Purchaser or the Transferred Assets pursuant to any business combination, takeover or other similar statute, rule or regulation.

3.6 **No Violation**. Seller is not in default under or in violation of (a) its certificate of formation, as amended or its bylaws, (b) any writ, order, judgment, decree or any law, rule, regulation, ordinance, or code which would cause a material adverse affect on the Transferred Assets, or (c) any applicable ruling or order of any administrative or governmental body.

3.7 **Possession of Licenses**. Seller possesses all franchises, certificates, licenses, permits, and other authorizations from public, governmental, regulatory or judicial authorities that are necessary for the ownership, maintenance and operation of the Transferred Assets and Seller is not in violation of any of the foregoing. A true and complete list of all such licenses is set forth on Schedule 3.7.

3.8 **Intellectual Property**.

(a) The term “*Intellectual Property*” as used in this Agreement includes all proprietary information in which Seller has a right, title, or interest, including, but not limited to, copyrights, patents, patent rights, trademarks, service marks, source code, know-how, trade secrets, and confidential information.

(b) Except as set forth in Schedule 3.8(b), to the knowledge of Seller, ownership or use of the Intellectual Property does not infringe the intellectual property rights or other rights of any other Person, and there are no activities anywhere in the United States that infringe any of Seller’s Intellectual Property.

(c) Except as set forth in Schedule 3.8(c), no rights of third parties with respect to any Intellectual Property exist that would have a material adverse effect on the use of the Transferred Assets.

(d) Each item of Intellectual Property:

(i) Except as set forth in Schedule 3.8(d), is owned, and will be conveyed hereunder, free of any Liens;

(ii) Except as set forth in Schedule 3.8(d), is valid, enforceable and in full force and effect, and

(A) All maintenance fees, annuities, affidavits and renewals due through sixty (60) days following the Closing Date with respect thereto have been paid or filed or will be paid or filed prior to the Closing Date; (B) With respect to pending applications, there are no obligations to file responses, amendments or other papers with the office in which such applications are pending;

(C) Seller is not aware of any information that would, or that another has asserted would, cause any of Seller’s Intellectual Property to be invalid or unenforceable;

(D) No action, demand, claim or proceeding has been filed, initiated, made or threatened to contest the validity, enforceability or Seller’s ownership of Seller’s Intellectual Property; and

(E) Seller has caused any assignment from any third party necessary to vest title in all Intellectual Property to vest in Seller to be executed and delivered and filed with the U.S. Patent and Trademark Office (the “*USPTO*”), the U.S. Copyright Office, or the corresponding agency or office of the states of the United States or other countries as indicated.

(e) Schedule 3.8(e) sets forth all Intellectual Property that has been duly registered in, filed in or issued by the USPTO, the U.S. Copyright Office, or the corresponding agency or office of the states of the United States or other countries as indicated.

3.9 **No Litigation.** Except as set forth in Schedule 3.9, there are no actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Seller, threatened) against or affecting Seller, or any of its property, including the Transferred Assets, at law or in equity.

3.10 **Tax Matters.** There are not, and on the date hereof will not be, any tax liens or other encumbrances, on the Transferred Assets, nor any other set of circumstances which over time would result in a tax lien or other encumbrances on any of the Transferred Assets.

3.11 **Bankruptcy Related Financial Information.** The financial information delivered to Purchaser in connection with, and upon execution of, this Agreement was prepared by or on behalf of Seller in good faith based upon the most recent financial and other information available to Seller’s management as of the date of this Agreement.

3.12 **Title.** Seller has sole and exclusive, good, valid and marketable title to, or, in the case of property held under a lease or other contractual obligation, a sole and exclusive, enforceable leasehold interest in, or contractual right to use, all of the Transferred Assets and, pursuant to the Approval Order, Seller is authorized to sell such Transferred Assets free and clear of any and all Liens, except Permitted Liens. From and after the Closing, upon issuance of the Approval Order, no entity or individual will possess any right, title or interest in or to any of the Transferred Assets, including without limitation any source code owned by Seller of any of the software programs that are part of the Transferred Assets; provided, however, that the source code or other intellectual property rights that Seller had licensed in connection with the Transferred Assets shall remain subject to the terms and conditions of any license agreements that are Assigned Contracts identified by an asterisk (*) on Schedule 1.1 and provided further that Purchaser’s rights with respect thereto shall be set forth in such license agreements. Seller has not received any notice of, nor does it otherwise have any knowledge of, any actual or potential infringement or violation of the rights of others pertaining to the Transferred Assets or the transactions contemplated by this Agreement.

3.13 **Insurance.** Schedule 3.13 sets forth a complete and accurate list of all insurance under which any of the Transferred Assets are covered (“**Insurance Policies**”). The Insurance Policies are in full force and effect, and Seller has paid or accrued (to the extent not due and payable) all premiums due, and have otherwise performed in all material respects all of its obligations under, each such Insurance Policy.

3.14 **Contracts.**

(a) Schedule 3.14(a) lists all oral or written contracts or agreements: (i) under which Seller has or may acquire any rights or benefits relating to the Transferred Assets or used in the operation of business presently conducted by Seller, (ii) under which Seller has or may become subject to any obligation or liability in connection with the business presently conducted by Seller or the Transferred Assets, or (iii) by which any of the Transferred Assets or Seller in connection with the operation of the business presently conducted by Seller is or may become bound).

