IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
QUADRANT 4 SYSTEM CORPORATION,	)	Case No. 17-19689
	)	
Debtor.	)	Honorable Jack B. Schmetterer
	)	
	)	**Hearing Date: July 7, 2017**
	)	**Hearing Time: 10:30 a.m.**

NOTICE OF MOTION

PLEASE TAKE NOTICE that on **Friday, July 7, 2017, at 10:30 a.m.,** we shall appear before the Honorable Jack B. Schmetterer of the United States Bankruptcy Court for the Northern District of Illinois, or any other judge sitting in his place and stead, at Courtroom 682 in the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois, and then and there present the **MOTION OF THE DEBTOR FOR THE ENTRY OF AN ORDER: (A) APPROVING THE SALE PROCESS AND BIDDING PROCEDURES WITH RESPECT TO SALE OF CERTAIN OF THE DEBTOR'S BUSINESS UNITS; (B) APPROVING FORM OF AND AUTHORIZING THE DEBTOR TO ENTER INTO STALKING HORSE ASSET PURCHASE AGREEMENTS; (C) APPROVING BID PROTECTION AND BREAK-UP FEES; (D) SCHEDULING A PUBLIC AUCTION AND SUBSEQUENT SALE HEARING; (E) AUTHORIZING THE SALE OF THE ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS; (F) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (G) APPROVING THE FORM OF NOTICE AND MANNER OF NOTICE OF SALE HEARING AND PROPOSED ASSUMPTION AND ASSIGNMENT**, a copy of which is hereby served upon you.

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NOW COMES Quadrant 4 System Corporation, an Illinois corporation, debtor and debtor in possession (the "**Debtor**"), by and through its undersigned counsel, and hereby requests the entry of order: (A) approving the sale process and bidding procedures with respect to a sale of certain property of the estate consisting of five (5) of the Debtor's business units commonly known as "U.S. Solutions", "Hybrid Solutions", "Legacy Staffing", "QEDX Education Platform", and "India Solutions", as those terms are defined below; (B) approving form of and authorizing the Debtor to enter into a stalking horse asset purchase agreement; (C) approving bid protection and break-up fees; (D) scheduling a public auction and subsequent sale hearing; (E) authorizing the sale of the assets of the Debtor free and clear of liens, claims, encumbrances and interests; (F) authorizing the assumption and assignment of executory

contracts and unexpired leases; and (G) approving the form of notice and manner of notice of sale hearing and proposed assumption and assignment, all pursuant to Sections 105 and 363 of the Bankruptcy Code and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Motion**"). In support of the Motion, the Debtor respectfully state as follows:

I. INTRODUCTION

This Motion seeks the approval of a bidding and sale process under Section 363 of the United States Bankruptcy Code, 11 U.S.C §§ 101 *et seq.* (the **"Bankruptcy Code"**) for the sale of substantially all of the Debtor's assets related to its U.S. Solutions, Hybrid Solutions, Legacy Staffing, QEDX Education Platform and India Solutions business units, as more fully described below. As explained in the "Declaration", as defined below, filed in support of the Debtor's first-day motions, the Debtor anticipated that this chapter 11 case would entail a series of going concern sales for all seven (7) of the Debtor's business units (collectively, the **"Business Units"**)[1], which include the five (5) which are the subject of this Motion. Combined, the Business Units, and assets associated therewith, comprise substantially all of the assets of the Debtor's estate. The Debtor intends to file a similar motion(s) for the other two Business Units as soon as is practicable hereafter.

Prior to the filing of this chapter 11 case on June 29, 2017, the Debtor, through its financial consultants, Silverman Consulting, Inc. (**"Silverman Consulting"**), and its investment banker, Livingstone Partners, LLC ("**Livingstone**"), has been actively marketing all of the Debtor's assets[2]. As more fully discussed below, the Debtor, After consultation with Silverman Consulting and Livingstone, has determined that in order to maximize value for the benefit of its

[1] The Debtor's website is www.qfor.com. Its other two (2) Business Units (collectively, the **"Remaining Business Units"**) are commonly referred to as (1) Stratitude/Agama; and (2) QHIX - Healthcare Platform. Stratitude/Agama's operations are similar to Legacy Staffing as described below. Stratitude, Inc., a California corporation (**"Stratitude"**) is a wholly-owned subsidiary of the Debtor. QHIX operations provide cloud-based proprietary products owned by the Debtor.

[2] The Debtor will be filing motions to retain Silverman Consulting and Livingstone, as its financial consultants and investment bankers, respectively, in this chapter 11 case.

creditors, equity security holders and other interested parties, a sale of the Business Units needs to occur on an expedited timeline.

The success of each of the Business Units is largely based on maintaining the Debtor's highly skilled employee, independent contractor and third party subcontractor workforce[3] (collectively, the **"Workforce"**) and maintaining customer relationships. Because of the technology skills held by a majority of the Workforce, these individuals are readily employable. Much of the Workforce is dedicated to a particular customer, making the individual even more employable, often directly by that customer. Absent a prompt resolution of the Debtor's financial difficulties in maintaining the viability of the Business Units, many in the Workforce will seek, and likely obtain, other jobs, leaving the Debtor with insufficient human resources to service its customers. The Debtor's representatives have taken all reasonable steps to maintain continuity of the Workforce and sales, with the consent of BMO Harris Bank, N.A. (**"BMO"**), the Debtor's senior secured lender, and debtor in possession lender herein, to fund all operating expenses on a current basis. But the need to expeditiously transition the operations and assets of each of the Business Units is critical.

Indeed, due to the potential loss of value if the sales are not consummated as quickly as possible, under the Debtor's "DIP Facility", as defined below, the Debtor has a deadline to implement a sales process and the BMO expects a sale of the Debtor's Business Units to have concluded as soon as practicable given ongoing operating losses.

Since the marketing process began, the Debtor has generated significant interest in the sale of the assets related to certain of its Business Units, and has now been able to secure four (4) meaningful staking horse offers totaling **$7,400,000.00** for the following Business Units

[3] The Workforce includes individuals employed, or retained as independent contractors, by the Debtor under an "H-1B Visa" which is a non-immigrant visa issued by the U. S. under the Immigration and Nationality Act, section 101(a)(17)(H) allowing U.S. employers to temporarily employ foreign workers in specialty occupations, such as in information technology.

collectively referred to as the **"Subject Business Units")**[4]: (1) "U.S. Solutions" ($2.2 million); (2) "Hybrid Solutions" ($2 million); (3) "Legacy Staffing" ($2 million); (4) "QEDX Education Platform" ($700,000); and (5) "India Solutions" ($500,000). It is critical that the Debtor has in place sale procedures and a sale hearing as soon as possible to ensure a sale of these assets at a time likely to achieve the highest price possible. In short, in order to maximize the value to be derived from the sale of the Subject Business Units' assets, the Debtor submits that approval of the sale procedures described below are necessary to realize such value through a fair, open and transparent process.

II. FACTUAL BACKGROUND

A. The Chapter 11 Case

1. On June 29, 2017 (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under Chapter 11 of the Bankruptcy Code, initiating the above-captioned bankruptcy case (the "**Chapter 11 Case**"). Since the Petition Date, the Debtor has remained in possession of its assets and has continued to operate its business as a debtor in possession in accordance with 11 U.S.C. §§ 1107(a) and 1108.

2. No official committee of unsecured creditors has yet been appointed in the Chapter 11 Case.

3. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. § 1334. Venue lies properly in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(M). The statutory predicates for the relief requested herein are Sections 105(a) and 363(b) of the Bankruptcy Code, and the applicable rules

[4] All as more fully described below. Further, notwithstanding the five (5) separate proposed stalking horse bids attached hereto, the Debtor is also requesting that competing bidders be permitted to submit qualifying bids for any or all of the Subject Business Units, or in any combination thereof, in order that the Debtor can maximize the value of such assets.

are Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

4. The nature of the Debtor' business and the factual background relating to the commencement of the Chapter 11 Case are set forth in more detail in the *Declaration of Robert H. Steele in Support of Chapter 11 Petition and First-Day Motions* [Docket No. 7] (the "**Declaration**"), which is incorporated herein by reference.[5]

B. The Criminal Action; Bank Loan Defaults

5. As noted in the Declaration, on November 29, 2016, the United States Attorney's Office for the Northern District of Illinois filed a criminal complaint against the Debtor's prior Chief Executive Officer, Nandu Thondavadi (**"Thondavadi"**), and Dhru Desai (**"Desai"**), the Debtor's then Chairman of the Board and Chief Financial Officer, both of whom were also members of the Debtor's Board of directors and are, upon information and belief, directly or indirectly, principal shareholders of the Debtor. The criminal proceeding is entitled *United States of America v. Nandu Thondavadi and Dhru Desai*, Case No. 16CR772 (USDC N.D. IL, E.D.) (the **"Criminal Action"**). On November 30, 2016, Thondavadi and Desai were arrested by agents of the Federal Bureau of Investigation in connection with the Criminal Action. The Criminal Action arises out of alleged violations of, inter alia, the federal securities and interstate wire laws, and false statements made to the Securities and Exchange Commission (**"SEC"**), including allegations that Thondavadi and Desai intentionally provided the Debtor's audit firms with false information for public filings with the SEC concerning two or more of the Debtor's major asset acquisitions in order to inflate the purchase prices reported, and in turn, increase the stock prices for the Debtor's publicly held stock.