(b) With respect to the Assumed Contracts, Seller will file with the Court and serve on each party to an Assumed Contract notice of Seller's intention to assume and assign that party's contract to Buyer (the "**Assignment Notice**"). Seller will mail the Assignment Notice and the Motion no later than July 31, 2017. The Assignment Notice will set forth the monetary amount Seller believes to be necessary to cure any and all monetary defaults with respect to the Assumed Contract pursuant to section 365 of the Bankruptcy Code (the "**Cure Amount**") and provide the contracting parties with an opportunity to object to (i) the assumption and assignment, (ii) the Cure Amount, or (iii) both. If no objection is filed with the Court no later than the day prior to the Sale Hearing, the Cure Amount set forth in the Assignment Notice will be controlling notwithstanding anything to the contrary in any Assumed Contract or other document, and the non-debtor party to the Assumed Contract will be forever barred from asserting any other claim arising prior to the assignment against Seller or Buyer as to such Assumed Contract. If an objection to the assumption and assignment is made, such objection will be heard at the Sale Hearing. If an objection by the non-debtor contracting party is made only with respect to the Cure Amount, a hearing to fix the Cure Amount will be set contemporaneously with the Sale Hearing and materially agreeable to the parties after the Sale Hearing; provided, however, that Seller reserves its right to reject any executory contract until such time as the Cure Amount is fixed and accepted, and the Buyer reserves Section 6.9 as a condition of closing.

(c) Except as set forth in Schedule 3.14(c):

(i) each Assigned Contract is valid and binding and in full force and effect.

(ii) Seller and, to the knowledge of the Seller, each other party to each Assigned Contract is, and at all times since January 1, 2016, has been, in material compliance with all applicable terms and requirements of each Assigned Contract; and

(iii) Since January 1, 2016, Seller has not given to, or received from, any other party to any Assigned Contract, any written notice or communication regarding any actual or alleged breach of or default under any Assigned Contract by Seller or any other party to such Assigned Contract, other than any breach or default that may be cured pursuant to the Bankruptcy Code.

3.15 **Customers and Suppliers.**

(a) Schedule 3.15(a) sets forth a true and complete list of each of the customers of Seller (the “Customers”), for the 12-month period ended on May 31, 2017, and the amount of revenues accounted for by each such Customers during such period.

(b) Schedule 3.15(b) sets forth a true and complete list of each of the suppliers of Seller (the “Suppliers”), for the 12-month period ended on May 31, 2017, and the amount of expenses accounted for by each such Suppliers during such period.

(c) Since January 1, 2017, there has been no material adverse change in the business relationship of Seller with any Customer or Supplier. Seller has not received any notice, and the Seller does not have any knowledge, that any Customer has any intention to terminate or materially reduce payments to Seller on account of the transactions contemplated hereby or otherwise. Seller has not received any notice, and Seller does not have any knowledge, that any Supplier has any intention to terminate or materially increase payments to Supplier on account of the transactions contemplated hereby or otherwise.

3.16 **Full Disclosure**. No representation, warranty, or covenant of Seller contained in this Agreement, the Schedules, any other Transaction Document, or certificate delivered by Seller pursuant to this Agreement or in connection with the transactions contemplated herein contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading. No fact is known to Seller that should cause a material adverse effect, or in the future may materially adversely affect, the Transferred Assets or Purchaser’s use thereof, that has not been disclosed in this Agreement or the Schedules.

4. REPRESENTATIONS AND WARRANTIES OF PURCHASER

As an inducement to Seller to enter into this Agreement and to sell the Transferred Assets to Purchaser, Purchaser hereby represents, warrants, and covenants as follows:

4.1 **Organization**. Purchaser is a limited liability company duly organized and validly existing under the laws of the State of Delaware.

4.2 **Authorization; No Inconsistent Agreements**. Purchaser has full limited liability company power and authority to enter into and execute this Agreement and the other Transaction Documents to which it is a party and the transactions contemplated hereby and thereby. This Agreement and such other Transaction Documents and all transactions required hereunder and hereunder to be performed by Purchaser have been duly and validly authorized and approved by all necessary action on the part of Purchaser. This Agreement and such other Transaction Documents have been (or at Closing will be) duly and validly executed and delivered on behalf of Purchaser by its duly authorized officers, and constitute the valid and legally binding obligations of Purchaser and are enforceable, subject to general equity principles, in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, or similar laws affecting the rights of creditors generally. Neither the execution and delivery of this Agreement or such other Transaction Documents nor the consummation of the transactions hereby or thereby

contemplated will constitute a violation or breach of any provision of any contract or other instrument to which Purchaser is a party or by which any of the assets of Purchaser may be affected or secured, or any order, writ, injunction, decree, statute, rule, or regulation to which Purchaser is subject, or will result in the creation of any lien, charge, or encumbrance on any of the assets of Purchaser or acceleration of any debt, except to the ext.

4.3 **No Inconsistent Obligations.** Neither the execution and delivery of this Agreement or any other Transaction Document and any other security documents required hereunder or related hereto, nor the consummation of the transactions contemplated herein or therein, will result in a violation or breach of, or constitute a default under (a) the certificate of incorporation, as amended, the bylaws, or other organizational instruments of Purchaser, (b) any term or provision of any indenture, note, mortgage, bond, security agreement, loan agreement, guaranty, pledge, or other instrument, contract, agreement, or commitment of Purchaser, (c) any writ, order, judgment, decree, law, rule, regulation, or ordinance, (d) any applicable ruling or order of any administrative or governmental body, or (e) any other commitment or restriction to which Purchaser is a party; nor will such actions result in (i) the creation of any Lien, (ii) the acceleration or creation of any obligation of Purchaser, or (iii) the forfeiture of any material right or privilege of Purchaser, in each case of clauses (a) through (e) above, with such exceptions as would not reasonably be expected to prevent Purchaser from consummating the transactions contemplated by this Agreement.