[5] Any capitalized terms not otherwise defined in the Motion shall have the same meaning as ascribed in the Declaration.

6. Since the resignation of the Criminal Defendants on December 5, 2016, the Company, through its new management and Board, has been cooperating closely with both the U.S. Securities and Exchange Commission (**"SEC"**) and the U.S. Department of Justice (**"DOJ"**) in their continuing investigations as to the civil and criminal matters related to the Criminal Action.[6]

7. Immediately following the filing of the Criminal Action, both of the Debtor's secured lenders, holding secured claims, in the aggregate, with outstanding principal balances exceeding $22 million, declared events of default by way of notices of default issued December 1, 2016 and December 3, 2016 by BMO and "BIP Lender", as defined below, respectively[7].

8. Following the resignation of Thondavadi and Desai on December 5, 2016, Robert H. Steele, previously an independent contractor providing services for the Debtor's healthcare division since in or around July 2012, was selected and appointed as the Debtor's new Chief Executive Officer on December 12, 2016 by the remaining members of the Debtor's Board of Directors (**"Board"**), with the support of BMO. Mr. Steel was also appointed to the Board effective March 16, 2017.

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[6] On the Petition Date, the following also occurred: (a) the DOJ filed an Information against the Criminal Defendants in the Criminal Action [Document #36] , charging them with wire fraud in connection with numerous additional acts of misconduct, including, misappropriation of Company funds, generation of inflated revenues, concealment of liabilities, and attempts to obstruct a SEC investigation; and (b) the SEC filed a civil complaint against the Criminal Defendants and the Company in this District, as Case No. 17-cv-04883, and related motion for approval of a partial settlement between the Company and the SEC whereby the Company, which has consented to the entry of a proposed judgment on a "no-admit, no-deny" basis, agrees to refrain from violating various provisions of the federal securities laws. The proposed consent judgment, which requires District Court approval, is part of a "bifurcated settlement" under which civil penalties, if any, may be determined in future litigation. The Company does not believe this will impair its operations during the Chapter 11 process.

[7] One day after the resignations of Thondavadi and Desai, the Company's remaining management caused the public filing of a Form 8-K with the SEC, dated December 6, 2016, notifying all parties that, among other things: (1) BMO and BIP Lender (collectively, the **"Secured Lenders"**) had issued notices of default under their applicable loan documents; (2) Thondavadi and Desai had been arrested on November 30, 2016, charged in the Criminal Action, and had resigned on December 5, 2016. On December 15, 2016, the Company's management caused the public filing of a second Form 8-K with the SEC stating that the Company's Board had "concluded that certain of the Company's previously issued financial statements should no longer be relied on in light of the matters previously disclosed in Item 8.01" of the Company's December 6, 2016 Form 8-K. Fifteen (15) prior financial statements filed for the period 3/31/13 - 12/31/15 was identified as no longer being reliable.

9. Subsequently, the Debtor entered into that certain Forbearance Agreement with BMO dated as of March 17, 2017, which expired by its terms on May 15, 2017 and was not renewed (**"BMO Forbearance Agreement"**).

10. Since his appointment as CEO, Mr. Steele has worked closely with the other members of the Board, the Debtor's outside financial consultants who were retained on January 16, 2017, and other members of the Debtor's management and staff. As a result, Mr. Steele is familiar with the Debtor's prior and current day-to-day operations, business affairs, and books and records. However, in light of the allegations set forth in the Criminal Action and other possible matters which may have led thereto, neither Mr. Steele nor any of the Debtor's other representatives are able to represent or warrant that any such information reflected herein is complete or without any inaccuracy. However, significant effort has been made to reflect all information herein as completely as possible under the circumstances[8].

C. The Debtor's Chapter 11 Sale Process

11. As explained in the Declaration, the Debtor is a publicly held company. The Debtor's common stock (**"Stock"**) is not traded on a national exchange. Its share price is quoted on the OTC [Over the Counter] Bulletin Board under the symbol "QFOR". The Debtor's registration number on file with the SEC is Commission File No. 33-42498. As reported in the Debtor's Q3 2016 Form 10-Q, there were approximately 110,341,504 issued and outstanding shares of the Debtor's Stock as of May 4, 2017.

[8] The Debtor understands that the cost of attempting to restate all of its financial statements going back over the prior 3+ years could reach or exceed $500,000. The Debtor does not have the funds to undertake such efforts, and BMO has not agreed to advance monies for such purpose. Under the circumstances of this Chapter 11 Case, and need to promptly market and sell the Debtor's assets, it is questionable what benefit, if any, would be derived by the Debtor's creditors and equity security holders from any restatement of prior financial statements and such expenditures even if the Company had the available funds.

12. The Debtor is engaged in the business of selling a wide range of information technology products and services to the healthcare, education and media industries in order to build more efficient operations, provide solutions to critical business and technology problems, and create technology-based innovation and growth (collectively, the **"Business"**). Its revenues are primarily generated from: (a) the placement of staffing or solution consultants for managed services (including data center/server management; (b) "SAP Human Capital Management"[9] licensing partner services and implementation consulting; and (c) the sale and licensing of certain cloud-based proprietary systems for the healthcare and education related businesses.

D. The Subject Business Units[10]

13. **U.S. Solutions.** The **"U.S. Solutions"** Business Unit provides information technology solutions (consulting, outsourcing and project delivery) serving customers all located in the United States in a variety of industries through service contracts which are typically short term engagements (i.e. 90 days). The Debtor's employees servicing U.S. Solutions customers are generally placed at client locations. As of the Petition Date, U.S. Solutions utilized the services of approximately 34 billable employees, and 5 sales, general and administrative, **"SG&A"**, employees (although these numbers are subject to frequent change based on customer engagements). Projected annual revenues for 2017 are approximately $6 million.

14. **Hybrid Solutions.** The **"Hybrid Solutions"** Business Unit also provides information technology solutions (consulting, outsourcing and project delivery) serving customers only located in the United States in a variety of industries through service contracts which are typically short term engagements (i.e. 90 days). Hybrid Solutions uses employees of

[9] SAP (Systems, Applications, and Products in data processing) Human Capital Management is a well-established approach to employee staffing that perceives people as assets (human capital) whose current value can be measured and whose future value can be enhanced through investment.

[10] Some of the employee counts may differ from the information set forth in the Declaration due to updated information received today.

the Debtor in the U.S. and outsources some of the labor needed for Hybrid Solutions customers through a third party subcontractor, Quadrantfour Software Solutions (Pvt.) Limited, an Indian limited company (**"Q4 India"**). To the best of the Debtor's CEO's knowledge, Q4 India is a separate and distinct Indian corporation under different ownership and management from the Debtor[11]. Most of the labor force utilized for Hybrid Solutions customers are placed at client locations. The Debtor employees approximately 28 billable employees in the U.S. for the Hybrid Solutions Business Unit. The Debtor also uses the subcontracting services of Q-4 India employees who are generally based in Chennai, India (approximately 248 billable and 60 SG&A employees - some billable and SG&A employees also provide services to India Solutions), also subject to frequent change in headcount). Projected annual revenues for 2017 are approximately $8 million.

15. **Legacy Staffing.** The **"Legacy Staffing"** Business Unit provides U.S. based consulting services, using employees of the Debtor and third party subcontractors, with back-office operations in Hyderabad, India. Staff is generally placed at client locations, with the Debtor's U.S. based employees totaling approximately 94 billable, and 4 SG&A employees. There are approximately 19 Q4 India employees utilized for SG&A purposes. All headcounts are subject to frequent change. Projected annual revenues for 2017 are approximately $13 million.

16. **QEDX Education Platform.** The **"QEDX Education Platform"** Business Unit consists of a cloud based education information technology platform and products with applications for students, teachers, school administrators, school districts administrators, consultants and vendor partners. The Debtor uses a development team of Q4 India employees

[11] Upon information and belief, a principal of Q4 India is a former brother-in-law of Nandu Thondavadi, one of the defendants in the Criminal Action. The Debtor has no independent knowledge of whether Thondavadi had or has a direct or indirect ownership interest of any kind in and to Q4 India, but has been informed by Q4 India representatives that there is no such interest.

based in Chennai, India (approximately 19 SG&A employees). The Debtor's sales staff and management team, all in the in U.S. are approximately 24 SG&A employees. This Business Unit utilizes third party educational content and includes sales of the Brainchild™ "Study Buddy" educational/learning hardware. Projected annual revenues for 2017 are approximately $2.2 million.