4.4 **Consents.** The execution and delivery by Purchaser of this Agreement and the other Transaction Documents and the consummation of the transactions contemplated hereby and thereby in accordance with the Approval Order, (a) do not require the consent, approval or action of, or any filing with or notice to, any Person or any public, governmental, judicial, or regulatory authority, other than the Bankruptcy Court, and (b) do not require the consent or approval of members of the board of directors or shareholders of Purchaser pursuant to any business combination, takeover, or other similar law, rule, regulation or ordinance, in each case of clauses (a) and (b) above, with such exceptions as would not reasonably be expected to prevent Purchaser from consummating the transactions contemplated by this Agreement.

4.5 **No Litigation.** There are no actions, suits, claims, investigations, hearings, or proceedings of any type pending (or, to the knowledge of Purchaser, threatened), at law or in equity, that would reasonably be expected to prevent Purchaser from consummating the transactions contemplated by this Agreement.

5. SELLER COVENANTS

Seller covenants and agrees that, except as may otherwise be provided herein, unless Purchaser otherwise consents or except as may otherwise be prescribed herein, between the date hereof and the earlier of (i) the Closing Date or (ii) the termination of this Agreement in accordance with its terms:

5.1 **Preservation of Assets.** Except as otherwise may be ordered by the Bankruptcy Court, Seller shall preserve the Transferred Assets in the ordinary and usual course of business, consistent with prior practices and shall keep all of the Insurance Policies in full force and effect.

5.2 **No Material Changes in Transferred Assets.** Except as otherwise may be ordered by the Bankruptcy Court, no action shall be taken or omitted to be taken by Seller that shall affect the Transferred Assets in any material adverse respect, or Purchaser's use or operation of the Transferred Assets after the Closing.

5.3 **Retention Plan.** Seller will assist Purchaser in developing a retention plan pursuant to which Purchaser may, at its sole discretion, retain certain employees of Seller (the "***Retention Plan***"). Purchaser shall not be under any obligation to hire any of Seller's employees.

5.4 **Operating Losses.** Except as otherwise may be ordered by the Bankruptcy Court, Seller shall fund the operating losses associated with the Transferred Assets from the effective date of this Agreement to Closing.

5.5 **Financial Information and Reports.** Seller shall (i) promptly provide Purchaser with copies of all financial reports provided by Seller to the Bankruptcy Court and (ii) meet with Purchaser on a weekly basis to apprise Purchaser of Seller's financial position, budgetary intentions and other matters relating to the ongoing conduct of Seller's business prior to the Closing.

5.6 **Transition Services.** From and after the Closing and subject to the approval of the Bankruptcy Court, Seller will provide such transition and migration services as are mutually agreed between the parties (including, without limitation, hosting services, rental of equipment and facilities and other services related to the operation of Seller's business) subject to the terms and conditions set forth in Schedule 5.6 (the "***Transition Services***"). Purchaser agrees to pay Seller the fees set forth in Schedule 5.6 in respect of the Transition Services.

5.7 **Filing with U.S. Bankruptcy Court.** By June 30, 2017, Seller will file a request for approval of this Agreement, including the requested bid/sale procedures, in the Bankruptcy Court.

6. CONDITIONS TO OBLIGATIONS OF PURCHASER

All obligations of Purchaser under this Agreement are subject to the fulfillment and satisfaction of each and every of the following conditions on or prior to the Closing, any or all of which may be waived in whole or in part by Purchaser:

6.1 **Proceedings and Documents Satisfactory.** All proceedings taken in connection with the consummation of the transactions contemplated herein and all documents and papers reasonably required in connection therewith shall be timely performed and delivered in form and substance reasonably satisfactory to Purchaser and its counsel.

6.2 **Representations, Warranties, and Covenants.** The representations and warranties of Seller contained in this Agreement, the Schedules and in any certificate, instrument, agreement, or other writing delivered by or on behalf of Seller pursuant to this Agreement shall be true, correct, and complete as of the date when made and, except where such representations and warranties are made with specific reference to a particular date, and then as to such particular date, shall (a) be deemed to be made again at and as of the Closing Date and (b) be true, correct, and complete at

and as of such time, except when such representations and warranties are made with specific reference to a particular date, and then as to such particular date.

6.3 **Compliance with Agreements, Covenants and Conditions.** Seller shall have performed and complied with all agreements, covenants and conditions required by this Agreement to be performed or complied with by Seller prior to or on the Closing Date.

6.4 **Certificates of Seller.** Seller shall have delivered to Purchaser a certificate, executed by an authorized officer of Seller, which shall be dated as of the Closing Date, certifying in such detail as Purchaser may reasonably request as to the fulfillment and satisfaction of the conditions by Seller specified in Section 6.2 and Section 6.3 above.

6.5 **Resolutions.** Seller shall have delivered to Purchaser duly adopted resolutions of the Board of Directors or equivalent governing body of Seller certified, as of the Closing Date, by the Secretary or an Assistant Secretary thereof authorizing and approving the execution, delivery, and performance by Seller of this Agreement and the other Transaction Documents to which Seller is a party and all other action necessary to enable Seller to comply with the terms of this Agreement and other Transaction Documents.

6.6 **Consents; Bankruptcy Court Approval.** Purchaser shall have received from any and all Persons, or any public or governmental authorities, bodies or agencies or judicial authority having jurisdiction over the transactions contemplated by this Agreement and the other Transaction Documents, or any part hereof, such consents, authorizations, and approvals as are necessary for the consummation thereof, and all notices required to be given to government authorities shall have been given and all applicable waiting periods shall have expired. Without limiting the generality of the foregoing, the Bankruptcy Court shall have entered (A) the Bid Procedures Order (as hereinafter defined) no later than July 14, 2017 and (B) the Approval Order (as hereinafter defined) no later than August 9, 2017 and each of the Bid Procedures Order and the Approval Order shall be in full force and effect, and shall not be appealed, stayed, modified, vacated or reversed, and any applicable appeal(s) period(s) shall have expired.

The term “***Bid Procedures Order***” means an order, in form and substance satisfactory to Purchaser, approving certain bid protections and procedures for the sale of any material portion of the Transferred Assets and/or the assumption by Purchaser of certain liabilities under the Assumption Agreement, including: (1) approval of payment to Purchaser in the event of termination of this Agreement for the reasons set forth in Section 9.1(a)(v) of (x) Purchaser’s reasonable fees, costs, and expenses incurred (including attorneys’, accountants’, and other professional advisors’ fees and expenses) in an amount not to exceed \$35,000.00 (the “***Reimbursement Amount***”) and (y) a break-up fee in the amount of \$18,000.00 upon the approval of any successful competing bid (the “***Breakup Amount***”); (ii) a requirement that all competing bidders make a cash deposit of not less than \$53,000.00, which deposit shall be non-refundable if the offer is accepted by Seller and approved by the Bankruptcy Court; (iii) an initial overbid amount of not less than \$725,000.00; and (iv) a deadline for the submission of competitive bids.

The term “*Approval Order*” means an order, in form and substance satisfactory to Purchaser, approving the consummation by Seller of the transactions set forth herein, including the sale to Purchaser of the Transferred Assets free and clear of all of the Liens, except for any Permitted Liens, the assumption of any liabilities effected by the Assumption Agreement, the execution and delivery of this Agreement and the Transaction Documents, a finding that Purchaser is a good faith purchaser under Section 363 of the Bankruptcy Code and all other actions by Seller that are reasonable or necessary to effectuate the transactions contemplated hereby.

6.7 **No Change in Transferred Assets.** No material adverse change shall have occurred in the Transferred Assets.

6.8 **Ownership of Assets.** Seller shall continue to own and have all rights, powers, and authority necessary to transfer all of its rights, title, and interest in and to the Transferred Assets, free and clear of the Liens, except the Permitted Liens.

6.9 **Consents and Assignment of Assigned Contracts.** Seller shall have provided evidence satisfactory to Purchaser that Seller has the consents or approvals of all third parties, including, but not limited to, applicable governmental or regulatory authorities, whose consent or approval is necessary in connection with the consummation of the transactions contemplated by this Agreement or for Purchaser’s unencumbered and unrestricted use of the Transferred Assets and Assumed Liabilities following the Closing. Seller shall have provided evidence satisfactory to Purchaser that Seller has obtained the assignment to Purchaser of those contracts identified as the “Essential Contracts” subset of the Assigned Contracts identified in Schedule 1.1.

6.10 **No Litigation.** No litigation, legal action, or other proceeding or governmental action shall have been commenced and remain in effect and no judicial or administrative order shall have been issued or adopted and remain in effect that would prevent, prohibit or adversely affect the transactions contemplated hereby.

6.11 **Satisfactory Completion of Diligence.** Purchaser shall have completed its investigation with respect to the Transferred Assets and Assumed Liabilities, including the Essential Contracts, and shall be satisfied in its sole discretion with the results of such investigation; provided, however, that this condition shall be deemed to have been satisfied if Purchaser fails, within twenty-one (21) days following the filing by Seller of the sale motion with the Bankruptcy Court, to notify Seller that Purchaser is not satisfied with the results of its diligence investigation.

7. CONDITIONS TO OBLIGATIONS OF SELLER

All of the obligations of Seller under this Agreement are subject to the fulfillment and satisfaction of each and every of the following conditions on or prior to the Closing, any or all of which may be waived in whole or in part by Seller.

7.1 **Representations and Warranties.** The representations and warranties of Purchaser contained in this Agreement, the Schedules and in any certificate, instrument, agreement, or other writing delivered by or on behalf of Purchaser pursuant to this Agreement shall be true, correct, and

complete as of the date when made and, except where such representations and warranties are made with specific reference to a particular date, and then as to such particular date, shall (a) be deemed to be made again at and as of the Closing Date and (b) be true, correct, and complete at and as of such time, except when such representations and warranties are made with specific reference to a particular date, and then as to such particular date.

7.2 **Compliance with Agreements and Conditions.** Purchaser shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by Purchaser prior to or on the Closing Date.

7.3 **Certificates of Purchaser.** Purchaser shall have delivered to Seller a certificate, executed by an authorized officer of Purchaser, which shall be dated as of the Closing Date, certifying in such detail as Seller may reasonably request as to the fulfillment and satisfaction of the conditions by Purchaser specified in Section 7.1 and Section 7.2 above.

7.4 **Consents.** Purchaser shall reasonably cooperate with Seller to receive from any and all Persons, or any public or governmental authorities, bodies or agencies or judicial authority having jurisdiction over the transactions contemplated by this Agreement and the other Transaction Documents, or any part hereof, such consents, authorizations, and approvals as are necessary for the consummation thereof, and all notices required to be given to government authorities shall have been given and all applicable waiting periods shall have expired.

7.5 **No Litigation.** No litigation, legal action, or other governmental action shall have been commenced and remain in effect and no judicial or administrative order shall have been issued or adopted and remain in effect prohibiting the transactions contemplated by this Agreement.

8. SURVIVAL OF SELLER'S LIABILITY

Seller shall remain liable for all liabilities and obligations of Seller, including, without limitation, the liabilities and obligations referred to in Section 1.3, except for the Assumed Liabilities and the executory obligations of Seller under the Assigned Contracts.