17. **India Solutions.** The **"India Solutions"** Business Unit also provides information technology solutions (consulting, outsourcing and project delivery) serving only U.S. based customers in a variety of industries through service contracts which are typically short term engagements (i.e. 90 days). India Solutions also outsources almost all of the labor needed for India Solutions customers through Q4 India. All Q4 employees utilized are based in Chennai, India. The Debtor employs approximately 3 billable employees in the U.S. for the India Solutions Business Unit. The Debtor's use of Q-4 India employees also work for Hybrid Solutions customers (see above). Projected annual revenues for 2017 are approximately $2 million.

E. The Acquired Assets

18. While the assets included with each of the Subject Business Units (collectively, the **"Acquired Assets"**) are separate and distinct, the nature of such assets are similar. For ease of reference, the Acquired Assets to be purchased with each of the Subject Business Units will be summarized together. Great care has been taken to eliminate such assets as may be common to all of the Subject Business Units and/or Remaining Business Units to avoid unnecessary complications (collectively, the **"Shared Assets"**). Any bidder wishing to utilize any of the Shared Assets will need to enter into a related transition agreement to be attached as an exhibit to any qualifying bid.

19. The Acquired Assets can more specifically be summarized as follows:

(a) All of the Debtor's right, title and interest in and to all customer contracts, including, without limitation, statements of work and purchase orders to Seller from the Subject Business Unit customers which are outstanding as of the Closing (collectively, the **"Customer Contracts"**), and to the extent any such Customer Contracts constitute executory contracts under Section 365 of the Bankruptcy Code, subject to the requirements thereof;

(b) All of Debtor's right, title and interest, if any, in and to any and all contracts, agreements and/or understandings with persons in the Workforce (whether employees of Debtor or independent contractors) used by the Debtor in the Subject Business Unit for the performance of the Customer Contracts, including such individuals subject to Labor Condition Applications or any other certification or petition with U.S. Citizenship and Immigration Services, the U.S. Department of Labor, or the U.S. Department of Homeland Security (with assignment of each employee's or consultant's employment to the buyer such that the obligations owing to such employees or independent contractors shall remain the same but for the identity of buyer as their new employer) (collectively, the **"H-1B Employees"**), and to the extent any such agreements with Workforce constitute executory contracts then subject to the applicable provisions of Section 365 of the Bankruptcy Code;

(c) All books, records, financial information, and documents pertaining to the Subject Business Unit, including, without limitation, historical revenue information per customer; customer files, lists and sales records; all expense and costing information; supplier files, lists, records and literature; all data and other information stored on hard drives (including those located on remote servers, whether operated by the Debtor or by third party providers), but expressly excluding, among other items to be more fully described in the underlying asset purchase agreement(s): (i) all books, records and other documents an information necessary to prosecute any and all "Causes of Action", as defined below; (ii) certain financial records, income tax returns, checkbooks, cancelled checks; and (iii) and any other documentation necessary for the Debtor to conclude the administration of the Chapter 11 Case;

(d) All trade and other receivables and rights to payments arising from products and services sold in the operation of the Subject Business Unit;

(e) All intangible assets or intellectual property pertaining solely to the Subject Business Unit, including, without limitation, owned software (source code and object code), to the extent assignable and transferable under applicable law, and goodwill;

(f) All furniture, fixtures, computers, office equipment, furnishings, machinery, equipment, parts, accessories, telephone and fax equipment and systems, supplies and other tangible personal property pertaining solely to the Subject Business Unit, if any;

(g) Subject to the to the provisions of Section 365 of the Bankruptcy Code, all of the Debtor's right, title and interests in and to all permits, licenses and approvals, to the extent they are assignable, if any; and

(h) Subject to the to the provisions of Section 365 of the Bankruptcy Code, all of the Debtor's right, title and interest in and to any and all other executory contracts or unexpired leases selected by the purchaser to be assumed and assigned by the Debtor concurrently with the sale of the Acquired Assets for the Subject Business Unit.

F. Liens on the Acquired Assets

20. The Acquired Assets are subject to the pre-petition secured claims of:

(a) BMO pursuant to that certain Credit Agreement dated as of July 1, 2016, which provided the Debtor with a credit facility of up to $25,000,000 as evidenced, by among other things, a : (i) $7,000,000 Revolving Credit Facility; (ii) $13,000,000 Term Loan; and (iii) $5,000,000 Cap Software Facility (collectively, the **"BMO Loan"**)[12]; and

(b) BIP Lender, LLC, as collateral agent for BIP Quadrant 4 Debt Fund I, LLC, as lender (**"BIP Lender"**)[13] pursuant to that certain Senior Subordinated Credit Agreement dated November 3, 2016 in the principal amount of $5,075,000.

21. The Acquired Assets are also subject to the post-petition secured claims of BMO arising out of that *certain Interim Order (I) Authorizing Secured Post-Petition Financing Pursuant To 11 U.S.C. § 364, (II) Authorizing Use Of Cash Collateral Pursuant To 11 U.S.C. § 363, (III) Granting Adequate Protection Pursuant To 11 U.S.C. §§ 361, 363 And 364, And (IV) Scheduling A Final Hearing Pursuant To Bankruptcy Rule 4001(C)*, entered on

[12] The BMO Loan was amended by that certain First Amendment to Credit Agreement dated as of November 3, 2016, which among other things, obtained the guaranty of Stratitude, Inc., consented to the BIP Lender Loan and

[13] BIP Lender is affiliated with Buckhead Investment Partners, a wealth management company based in Atlanta Georgia, www.buckheadinvestments.com

_____, 2017 [Docket No. ____] (as supplemented from time to time, the "**Interim Financing Order**")[14] and the "DIP Promissory Note" and "DIP Credit Agreement", as those terms are defined in the Interim Financing Order (collectively, the **"DIP Loan Documents"**); and (b) the "Existing Prepetition Secured Credit Agreements" of BMO, as also defined in the Interim Financing Order.

22. Pursuant to the Interim Financing Order and DIP Loan Documents, BMO provided the Debtor with access to post-petition financing in the aggregate amount of up to $900,000.00 (together with any allowed interest, costs and fees, the "**DIP Facility**")[15]. As collateral security for the indebtedness owing to Lender under the DIP Facility, the Debtor granted Lender perfected security interests in and to all of the Acquired Assets. As of the date of this Motion, there was no outstanding principal balance under the DIP Facility.

23. Pursuant to the applicable loan documents between the Debtor and BMO, there was an outstanding principal balance owing to BMO by the Debtor as of the Petition Date of $19,447,315.91 (together with any allowed interest, costs and fees, the "**Existing BMO Prepetition Secured Indebtedness**"). As collateral security for the Existing Prepetition Secured Indebtedness, the Debtor granted Lender perfected security interests in and to all of the Acquired Assets.

24. Pursuant to the applicable loan documents between the Debtor and BIP Lender, there was an outstanding principal balance owing to BIP Lender by the Debtor as of the Petition Date of $5,000,000.00 (together with any allowed interest, costs and fees, the "**Existing BIP Lender Prepetition Secured Indebtedness**"). As collateral security for the Existing Prepetition

[14] Subject to the entry of a final DIP financing order not yet entered. As of the date of this Motion, the extent and validity of liens on all assets in this estate in favor of BMO and/or BIP Lender remains subject to the right of any creditor, including, a Committee, if formed, to challenge such liens.

[15] The Interim Financing Order contemplated, and the Debtor expects, that the size of the DIP Facility will not increase under any final debtor in possession financing order.

Secured Indebtedness, the Debtor granted BIP Lender perfected security interests in and to all of the Acquired Assets, junior only to the prior liens granted in favor of BMO.[16]

G. Marketing of the Acquired Assets

25. With the assistance of Silverman Consulting and Livingstone, the Debtor has conducted an aggressive marketing process prior to the commencement of the Chapter 11 Case, and continuing thereafter, which has created significant interest in the Subject Business Units and the Remaining Business Units.