9. TERMINATION

9.1

(a) This Agreement may be terminated at any time prior to or on the Closing Date as follows:

(i) By mutual consent of the parties;

(ii) By either party if the Closing fails to occur on the first business day that is no earlier than twenty (20) calendar days after the date on which an Approval Order is entered, except that a party cannot exercise this termination right if that party is not cooperating in good faith with the other party or is not exerting commercially reasonable efforts to effectuate the Closing;

(iii) If the transactions contemplated by this Agreement are enjoined, restrained, or prohibited by a court or governmental agency;

(iv) By Purchaser if Seller breaches its representations or warranties or fails to perform its covenants or agreements set forth in this Agreement, subject to prior notice and a fifteen (15) calendar day cure period;

(v) Automatically and without any action by either Purchaser or Seller if the Bankruptcy Court approves a Qualified Bid (as defined hereafter) by a Qualified Bidder (as defined hereafter) other than Purchaser;

(vi) Unless waived, by Purchaser if the Bankruptcy Court does not enter the Bid Procedures Order by 12:00 midnight on July 14, 2017;

(vii) By Purchaser or Seller if the Bankruptcy Court fails to enter an Approval Order by August 9, 2017; or

(viii) By Seller if Purchaser breaches in any material respect its representations or fails to perform in any material respect its covenants or agreements set forth in this Agreement, subject to prior notice and a fifteen (15) calendar day cure period.

(ix) By Purchaser within twenty-one (21) days following the filing of the sale motion, if Purchaser after completion of its due diligence investigation, for any reason, at Purchaser's sole discretion, determines to terminate this Agreement.

(b) Upon any termination of this Agreement pursuant to paragraph (a)(v) of this Section 9.1, Seller shall pay to Purchaser the Breakup Amount and the Reimbursement Amount on the earlier of 'the 30th day following termination of this Agreement or the consummation of the transaction contemplated by the approved Qualified Bid. Furthermore, upon any termination of this Agreement pursuant to paragraph (a)(iv) of this Section 9.1, Seller shall immediately pay to Purchaser the Reimbursement Amount.

(c) For purposes of this Section 9.1:

“Qualified Bid” means the Minimal Incremental Bid Amount.

“Minimum Incremental Bid Amount” means (a) for any initial incremental bid by any Qualified Bidder other than Purchaser, an amount equal to \$725,000.00, and (b) thereafter for any additional incremental bids made by Purchaser or any Qualified Bidder other than Purchaser, \$25,000.00.

“Qualified Bidder” means a bid that satisfies the Minimum Incremental Bid Amount requirement and otherwise meets the requirement of the Bidding Procedures Order or other order of the Bankruptcy Court. For the avoidance of doubt, Purchaser shall be deemed to be a Qualified Bidder.

(d) **Administrative Expenses**. Purchaser's right to receive payments under Section 9.1(b) shall constitute an allowed claim for an administrative expense under Section 503(b) of the Bankruptcy Code.

10. MISCELLANEOUS

(a) All notices, demands or other communications required or permitted to be given or made hereunder shall be in writing and delivered personally or sent by pre-paid, first class, certified or registered air mail (or the functional equivalent in any country), return receipt requested, or by facsimile transmission to the intended recipient thereof at its address, or facsimile number set out below. Any such notice, demand or communication shall be deemed to have been duly given immediately (if given or made by confirmed facsimile), or three days after mailing (if given or made by letter addressed to a location within the country in which it is posted) or seven days after mailing (if made or given by letter addressed to a location outside the country in which it is posted), and in proving same it shall be sufficient to show that the envelope containing the same was duly addressed, stamped and posted, or that receipt of a facsimile was confirmed by the recipient. The addresses and facsimile numbers of the parties for purposes of this Agreement are:

If to Purchaser: Prescient Medicine Holdings, LLC
1214 Research Blvd
Suite 1000
Hummelstown, PA 17036
Fax Number: (717) 256-7959
Attn: Keri Donaldson, MD, MSCE

With a copy to: Cynthia Y. Reisz
Bass Berry & Sims PLC
150 Third Avenue South
Suite 2800
Nashville TN 37201
Fax Number: (615) 742-2783

If to Seller: Pharmacogenetics Diagnostic
Laboratories, LLC
Attn: Roland Valdes
201 E. Jefferson St., Suite 309
Louisville KY 40202

With a copy to: Charity B. Neukomm
James Edwin McGhee III
Kaplan & Partners LLP
710 West Main Street
Fourth Floor
Louisville KY 40207
Fax Number: (502) 540-8282

(b) Any party may change the address to which notices, requests, demands or other communications to such party shall be delivered or mailed by giving notice thereof to the other parties hereto in the manner provided herein.

10.2 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same instrument. Facsimile signatures shall constitute original signatures for all purposes of this Agreement.

10.3 **Governing Law**. The validity and effect of this Agreement shall be governed by and construed and enforced in accordance with the laws of the Commonwealth of Kentucky without regard to rules of such State relating to the conflict of laws, except to the extent that the laws of the Commonwealth of Kentucky are superseded by the Bankruptcy Code or other applicable federal law. The parties hereby submit to personal jurisdiction of the Bankruptcy Court for all disputes arising out of this Agreement.

10.4 **Successors and Assigns**. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, legal representatives, successors and permitted assigns. This Agreement may not be assigned, or the obligations hereunder delegated, by Seller, or Purchaser, without the prior written consent of the other parties; provided, however that Purchaser may assign its rights and obligations under this Agreement to any entity directly or indirectly controlling, controlled by or under common control with Purchaser (each such Person, an "*Affiliated Party*") without the prior written consent of Seller, but in the event of such a transfer by Purchaser to an Affiliated Party, Purchaser shall remain liable to Seller for all of its obligations hereunder.