26. Silverman Consulting marketing efforts. The marketing efforts undertaken by Silverman Consulting since its retention on or about January 16, 2017 include the following:

- Between January and June 2017, initiated discussions and communications with five prospective buyers, who provided expressions of interest for various Business Units of the Debtor's business;
- Prepared and circulated due diligence information, including detailed financial projections for the Debtor's Business Units to prospective buyers;
- To facilitate flow of information to prospective buyers, established an online data room with a third-party vendor (**"Data Room"**), which has subsequently been handed over the management and administration of the Data Room to Livingstone;
- Arranged and participated in in-person management presentations made to prospective buyers and due diligence related meetings with prospective buyers that occurred between January and June 2017;
- Been involved in frequent (daily/weekly) telephonic and email discussions with multiple prospective buyers for certain of the Business Units, with such communications involving responding to due diligence queries, facilitating flow of information between the Debtor's management team, Board and prospective buyers, including introducing prospective buyers' professionals (investment bankers and attorneys) to the Debtor's professionals (investment bankers and attorneys) and providing status and sale process updates to prospective buyers; and
- Assisted the Debtor and Livingstone in obtaining seven (7) letters of intent or expressions of interest from five different purchasers for various of the Business Units.
- Assisted the Debtor's counsel with its preparation of sample asset purchase agreements for each of the Subject Business Units (**"Sample**

[16] The rights of BMO and BIP Lender (collectively, the **"Secured Lenders"**) as to each other are set forth in that certain Intercreditor and Subordination Agreement executed by them dated as of November 3, 2016.

APAs"), all of which were put into the Data Room and available to prospective purchasers[17].

27. Livingstone marketing efforts. Livingstone was initially engaged by the Debtor on or about February 14, 2017. Its services were officially suspended by the Board on or about March 8, 2017 while the Company attempted to finalize the BMO Forbearance Agreement. Livingstone was reinstated in or around early to mid-April 2017. Throughout its engagement, Livingstone's activities in connection with the Debtor's marketing efforts have included the following:

- Worked closely with the Debtor's management and Silverman Consulting to quickly analyze the Debtor's Business;
- Participated in multiple strategy session (meetings/calls) with the Debtor and the Debtor's other advisors to discuss the optimal strategy to maximize asset values, including transaction structure considerations, process considerations, timing issues, data sufficiency, etc.;
- Worked closely with the Debtor's management and Silverman Consulting to evaluate non-binding indications of interest that have been received by the Debtor;
- Worked with the Debtor's management and Silverman Consulting to establish the Data Room to facilitate potential buyer due diligence;
- Delivered a preliminary list of potential buyers (for all Business Units) to the Debtor;
- Participated in meetings and on conference calls with BMO representatives;
- Prepared a teaser ad to be provided to potential buyers;
- Prepared a detailed Confidential Information Presentation to provide to those potential buyers that executed confidentiality agreements;
- Reviewed and help negotiate confidentiality agreements with potential buyers;
- Contacted over 120 potential buyers for the Business – seeking buyers for individual Business Units and/or the Business in its entirety;
- Hosted multiple different buyers in our offices for diligence sessions and meetings with the Debtor's management; and

[17] The Debtor's counsel have long believed that providing prospective purchasers with a sample asset purchase agreement tailored to the particular transaction, and encouraging them to submit their bids based upon such a sample, is the most efficient and cost effective way to promote the submission and comparison of bids in Section 363 sales, and selection of a winning bid. All bidders will be encouraged to submit offers substantially in the form of the Sample APA, as did the Stalking Horse Bidders, but shall not be obligated to do so.

- Attended meetings between potential buyers and the Debtor's management at various locations on the East and West coasts.

III. STALKING HORSE OFFERS

28. The Debtor has received the following five (5) stalking horse proposals (collectively, the **"Stalking Horse Offers"** or **"Stalking Horse Bidders"**)[18]:

(a) Offer of First Tek, Inc., a New Jersey corporation (**"First Tek"**), dated as of June 22, 2017 for the purchase of the Legacy Staffing Business Unit in the amount of $2,000,000.00 (**"First Tek Staffing Offer"**). A copy of the First Tek Staffing Offer is attached as Exhibit A (without Exhibits per Footnote 16) hereto and made a part hereof.

(b) Offer of Aspire Systems, Inc., an Oregon corporation (**"Aspire"**), dated as of June 23, 2017 for the purchase of the U.S. Solutions Business Unit in the amount of $2,200,000.00 (**"Aspire U.S. Solutions Offer"**). A copy of the Aspire U.S. Solutions Offer is attached as Exhibit B (without all Exhibits per Footnote 16) hereto and made a part hereof.

(c) Offer of Aspire, dated as of June 23, 2017 for the purchase of the Hybrid Solutions Business Unit in the amount of $2,000,000.00 (**"Aspire Hybrid Solutions Offer"**, and together with the Aspire U.S. Solutions Offer, the **"Aspire Offers"**). A copy of the Aspire Hybrid Solutions Offer is attached as

[18] Given the confidential nature of the information contained in the exhibits to the Stalking Horse Offers (**"Exhibits"**), First Tek and Aspire have each conditioned the submission of their Stalking Horse Offers on the Debtor not attaching all of the Exhibits to Exhibit A-D hereto, as filed in the Chapter 11 Case. The Debtor has acquiesced, but has advised First Tek and Aspire that: (a) this Motion would clearly set forth the manner in which the Debtor intends to proceed with the Exhibits; (b) any party executing a Confidentiality Agreement, as required under the Bidding Procedures and prior marketing efforts, will be entitled to see un-redacted copies of the Exhibits upon request in connection with their consideration of whether to submit a competing bid or otherwise; and (c) should any of the Stalking Horse Offers become the prevailing bid for their respective Subject Business Unit which is approved by the Court, then all Exhibits, without redaction, will be attached to each such prevailing bid to be attached to the Court's order confirming the sale.

Exhibit C (without all Exhibits per Footnote 16) hereto and made a part hereof.

(d) Offer of First Tek, dated as of June 28, 2017 for the purchase of the QEDX Education Platform Business Unit in the amount of $700,000.00 (**"First Tek Education Offer"**). A copy of the First Tek Education Offer is attached as Exhibit D (without all Exhibits per Footnote 16) hereto and made a part hereof.

(e) Offer of First Tek, dated as of June 29, 2017 for the purchase of the India Solutions Business Unit in the amount of $500,000.00 (**"First Tek India Solutions Offer"** , and together with the First Tek Staffing Offer and First Tek Education Offer, the **"First Tek Offers"**). A copy of the First Tek India Solutions Offer is attached as Exhibit E (without Exhibits per Footnote 16) hereto and made a part hereof[19].

29. In consultation with Silverman Consulting and Livingstone, the Debtor evaluated the terms and benefits of each of the proposed Stalking Horse Offers. In its reasonable business judgment, the Debtor concluded that each of the Stalking Horse Offers represents the highest and best bid to purchase the Subject Business Unit described therein received to date, and is on terms, including the proposed "Bid Protection" and "Break-Up Fee", as defined below for each Stalking Horse Offer, that provide the best opportunity to conclude a sale process for the Subject Business Units that will maximize the asset values for the benefit of the Debtor's estate, its creditors, equity security holders and other interested parties.

[19] None of the First Tek Offers nor the Aspire Offers are conditioned upon the other offer from that bidder also becoming a prevailing bid. Each Stalking Horse Offer stands on its own.

30. The Debtor will continue marketing the Acquired Assets, in bulk or by individual Subject Business Unit or any combination thereof, in an effort to solicit further interest from both strategic and financial buyers pursuant to the "Sale Process", as defined below.

31. Each of the Stalking Horse Offers is subject to higher and better "Qualifying Bids" received at the "Auction", as those terms are defined below, and is conditioned on the execution and filing of executed asset purchase agreements, substantially in the form of the Stalking Horse Offers, and, in part, upon the Stalking Horse Bidders receiving the Bid Protection provided therein.

32. The Stalking Horse Offers can each be summarized as follows:

(a) Purchase of Acquired Assets. Each Stalking Horse Bidder will acquire all of the Debtor's right, title and interest in and to the Acquired Assets of the Subject Business Unit which is the subject of their Stalking Horse Offer, free and clear of all liens, claims, encumbrances and interests.

(b) Purchase Price. The consideration for the Acquired Assets (**"Purchase Price"**) shall be the sum of: (i) a cash payment (**"Initial Bid Amount"**), as may be further adjusted as a result of competitive bidding at the Auction (each, the **"Final Bid Amount"**); and (ii) an amount equal to the other Assumed Liabilities to be set forth in each of Stalking Horse Offers. For purposes hereof, the Initial Bid amounts under the Stalking Horse Offers are as follows:

(i) First Tek Staffing Offer - $2,000,000.00;
(ii) Aspire U.S. Solutions Offer - $2,200,000.00, subject to the "Potential Purchase Price Reductions", as defined below;
(iii) Aspire Hybrid Solutions Offer - $2,000,000.00, subject to Potential Purchase Price Reductions; and
(iv) First Tek Education Offer - $700,000.00.
(v) First Tek India Solutions Offer - $500,000.00

(c) Assumed Liabilities. Each Stalking Horse Bidder will assume under the terms of their respective Stalking Horse Offer: (i) any or all liabilities or obligations of any kind or nature whatsoever arising from and after the Closing out of, under, or related to the Acquired Assets; and (ii) all costs and expenses to be incurred in connection with the fulfillment of the Customer Contracts and other Assumed Contracts (including all cure costs), provided however, that First Tek's liability for cure costs under its Assumed Contracts is limited to $100,000 under the First Tek Staffing Offer and $50,000 under both the First Tek Education Offer and First Tek India Solutions Offer. Cure costs in excess of such limitations shall

be borne by the Debtor. The Debtor does not believe cure costs will exceed such caps.

(d) Deposit. Each Stalking Horse Bidder under each Stalking Horse Offer has made an earnest money deposit in an amount equal to ten percent (10%) of the Initial Bid Amount concurrently with the submission of their Stalking Horse Offer (the **"Deposit"**). The Deposits are being held in the non-interest bearing IOLTA trust account maintained by the Debtor's counsel, Adelman & Gettleman, Ltd. (**"A&G"**) at JPMorgan Chase Bank, N.A. (the "**Trust Account**") in accordance with the terms of the subject Stalking Horse Offer.

(e) Representations and Warranties. Each Stalking Horse Offer contains such representations and warranties of the Debtor as are customary for sales of assets in Chapter 11 case, with the inclusion in the Aspire Offers of additional representations and warranties concerning the H-1B Employees and the Debtor's successorship to its prior divisions or affiliates under the Customer Contracts and any other Assumed Contracts. All representations and warranties shall terminate within one (1) year of the Closing. Except as largely set forth in the Stalking Horse Offers, the Acquired Assets under each are being sold "AS IS, WHERE IS".

(f) Conditions of Closing / Termination Events. The Stalking Horse Offers require, among other things as set forth therein, the Debtor to: (i) obtain the entry of the "Bidding Procedures Order", as defined below; (ii) conduct the Auction and obtain the entry of the "Sale Order", as defined below, following all requisite and appropriate notice to the creditors and other interested parties in the Chapter 11 Case, and such other parties as are deemed necessary; (iii) obtain any necessary approvals and consummate the transactions contemplated in such Stalking Horse Offer (presuming it is the winning bid at the Auction and approved by this Court pursuant to the terms and conditions of the Sale Order) no later than August 25, 2017 (**"Closing"**). In addition thereto, the Stalking Horse Offers contain such other closing conditions and termination events which are customary for transactions of this type and size.

(g) Insider and Employee Matters. Each Stalking Horse Bidder shall has the right, but not the obligation, to make offers of employment to any and all of the Debtor's employees in the Subject Business Unit, provided however, that any and all offers for employment to any "insiders" of the Debtor, as defined in Section 101(31) of the Bankruptcy Code, shall be fully disclosed to the extent possible in Stalking Horse Offer, or at the "Sale Hearing", as defined below.

(h) Executory Contracts. There are multiple executory contracts and unexpired leases, which the Stalking Horse Bidders are requiring be assumed and assigned at Closing. Each Stalking Horse Offer has, or will have, pursuant to the procedures proposed in the Bidding Procedures Order a list of executory contracts to be assumed.

(i) Bid Protection and Break-Up Fee. In consideration of each Stalking Horse Bidder submitting their respective Stalking Horse Offer and serving as the stalking horse for purposes of further competitive bidding for the Acquired Assets, the Stalking Horse Offers require the Court's approval of any competing bid's Initial Bid Amount to be a certain amount higher than the Initial Bid Amount set forth in the subject Stalking Horse Offer (the "**Bid Protection**"), and a break-up fee payable to the Stalking Horse Bidder (the "**Break-Up Fee**") in the event that the Court approves a higher and better offer as a result of the Auction, the Stalking Horse Bidder is not in default under the Stalking Horse Offer, and such higher and better transaction closes. For purposes hereof, the Bid Protection and Break-Up Fees under the Stalking Horse Offers are as follows:

(i) First Tek Staffing Offer: *Bid Protection* of $100,000 (5% of Initial Bid Amount), and *Break-Up Fee* of3% of Purchase Price plus to $50,000 for reasonable reimbursable expenses;
(ii) Aspire U.S. Solutions Offer: *Bid Protection* of $200,000 (9% of Initial Bid Amount), and *Break-Up Fee* of $100,000;
(iii) Aspire Hybrid Solutions Offer: *Bid Protection* of $180,000 (9% of Initial Bid Amount), and *Break-Up Fee* of $100,000;
(iv) First Tek Education Offer: *Bid Protection* of $75,000 (10.7% of Initial Bid Amount); *Break-Up Fee* of 3% of Purchase Price plus to $25,000 for reasonable reimbursable expenses; and
(v) First Tek India Solutions Offer: *Bid Protection* of $50,000 (10% of Initial Bid Amount); *Break-Up Fee* of 3% of Purchase Price plus to $25,000 for reasonable reimbursable expenses.

33. Aspire Material Adverse Change and Potential Purchase Reduction Provisions. In addition to the summary above, the Aspire Offers contain two other key provisions, which are related to the Debtor's nine (9) largest customers, by sales volume (collectively, the **"Key Customers"**). The Key Customers are identified on Exhibit F to each of the Aspire Offers (collectively, the **"Aspire APA Exhibit F"**), but pursuant to Footnote 16 hereof, such customer identities have been redacted from the Exhibits attached to the Aspire Offers which are attached as Exhibits B and C hereto. These two key provisions are as follows[20]:

(a) Material Adverse Change. While all of the Stalking Horse Offers contain, as a condition of closing, a "material adverse change" clause, which is customary for transactions of this type and size, the Aspire Offers include a

[20] These provisions, as with all other provisions of the Aspire Offers, apply separately to each Aspire Offer. The triggering of any of the key provisions under one Aspire Offer will not impact the other.

specific event that would constitute a "material adverse change" and enable Aspire to terminate the Aspire Offer(s), which provides as follows:

(i) Aspire APA Exhibit F lists the Debtor's 2017 estimated revenue projections, by Key Customer (collectively, in the aggregate, the **"2017 Revenue Projections"**).

(ii) The Aspire Offers require each of the Debtor's contracts with the Key Customers to be assumed and assigned to Aspire at the Closing. any of these customer contracts which cannot be assigned to Aspire are referred to as the **"Unassumed Customer Contracts".**

(iii) If the 2017 Revenue Projections listed for any Unassumed Customer Contracts, in the aggregate, are equal to or greater than thirty three and one-third percent (33⅓%) of the 2017 Revenue Projections, then that shall constitute a material adverse change under the Aspire Offer and entitle Aspire to terminate the Aspire Offer. If such amounts for the Unassumed Customer Contracts, in the aggregate, account for less than thirty three and one-third percent (33⅓%) of 2017 Revenue Projections, then it shall be not considered a material adverse change, but will trigger the Potential Purchase Price Reduction described below.

(b) Potential Purchase Price Reductions. Aspire APA Exhibit F also lists the amount by which the Purchase Price under the subject Aspire Offer will be reduced if the Debtor's contract with any Key Customer becomes an Unassumed Customer Contract, but below the threshold necessary to trigger the material adverse change clause under the Aspire APA. The Potential Purchase Price Reductions total $1.2 million for Aspire U.S. Solutions Offer, and $1.25 million for the Aspire Hybrid Solutions Offer.

IV. PROPOSED SALE PROCESS, BIDDING PROCEDURES, AND BID PROTECTION

34. The Debtor request the entry of an order (the "**Bidding Procedures Order**") in substantially the form filed herewith and incorporated herein: (a) approving the entire sale process as set forth in this Motion (**"Sale Process**"); (b) approving the proposed bidding procedures ("**Bidding Procedures**") attached as Exhibit F and incorporated herein; (c) approving the Bid Protection; (d) scheduling an auction for the sale of the Acquired Assets to "Qualifying Bidders", as defined below, pursuant to the Bidding Procedures (the "**Auction**") and subsequent hearing to consider the sale of the Acquired Assets; (e) authorizing the assumption

and assignment of executory contracts and unexpired leases; (f) approving the form and manner of notice of the Sale Hearing attached hereto as Exhibit G; and (g) approving the form and manner of notice of the proposed assumption and assignment of executory contracts and unexpired leases attached hereto as Exhibit H.

35. The Debtor also requests that at the Sale Hearing, the Court enter an order ("**Sale Order**"), *inter alia*:, (a) authorizing the Debtor to sell the Acquired Assets free and clear of any and all liens, claims, encumbrances and interests pursuant to 11 U.S.C. §§ 105 and 363(b) and (f) in accordance with the highest and best offer(s) submitted at the Auction pursuant to the Sale Process and approved by this Court at the Sale Hearing ("**Prevailing Bidder**" or "**Prevailing Bid**"); (b) granting good faith purchaser protections to the Prevailing Bidder pursuant to 11 U.S.C. § 363(m); and (c) granting all relief requested in the Sale Motion and such other relief as may be warranted under the circumstances.