10.5 **Partial Invalidity and Severability**. All rights and restrictions contained herein may be exercised and shall be applicable and binding only to the extent that they do not violate any applicable laws, and are intended to be limited to the extent necessary to render this Agreement legal, valid and enforceable. If any term of this Agreement, or part thereof, not essential to the commercial purpose of this Agreement shall be held to be illegal, invalid or unenforceable by a court of competent jurisdiction, it is the intention of the parties that the remaining terms hereof, or part thereof shall constitute their agreement with respect to the subject matter hereof and all such remaining terms, or parts thereof, shall remain in full force and effect. To the extent legally permissible, any illegal, invalid or unenforceable provision of this Agreement shall be replaced by a valid provision which will implement the commercial purpose of the illegal, invalid or unenforceable provision.

10.6 **Waiver**. Any term or condition of this Agreement may be waived at any time by the party which is entitled to the benefit thereof, but only if such waiver is evidenced by a writing signed by such party. No failure on the part of any party hereto to exercise, and no delay in exercising any right, power or remedy created hereunder, shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy by any such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. No waiver by any party hereto

of any breach of or default in any term or condition of this Agreement shall constitute a waiver of or assent to any succeeding breach of or default in the same or any other term or condition hereof.

10.7 **Headings**. The headings of particular provisions of this Agreement are inserted for convenience only and shall not be construed as a part of this Agreement or serve as a limitation on or enlargement of the scope of any term or provision of this Agreement.

10.8 **Number and Gender**. Where the context requires, the use of the singular form herein shall include the plural, the use of the plural shall include the singular, and the use of any gender shall include any and all genders.

10.9 **Time of Performance**. Time is of the essence.

10.10 **Definition of Knowledge**. The words “known,” “to the knowledge of,” “to the best knowledge ‘of,’” “aware” or words of similar import employed in this Agreement with reference to any individual or entity shall be conclusively presumed to mean that the Person has made reasonable and diligent efforts under the circumstances to become knowledgeable, except where reference is made to the “actual knowledge” of such Person; in the case of any Person other than a natural person, the “knowledge” of such Person shall be deemed to be the knowledge of its directors and senior officers.

10.11 **Access to Records**. After the Closing, Seller will provide Purchaser and its representatives full access, at all reasonable times, to the books, records, and other documents of Seller related to the Transferred Assets (the “***Records***”) as Purchaser may reasonably request. If at any time Seller decides to destroy or abandon the Records, then Seller shall provide Purchaser with thirty (30) days’ prior written notice of such decision. If Purchaser desires to obtain possession of the Records Seller seeks to destroy or abandon, Purchaser must so advise Seller, in writing, within twenty (20) days after the date of delivery of Seller’s notice. If Purchaser timely notifies Seller that Purchaser desires to obtain the Records, then Seller shall make the Records available to Purchaser at a single location. If Purchaser fails to provide Seller with written notice that Purchaser desires to obtain the Records, then Seller shall be entitled to destroy or abandon the Records. Seller’s compliance with the foregoing shall be at Seller’s sole cost and expense.

10.12 **Counsel**. Each party hereto warrants and represents that such party has been afforded the opportunity to be represented by counsel of its choice in connection with the execution of this Agreement and has had ample opportunity to read, review and understand the provisions of this Agreement.

10.13 **No Construction Against Preparer**. No provision of this Agreement shall be construed against or interpreted to the disadvantage of any party by any court or other governmental or judicial authority by reason of such party’s having or being deemed to have prepared or imposed such provision.

10.14 **Entire Agreement**. This Agreement supersedes all prior discussions and agreements between the parties with respect to the subject matter hereof, and this Agreement contains the sole

and entire agreement among the parties with respect to the matters covered hereby. This Agreement shall not be altered or amended except by an instrument in writing signed by or on behalf of the party entitled to the benefit of the provision against whom enforcement is sought.

10.15 **Waiver of Jury Trial**. EACH PARTY HERETO AGREES THAT IT SHALL NOT SEEK A JURY TRIAL IN ANY SUIT, ACTION OR OTHER PROCEEDING ARISING OUT OF, IN CONNECTION WITH, OR IN ANY WAY RELATING TO, THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT AND HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO SUCH JURY TRIAL.

10.16 **Counterparts**. This Agreement may be executed in one or more counterparts and by facsimile, PDF or other electronic transmission, 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.

10.17 **Specific Performance**. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof and that the Parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

[Signature Page Follows]

SCHEDULES
TO
AGREEMENT FOR PURCHASE AND SALE OF ASSETS
BY AND AMONG
PRESCIENT MEDICINE HOLDINGS, LLC
AND
PHARMACOGENETICS DIAGNOSTIC LABORATORY, LLC
D/B/A PGXL LABORATORIES
DATED AS OF _____

Schedule 1.1

Transferred Assets¹

1. All instrumentation and equipment used by Seller, including the equipment listed on the attached list.
2. Seller's drug-gene database, including the related software, and all software or intellectual property licenses to which Seller is a party
3. Anonimized DNA control specimens and related files
4. Seller's lease with respect to the office and lab space at Suites 232, 309, 310 and 311 of 201 East Jefferson Street, Louisville, KY 40202
5. The agreements with insurance payors to which Seller is a party and listed on the attached list
6. The agreements with vendors listed on the attached list to which Seller is a party
7. **[The sales agreements to which Seller is a party]**
8. Licenses issued by any governmental authority to which Seller is a party

¹ Subject to update by Purchaser.