36. In order to facilitate the Sale Process, the Debtor, in consultation with Livingstone, has developed the Sale Procedures for use in connection with the sale of the Acquired Assets.

A. The Sale Process and Bidding Procedures[21]

37. The Debtor propose the following Bidding Procedures:

(a) **The Assets Offered for Sale.** The Debtor is offering for sale the Subject Business Units, individually, or in any combination thereof. The Acquired Assets of each of the Subject Business Units will not be sold piecemeal.

(b) **Potential Bidder.** Each person wishing to participate in the Sale Process ("**Potential Bidder**") must execute an NDA in form and substance acceptable to the Debtor prior to gaining access to the Debtor's due diligence information and the Data Room.

[21] The summary of the Bidding Procedures set forth herein is provided for informational purposes only. Interested parties are directed to read the entire Bidding Procedures. To the extent of any discrepancy between the summary description of the proposed Bidding Procedures contained in this Motion and the actual Bidding Procedures and Bidding Procedures Order, the terms of the Bidding Procedures and Bidding Procedures Order shall control.

(c) **Due Diligence/Bid Deadline.** Potential Bidders shall be authorized to perform due diligence with respect to the acquisition of the Acquired Assets at its sole cost and expense to be completed on or before the close of business on or before August 8, 2017 ("**Bid Deadline**").

(d) **Qualifying Bids.** For purposes of the Sale Process, a "**Qualifying Bid**" shall mean a *bona fide*, binding, and duly executed written cash offer(s) to purchase the Acquired Assets received on or before the Bid Deadline, which: (i) may but is not required to be in the form substantially similar to the Sample APA; (ii) satisfies the Bid Protection requirement; (iii) remains irrevocable: (A) until the approval of a "Prevailing Bid" and a "Runner-Up Bid" at the Sale Hearing, as such terms are defined below; and (B) if approved at the Sale Hearing as either the Prevailing Bid or the Runner-up Bid, remain irrevocable for a period of the lesser of (X) the closing of the Prevailing Bid, or (Y) ten (10) business days after the conclusion of the Sale Hearing; (iv) is not conditioned upon obtaining financing; (v) contains sufficient assurances that the Potential Bidder's representative is legally empowered, by power of attorney or otherwise, to both bid on behalf of the Potential Bidder and also to complete and sign, on behalf of the Potential Bidder, a binding and enforceable bid, including as such bid may be revised at the Auction; (vi) is accompanied by a wire transfer to be held as the Deposit in an amount equal to that Aspire under each of the Stalking Horse Offers, and as to the First Tek Offers ($190,000 for Legacy Staffing; $77,500 for QHIX Education Platform; and $57,500 for India Solutions) to the non-interest bearing IOLTA trust account maintained by the Debtor's counsel, A&G, at JPMorgan Chase Bank, N.A., as set forth above, and as described in the Stalking Horse Offers; (vii) is accompanied by such evidence reasonably acceptable to the Debtor demonstrating such bidder's ability to close the proposed transaction and as otherwise described in the Bidding Procedures; and (viii) is served upon the Debtor and Debtor' counsel. All Qualifying Bids must disclose the material terms and conditions of any contemplated employment or consulting agreement with any former or current insider of the Debtor.

(e) **Determination of Qualifying Bid.** The Debtor, in its sole discretion and in the exercise of its business judgment, but following consultation with Silverman Consulting, Livingstone, and counsel for the Secured Lenders, shall determine whether any competing bid(s) constitute a Qualifying Bid. On or before a date specified in the Bidding Procedures, the Debtor will so notify the party submitting same (each, a "**Qualifying Bidder**"). For the avoidance of doubt, each of the Stalking Horse Bidders shall be considered a Qualifying Bidder without further action. Further, each of the Stalking Horse Offers shall be considered a Qualifying Bid.

Notwithstanding anything herein to the contrary, all bids submitted prior to the Bid Deadline as set forth above are subject to the approval of this Court after taking into account the best interests of the Debtor's estate.

(f) **Auction and Sale Hearing.** The Debtor shall conduct the Auction of the Acquired Assets at the offices of its counsel, Adelman & Gettleman, Ltd., 53 West Jackson Boulevard, Suite 1050, Chicago, Illinois 60604 commencing at 10:00 a.m. (Central time) on August 14, 2017, or such other date and time established by the Court. The Debtor intends to publish notice of the Auction in the *Chicago Tribune* weekly for two (2) consecutive weeks preceding the Auction. Only Qualifying Bidders shall be entitled to make a bid at the Auction. The Stalking Horse Offers shall be the opening bid for their respective Subject Business Unit. All bids subsequent to the initial Bid Protection overbid at the Auction shall be in increments of at least $100,000 or such other amounts as determined by the Debtor to be in the best interest of the estates. All such bids shall be made as a matter of record. If there are no competing Qualifying Bids received by the Bid Deadline, the Auction shall be deemed cancelled.

Any Qualifying Bid that is determined by the Debtor in accordance with these Bidding Procedures as the Prevailing Bid or the Runner-Up Bid will be subject to approval by the Court. The sale hearing to approve the Prevailing Bid and designation of the Runner-Up Bid as an alternative Prevailing Bid (the "**Sale Hearing**") will be held before the Honorable Jack B. Schmetterer, United States Bankruptcy Judge, in the United States Bankruptcy Court, Northern District of Illinois, Eastern Division, in Courtroom 682 in the Dirksen Federal Building, 219 S. Dearborn Street, Chicago, Illinois at __:__ **a.m. (Central time) on** _____, _____, **2017,** or such other time as may be ordered by the Court and announced by the Debtor to all Qualifying Bidders at the Auction.

(g) **Sale Objections.** Any objection to the sale of the Acquired Assets may be presented at the Sale Hearing.

(h) **Identification of Prevailing Bid and Runner-Up Bid.** Upon the conclusion of the Auction, the Debtor, in its sole discretion and in the exercise of its business judgment, but following consultation with Livingstone and the Committee, shall identify the Prevailing Bid and the Runner-Up Bid, if any. At the Sale Hearing, the Debtor shall present to the Court the Prevailing Bid, and if applicable, the Runner-Up Bid, and request the entry of the Sale Order approving such bid(s) subject to the terms thereof in a form reasonably satisfactory to counsel for the Prevailing Bidder and Runner-Up Bidder. In the event the Auction is cancelled as set forth above, then the Stalking Horse Offers shall be deemed the highest and best offer for Acquired Assets in the Subject Business Unit and constitute the Prevailing Bid.

(i) **Runner-Up Bid.** The Debtor, in the exercise of its business judgment, may, but shall not be obligated to, request that the Court determine at the Sale Hearing the next highest and best bid for the Acquired Assets other than the Prevailing Bid ("**Runner-Up Bid**"). In the event the party making the Prevailing Bid refuses or is otherwise unable to close in accordance with the terms thereof on or before

August 18, 2017, then, in such event, the Debtor, in its sole and absolute discretion may accept the Runner-Up Bid in writing to such bidder within two (2) business days thereafter, in which case, the party submitting the Runner-Up Bid ("**Runner-Up Bidder**") shall be required to consummate the transactions contemplated in the Runner-Up Bid at the purchase price so offered without further act, deed or order of Court within the following five (5) business days after such acceptance. If the Debtor fail to timely notify the Runner-Up Bidder, then the Runner-Up Bid shall be considered null and void and of no legal effect whatsoever upon the Debtor' return of the Deposit to such party which shall occur within three (3) business days after the conclusion of such two (2) business day notice period, and each party shall otherwise suffer its own losses, costs, expenses or damages arising out of, under or related to the underlying asset purchase agreement. The provisions herein concerning the acceptance and closing of a Runner-Up Bid are subject to further order of the Court regarding the Debtor's ability to fund operations from and after July 28, 2017, the projected expiration of the Interim Financing Order.

(j) **Assets Sold As Is, Where Is.** The Acquired Assets shall be sold on an "**AS IS, WHERE IS**" basis and without representations or warranties of any kind, nature, or description by the Debtor, its agents or estates except to the extent expressly set forth in the Prevailing Bid, and if applicable, the Runner-Up Bid. Except as otherwise provided in such agreement(s), all of the Debtor' right, title and interest in and to the Acquired Assets shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and therein (collectively, the "**Interests**") in accordance with Section 363 of the Bankruptcy Code, with all such valid Interests to attach to the net proceeds of the sale of the Acquired Assets.

(k) **Return of Earnest Money Deposits.** Any entity that submitted a Deposit and is not designated a Qualifying Bidder shall has its Deposit returned on or before the third (3rd) business day after the designation of Qualifying Bids under these Bidding Procedures. Any Qualifying Bidder that is not declared either a Prevailing Bidder or a Runner-Up Bidder shall has its deposit returned within three (3) business days after the Auction. The Deposit of the Runner-Up Bidder shall be returned in accordance with sub-paragraph (i) above.

(l) **Buyer's Inspection Rights.** Each Qualifying Bidder shall be deemed to acknowledge and represent in its Qualifying Bid that it has had an opportunity to inspect and examine the Acquired Assets and to conduct any and all due diligence regarding the Acquired Assets prior to making its offer to the extent it has deemed necessary and appropriate, that is has relied solely upon its own independent review, investigation and/or inspection of any documents and/or Acquired Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Acquired Assets, or the

completeness of any information provided in connection therewith or the Auction, except as expressly stated in its Qualifying Bid.

B. The Proposed Bid Protection and Break-Up Fee

38. In order to induce the Stalking Horse Bidders to expend the time, energy and resources necessary to submit a "stalking-horse bid", the Debtor has agreed to request that this Court approve the Bid Protection and the Break-Up Fee, as more fully set forth in the Stalking Horse Offers.

39. The Break-Up Fee represents expenses and costs, including employee costs and out of pocket expenses for due diligence and for professional and other related fees and expenses, incurred by or on behalf of the Stalking Horse Bidders in the preparation of the Stalking Horse Offers and their participation in the Sale Process.

V. ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES

40. As part of the Motion, the Debtor seeks authority to assume and assign the executory contracts and unexpired leases identified in the Prevailing Bid. Within two (2) business days of the Bid Deadline, the Debtor intend to send notice, by facsimile or next-business day delivery, to all non-debtor parties to any executory contracts or unexpired leases which the Debtor may elect to assume and assign in conjunction with the sale of the Acquired Assets (the "**Contracts and Leases**", and each, a "**Contract/Lease**"). The Contracts and Leases include, but may not be limited to, those agreements which has been identified by Lender as contracts and leases which it would has the Debtor assume and assign in connection with its proposed purchase of the Acquired Assets (collectively, the **"Assumed Contracts"**). The Assumed Contracts will likely consist of, among others: (a) certain intellectual property licenses of which a Debtor is licensee or licensor; (b) the Customer Contracts, including statements of

work and purchase orders to Seller from the Subject Business Unit customers which are outstanding as of the Closing; and (c) certain contracts associated with the operation of the Subject Business Unit.

41. Because of the need to close any transaction as quickly as possible in order to minimize any diminution in the value of the Acquired Assets, the Debtor propose the following procedures for assuming and assigning executory contracts and unexpired leases:

(a) Within two (2) business days of the Bid Deadline, the Debtor will file a *Notice of Potential Assumption and Assignment of Executory Contracts and Unexpired Leases* in the form attached hereto as Exhibit H (the **"Assumption/Assignment Notice"**) with the Court and serve same on each non-Debtor party to the Contracts and Leases. The Assumption/Assignment Notice shall: (i) identify the Qualifying Bidders; (ii) state the cure amounts that the Debtor believe are necessary to assume and assign such Contracts and Leases pursuant to Section 365 of the Bankruptcy Code (the "**Cure Amount(s)**"); and (iii) notify the non-Debtor party that such party's Contract/Lease may be assumed and assigned to a purchaser of the Acquired Assets (the **"Proposed Assumption/Assignment"**).

(b) Unless the non-debtor party to a Contract/Lease files or presents at the Sale Hearing an objection (the "**Assignment Objection**") to (i) its scheduled Cure Amount and/or (ii) the Proposed Assumption/Assignment at or before the Sale Hearing, then such non-Debtor party (A) will be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Contract/Lease, and the Debtor shall be entitled to rely solely upon the Cure Amount, and (B) will be deemed to have consented to the assumption, assignment and/or transfer of such Contract/Lease, and will be forever barred and estopped from asserting or claiming against the Debtor, the Prevailing Bidder and/or the Runner-Up Bidder, or any other assignee of the relevant Contract/Lease that (1) any additional amounts are due or defaults exist, or conditions to assumption, assignment and/or transfer must be satisfied, under such Contract/Lease, or (2) the Prevailing Bidder or Runner-Up Bidder has failed to provide adequate assurance of future performance as required by Section 365 of the Bankruptcy Code.

(c) In the event that the Debtor and any objecting party are unable to consensually resolve any Assignment Objection prior to the Sale Hearing, the Debtor request that the Court resolve any such Assignment Objection at the Sale Hearing or as soon thereafter as practicable.

(d) At the Sale Hearing, the Debtor shall request entry of an order approving the assumption and assignment of any Contracts and Leases to the Prevailing Bidder upon terms which the Prevailing Bidder agrees to accept and assume.

42. The Debtor submits that the foregoing procedures are fair and appropriate under the circumstances. Non-debtor parties to the Contracts and Leases will receive at least four (4) calendar days' notice of the potential assumption, proposed cure amount, and the potential purchasers. The Debtor believes with respect to most of the Contracts and Leases, little to no cure amount is required.

VI. AUTHORITY FOR RELIEF REQUESTED

A. The Proposed Sale of the Acquired Assets Satisfies the Business Judgment Rule.

43. Section 363 of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b). To approve the use, sale or lease of property outside the ordinary course of business, there must be some "articulated business justification." *Fulton State Bank v. Schipper (In re Schipper)*, 933 F.2d 513, 515 (7th Cir. 1991) (internal citation omitted); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *see also Stephens Indus., Inc., v. McClung*, 789 F.2d 386, 389-90 (6th Cir. 1986); *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 145-47 (3d Cir. 1986); *In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 175-76 (D. Del. 1991); *In re Efoora, Inc.*, 472 B.R. 481, 488 (Bankr. N.D. Ill. 2012); *In re Telesphere Commc'ns, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999).

44. Once a valid business justification made in the ordinary course of business is established, the business judgment rule "is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the Debtor." *In re S.N.A. Nut Co.*, 186 B.R. 98

(Bankr. N.D. Ill. 1995) (internal citation omitted). Similarly, a court will defer to the debtor's judgment to make a sale outside the ordinary course of business pursuant to Section 363, when the debtor has "sound business reasons for making the sale." *Schipper*, 933 F.2d at 515; *see also In re MF Global Inc.*, 467 B.R. 726, 730 (Bankr. S.D.N.Y. 2012) ("If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate; the burden of rebutting that presumption falls to parties opposing the transaction.").

45. Indeed, when applying the "business judgment" rule, courts show great deference to the debtor's decision-making. *See Summit Land Co. v. Allen (In re Summit Land Co.)*, 13 B.R. 310, 315 (Bankr. D. Utah 1981). Therefore, the relief requested in this Motion should be granted if the Debtor demonstrate a sound business justification therefor. *See Schipper*, 933 F.2d at 515; *Lionel*, 722 F.2d at 1071; *Del. Hudson Ry.*, 124 B.R. at 179.

46. As explained above, the Debtor has sound business justifications for selling the Acquired Assets at this time. The Debtor does not have the resources necessary to maintain the value and viability of the Acquired Assets beyond August, 2017. Moreover, the value of the Subject Business Units is predicated on an expeditious and seamless transition of the Customer Contracts and customer relationships related thereto. The cessation of the Subject Business Unit will lead to an immediate, irreparable and significant decline in the value of the Acquired Assets. The Debtor therefore has determined, based upon its business judgment, the most viable option for maximizing the value of its estates is through a prompt sale of the Acquired Assets.

47. Based upon these factors and those discussed above, the Debtor has demonstrated a sound business justification for the proposed sale of the Acquired Assets pursuant to the Bidding Procedures.

B. The Bid Protection and Break-Up Fees are Fair and Reasonable.

48. The Debtor believes that a compelling need exists to authorize granting of the Bid Protection and the Break-Up Fees in order to induce the Stalking Horse Bidders to submit their Stalking Horse Offers for the Subject Business Unit within the time frame mandated by the Debtor's business circumstances. Moreover, the Debtor believes that the proposed Bid Protection and the Break-Up Fee is fair and reasonable in relation to any Qualifying Bid received and will maximize the benefit to the estate by providing an incentive to potential purchasers to expend the resources necessary to formulate offers for the Subject Business Unit in excess of the Stalking Horse Offers. *See, e.g., In re Kirk Corp.*, No. 09 B 17236, 2009 WL 6769950, at *16 (Bankr. N.D. Ill. July 30, 2009) (approving break-up fee and overbid protection); *In re CXM, Inc.*, 307 B.R. 94, 103-04, 106 (Bankr. N.D. Ill. 2004) (awarding break-up fee and noting that it "makes economic sense" to establish overbid protections as well); *In re Kmart Corp.*, Case No. 02-B-02474 (Bankr. N.D. Ill. Aug. 29, 2002) (authorizing break-up fee and overbid protections).