State	Payer Name	Effective Date
AK/WA/OR/ID/MT/WY/CO/SD/ND	First Choice Health	4/12/2013
AK	Alaska Medicaid	9/1/2013
AL	Alabama Medicaid	1/21/2014
AR	Arkansas Managed Care Organization (AMCO)/PPO Plus/Stratose	6/26/2013
AR	Arkansas Medicaid	7/11/2012
AZ	Cenpatico	N/A
	Fortified Providers Networks	8/16/2012
AZ	Arizona Medicaid	7/16/2013
CA	Blue Shield of California	5/28/2014
CO	Colorado Medicaid	3/25/2013
	AHC	6/1/2013
	Beechstreet	6/1/2013
Canada	Canadian Medical Network	5/1/2013
Canada	Cayman Islands National Insurance Company Ltd (CINICO)	5/1/2013
	CHAMPVA	2/15/2001
	Coalition of America/Stratose	3/18/2013
FL	Evolutions HealthCare Systems	3/1/2013
	Formost	6/1/2013
	Global Excel Management	6/1/2013
	Global Health Claim Services	3/3/2013
	Health EOS	6/1/2013
	Health Network	6/1/2013
	HealthCare	6/1/2013
	Med Network	6/1/2013
National	Multiplan	6/1/2013
	National Preferred Provider Network	3/18/2013
	Payors & United Providers/Up & Up	6/1/2013
	PHCS	6/1/2013
	Pro America	6/1/2013
FL	Quality Health Management LLC	6/1/2013
GA	Georgia Medicaid	2/1/2013
GA	Georgia Wellcare	3/1/2014
HI	BCBS of Hawaii/HMSA	7/25/2013
HI	Hawaii Medicaid/Quest	6/1/2012
IA	Amerigroup MCO	3/1/2016
IA	BCBS of Iowa/Wellmark	6/1/2012
IA	Iowa Medicaid	6/1/2012
IA	Meridian	11/1/2013
ID	Idaho Medicaid	4/2/2013
ID/OR/WA	PacificSource	6/1/2013
IL	Blue Cross Blue Shield of Illinois	4/18/2013
IL	Beechstreet/Capp Care PPO/Viant	6/1/2013
IL	Illinois Medicaid	6/1/2013
IL	HFN	5/15/2013
	Interplan/HealthSmart	7/1/2013
IL	Meridian	8/1/2013
	PPO Next/Healthstar	6/1/2013
IL	Preferred Plan PPO	7/1/2013
IL	Unicare/Wellpoint	9/15/2013
IN	Indiana Medicaid	10/19/2012

IN	Indiana BCBS (Anthem)		5/15/2007
IN	Indiana BCBS Anthem MCO		7/7/2013
IN	Encore Health Network		7/1/2013
IN	Managed Health Services		5/21/2013
IN	MD Wise		8/14/2013
IN	PHP of Northern Indiana		5/22/2013
IN	SIHO		4/1/2012
IN	Advantage Health Solutions		9/1/2012
KS	Kansas Medicaid		7/26/2012
KS	WPPA/ProviDRs Care		7/1/2013
KY	Aetna		6/1/2008
KY	Anthem BCBS		5/15/2007
KY	Anthem Medicaid MCO		9/1/2014
KY	Bluegrass Family Health		6/1/2007
KY	Coventry Cares MCO		3/1/2013
KY	Humana		9/15/2014
KY	Kentucky Medicaid		1/1/2011
KY	Medicare		3/1/2007
KY	Passport MCO		5/4/2011
KY	Wellcare MCO		8/1/2013
LA	Gilsbar/360 Alliance		5/1/2013
LA	Louisiana Medicaid		6/1/2012
LA	PPO Plus		7/24/2013
MA	Network Health		8/17/2013
MD	CareFirst BCBS		2/21/2014
MD	Evergreen Health Coop		12/1/2014
MD	Maryland Medicaid		9/1/2012
MD	Riverside Health of Maryland		9/2/2013
ME	Maine Medicaid (MaineCare)		1/1/2013
MI	Michigan Medicaid (CHAMPS)		6/1/2012
MI	Meridian Health Plan of Michigan		7/1/2013
MI	Paramount		4/16/2013
	Ameriben	N/A	
	Broadspire		2/22/2013
	Center Care		3/5/2015
	HFN		5/15/2013
National	Railroad Medicare		3/1/2007
MN	Preferred One		5/1/2013
	Sanford Health Plan		8/15/2013
National	Sedgwick Workers Comp		4/23/2013
	Tricare		6/1/2014
MN	BCBS of Minnesota		3/19/2013
MO	Blue KC		6/20/2013
MO	Missouri Medicaid		7/31/2012
MS	Magnolia Health		10/1/2013
MS	Mississippi Medicaid		3/30/2013
MT	Montana Medicaid		2/11/2013
MT	MCEBP		4/1/2013
National	Coventry		3/1/2013
National	GEHA		6/1/2013
NC	North Carolina Medicaid (NC Tracks)		6/1/2012
NE	Nebraska Medicaid		6/15/2011
NJ	Accordia		7/1/2013
NY	MagnaCare		7/1/2013
NJ	New Jersey Medicaid		1/1/2013

NM	New Mexico Medicaid		7/28/2013
NY	Fidelis Care		7/22/2013
NY	MEDNET		8/17/2013
OH	Aetna Better Health MCO		6/1/2014
OH	Ohio Bureau of Workers Comp (BWC)		2/13/2013
OH	Ohio Medicaid		5/29/2011
OH	Medical Mutual of Ohio		9/5/2013
OR	Grand Ronde Indian Tribe		4/1/2013
OR	Oregon Medicaid		1/26/2013
OR	Intercommunity Health (Samaritan Health)	N/A	
	Prime		4/23/2015
PA	Capital Blue Cross (Harrisburg)		8/23/2013
PA	Highmark Blue Shield		8/1/2013
PA	Pennsylvania Medicaid		6/1/2012
SC	SC Medicaid		9/20/2012
SD	SD BCBS (Wellmark)		6/1/2012
TN	TN Medicaid		8/24/2012
TX	Ancillary Care Services		7/25/2015
TX	BCBS of Texas		4/15/2015
TX	Galaxy Health Network		6/21/2015
TX	USA Managed Care		4/17/2013
UT	Utah Medicaid		6/1/2012
VA	Virginia Medicaid		12/12/2012
WA	Washington Dept. of Labor & Industries	N/A	
WA	Group Health Options Plan PPO		1/1/2014
WA	Washington Medicaid (Apple Health)		9/3/2013
WV	Highmark BCBS		5/24/2013
WV	WV Medicaid		10/31/2012

EXHIBIT A

<u>Instrumentation and Equipment</u>
Hamilton Star 1
Qiagen EZ1 #1
Qiagen EZ1 #2
nanodrop
Starlet
Quant Studio 12K flex -3
accufill - 2
Via7 - 2
7500fast - 2
Eppendorf thermocyclers + controller - 4
Eppendorf MC Gradient - 2
e-gel system
incubator - 2
Eppendorf refrigerated centrifuge
Hamilton Nimbus
Uninterruptible power supplies - 8
dead air boxes - 3
omega pipettor plus
epp stream pipettors - 6
epp micropipettors - 47
rainin mulitchannel pipettors - 11
vortexes - 4
spectrafuge
minifuge
plate spinners - 4
waterbath
matrix plate reader
matrix plate sealer and mat
heat block - 2
minus 70 freezer - 3
minus 70 freezer - 2
minus 20 freezer
4 deg refrigerator lab quality
4 deg under counter frdge lab quality
side by side fridge/freezer
ABI 9700 thermocycler (pre-amp) - 2
SmartVue Temperature monitoring system (probes and software)

PGXL Laboratories
AP by Preferred Vendor
As of July 1, 2017

Date	Transaction Type	Num	Posting	Account	Amount	Due Date	Open Balance
	Acuity - Property insurance-ONLINE						\$ 319.31
	Advanced Business Solutions						\$ 834.76
	Assured Partners Insurance Agency, Inc.						\$ 500.00
	ATT						\$ 954.85
	Birch Communications						\$ 36.26
	BMS						\$ 80.00
	Carolina Container						\$ 28.77
	Citrix Online, LLC						\$ 72.00
	CLIA Laboratory Program						\$ 300.00
	College Of American Pathologists						\$ 3,520.72
	Darob, Inc.						\$ 159.76
	Dell - 97900-500						\$ 5,892.70
	Dell - 97900-501						\$ 399.76
	Dell - 97900-502						\$ 1,027.44
	Docu Confidential						\$ 734.75
	Guardian						\$ 923.88
	Hampton Inn						\$ 1,060.00
	Highmark Blue Shield						\$ 542.46
	Kentucky State Treasurer - Office Inspect						\$ 510.00
	Marlin Business Bank-AutoACH PNC 7th						\$ 7,950.00
	New York State Department of Health						\$ 514.74
	Pennsylvania Department of Health						\$ 300.00
	SimplexGrinnell Tyco						\$ 160.00
	Stamps.com						\$ 69.98
	State of Alabama Department of Revenue						\$ 161.66
	tevixMD Corporation						\$ 350.00
	Tyler Mountain						\$ 84.32
	UPS						\$ 3,192.37
	Work-A-Haulix, LLC						\$ 3,089.25

Grand Total

\$ 34,405.28

Schedule 1.2

Excluded Assets²

[To come.]

² Subject to update by Purchaser.

Schedule 1.3

Assumed Liabilities³

None.

³ Subject to update by Purchaser.

Schedule 1.6

Purchase Price

Cash Purchase Price means \$500,000.

Additional Cash Consideration.

On each of the first three anniversaries of the Closing Date (*by way of example only, if the Closing occurs on September 1, 2017, such payment dates will be September 1, 2018, September 1, 2019, September 1, 2020*), Purchaser shall make a payment to Seller, by wire transfer of immediately available funds to an account specified in writing by Seller, equal to \$50,000 for a total of \$150,000 over such three-year period (such payments “**Additional Cash Consideration**”); provided, however, that Purchaser shall have the option, in its sole discretion, to satisfy its obligations in respect of Additional Cash Consideration by making a payment or payments to Seller equal to \$100,000 in the aggregate on or prior to the 18-month anniversary of the Closing Date, in which case Purchaser shall have no further obligation to Seller to make any additional payments in respect of Additional Cash Consideration. For the avoidance of doubt, in no event shall the Additional Cash Consideration exceed \$150,000 in the aggregate (or \$100,000 in the event that Purchaser pays Seller \$100,000 in the aggregate on or prior to the 18-month anniversary of the Closing Date).

Schedule 2.4

Brokers

None with respect to Purchaser.

[None with respect to Seller] [Seller to confirm.]

Schedule 3.7

Licenses

[Seller to provide.]

Schedule 3.8(b)

Intellectual Property Infringement

[Seller to provide.]

Schedule 3.8(c)

Third Party Intellectual Property Rights

[Seller to provide.]

Schedule 3.8(d)

Intellectual Property Liens and Enforceability

[Seller to provide.]

Schedule 3.8(e)

Registered and/or Filed Intellectual Property

[Seller to provide.]

Schedule 3.9

Litigation

[Seller to provide.]

Schedule 3.13

Insurance

[Seller to provide.]

Schedule 3.14(a)

Contracts

[Seller to provide.]

Schedule 3.14(c)

Exceptions to Contracts

[Seller to provide.]

Schedule 3.15(a)

Customers

[Seller to provide.]

Schedule 3.15(b)

Suppliers

[Seller to provide.]

Schedule 5.6

Transition Services

[Seller to provide.]

23205149.1

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the day and year first above written.

PURCHASER:

Prescient Medicine Holdings, LLC

By: _____

Its: _____

SELLER:

Pharmacogenetics Diagnostic Laboratory, LLC

By: _____

Its: _____

23206124.2