49. As has been noted, the Break-Up Fee such as that proposed here "is incentive payment to a prospective purchaser with which a company fails to consummate a transaction." S.N.A. Nut Co., 186 B.R. at 101. "Agreements to provide breakup fees or reimbursement of fees and expenses are meant to compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers." Id.; see also In re 995 Fifth Ave. Assocs., L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1992) (bidding incentive may "be legitimately necessary to convince a 'white knight' to enter the bidding by providing some form of compensation for the risks it is undertaking") (internal citation omitted); In re Marrose Corp., Nos. 89 B 12171-12179 (CB), 1992 WL 33848 at *5 (Bankr. S.D.N.Y. 1989) ("[bidding incentives] are meant to

compensate the potential acquirer who serves as a catalyst or 'stalking horse' which attracts more favorable offers").

50. In the bankruptcy context, the test for determining whether a proposed Break-Up Fee should be approved is whether it is in the best interests of the estate. See S.N.A. Nut. Co., 186 B.R. at 104; see also In re ASARCO, L.L.C., 650 F.3d 593, 600-03 (5th Cir. 2011); In re Tiara Motorcoach Corp., 212 B.R. 133, 137 (Bankr. N.D. Ind. 1997) (adopting the standards set forth in S.N.A. Nut Co.); In re Am. W. Airlines, Inc., 166 B.R. 908, 912 (Bankr. D. Ariz. 1994); In re Hupp Indus., Inc., 140 B.R. 191, 196 (Bankr. N.D. Ohio 1992). In particular, a court should evaluate whether a break-up fee will maximize revenues and the value to be brought into the debtor's estate. See S.N.A. Nut Co., 186 B.R. at 105-06; Tiara Motorcoach, 212 B.R. at 137.

51. The Debtor believes that the proposed Break-Up Fees satisfies this standard. The primary circumstances compelling allowance of the Break-Up Fees is to entice each of the Stalking Horse Bidders to facilitate the commencement of the bidding process as quickly as possible, so that a transaction can be consummated promptly in light of the dwindling value of the Acquired Assets. There exist "safeguards beneficial" to the Debtor's estate insofar as the Break-Up Fee will be awarded only if the Debtor closes on a competing bid or under other limited circumstances. See S.N.A. Nut Co., 186 B.R. at 106 (denying break-up fee in the absence of any consummated sale).

52. The amounts of each of the Break-Up Fees constitute "a fair and reasonable percentage of the proposed purchase price," id. at 103 n.5, taking into account the overall financial commitment of the Stalking Horse Bidders given the lack of historically reliable financial statement due to the Criminal Defendant's actions. Indeed, the amounts are customary for similar transactions of this type in the bankruptcy context and therefore is not "so substantial

that it provides a 'chilling effect' on other potential bidders." Id. In sum, the Debtor's ability to offer the Break-Up Fees enables it to ensure the sale of the Acquired Assets to the Stalking Horse Bidders, each of whom is a contractually committed bidder, at prices the Debtor believes to be fair, while providing the Debtor with the potential of even greater benefit to the estate. The Break-Up Fees therefore should be approved.

53. Courts will approve bid protection if it is "in the best interest of the bankruptcy estate." *In re Sea Island Co.*, No. 10-21034, 2010 WL 4393269, at *4 (Bankr. S.D. Ga. Sept. 15, 2010) (citing *In re Am. W. Airlines, Inc.*, 166 B.R. 908, 913 (Bankr. D. Ariz. 1994)); *cf. In re S.N.A. Nut Co.*, 186 B.R. 98, 104 (Bankr. N.D. Ill. 1995) (applying the "best interests of the estate" standard in evaluating the use of a break-up fee in a bankruptcy sale). In particular, courts evaluate whether bid protection is sufficient to "move the procedure along toward achieving the highest bid," without being so high as to chill competition. *In re Mama's Original Foods, Inc.*, 234 B.R. 500, 505 (Bankr. C.D. Cal. 1999). The Debtor believes the Bid Protection meets this standard under the present circumstances.

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

54. Under Section 363(f) of the Bankruptcy Code, a debtor in possession may sell property free and clear of any lien, claim, or interest in such property if, among other things:

(a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;

(b) such entity consents;

(c) such interest is a lien and the price at which such property is sold is greater than the aggregate value of all liens on such property;

(d) such interest is in bona fide dispute; or

(e) 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).

55. Because Section 363(f) is drafted in the disjunctive, satisfaction of any one of its five requirements will be sufficient to permit the sale of the Acquired Assets free and clear of any and all liens, claims, encumbrances and interests. *In re Terrace Chalet Apartments, Ltd.*, 159 B.R. 821, 827 (N.D. Ill. 1993). The Debtor believes that the Secured Lenders are the primary entity holding liens on the Acquired Assets. If the purchase price for the Acquired Assets does not exceed the value of Secured Lenders' liens on such assets, then the Debtor is extremely confident that it will procure the consent of the Secured Lenders to the proposed sale of their collateral, thereby satisfying Section 363(f) of the Bankruptcy Code.

56. At this point in time in the proposed sale process, it is difficult to gauge the likelihood of obtaining any competing bids for the Acquired Assets. In any event, the Debtor believe that the Sale Process proposed herein provides the best, and only, way to maximize the value of the Acquired Assets by allowing the "market" to have one further opportunity to bid for the Acquired Assets, thus benefiting all creditors, equity security holders and other parties in the interest in the Chapter 11 Case.

57. Based upon the foregoing, the sale should be approved under Section 363(f) of the Bankruptcy Code.

E. The Sale Satisfies the Requirements of Bankruptcy Code Section 363(m) for a Sale Made in Good Faith.

58. Section 363(m) reflects that the Bankruptcy Code strongly favors finality of sale orders, and the protection of good-faith purchasers maximizes the value of the assets for sale,

which benefits both Debtor and creditors. *See Hower v. Molding Sys. Eng'g Corp.*, 445 F.3d 935, 938 (7th Cir. 2006).

59. "The requirement that a purchaser act in good faith, of course, speaks to the *integrity of his conduct in the course of the sale proceedings*. Typically, the misconduct that would destroy a purchaser's good faith status at a judicial sale involves fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders." *In re Andy Frain Servs., Inc.,* 798 F.2d 1113, 1125 (7th Cir. 1986) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1995, 1198 (7th Cir. 1978)).

60. In the present case, the Stalking Horse Offers represents the culmination of weeks of intensive due diligence by the Stalking Horse Bidders, as well as arms' length and good-faith negotiations and discussions between representatives of the Debtor and the Stalking Horse Bidders. The Stalking Horse Offers are the result of rigorous, arms-length, good-faith negotiations between the Debtor, Stalking Horse Bidders and their respective counsel. To the best of the Debtor's management's knowledge, information and belief, the Stalking Horse Bidders and the Debtor are unrelated parties.

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

61. Section 365(f)(2) of the Bankruptcy Code provides that:

> [t]he trustee may assign an executory contract or unexpired lease of the debtor only if–
>
> (A) the trustee assumes such contract or lease in accordance with the provisions of this Section; and
>
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

62. Under 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). Section 365(b)(1), in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides as follows:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee–
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default . . . ;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

63. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given a "practical, pragmatic construction." *In re Res. Tech. Corp.*, 624 F.3d 376, 383 (7th Cir. 2010) (internal citation omitted). The required assurance "will fall considerably short of an absolute guarantee of performance." *Id.* (quoting *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988)); *see also In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803-04 (Bankr. N.D. Ill. 1985).

64. Among other things, adequate assurance may be provided by demonstrating the assignee's financial health and reputation. *Res. Tech.*, 624 F.3d at 383; *see also, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance where prospective assignee of lease from debtor had financial resources and expressed its willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

65. To the extent that any defaults exist under any of the Contracts and Leases that are to be assumed and assigned in connection with the sale of the Acquired Assets, the Debtor will either has any such default cured at Closing as a condition of such assumption and assignment, or obtain consent to the assumption and assignment on such modified terms as may be agreed to by the non-debtor party to such Contract/Lease. Moreover, the Debtor will adduce facts at the Sale Hearing demonstrating the financial wherewithal of the Prevailing Bidder, its experience in the industry, and its willingness and ability to perform under the proposed Contracts and Leases to be assumed and assigned to it.

66. The Sale Hearing therefore will provide the Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of the Prevailing Bidder to provide adequate assurance of future performance under the executory contacts and unexpired leases to be assumed and assigned. The Court therefore should have a sufficient basis to authorize the Debtor to assume and assign the Contracts and Leases as will be set forth in the Prevailing Bid.

VII. NOTICE

67. On June 30, 2017, the Debtor served notice of the Motion and a copy of the Motion with all exhibits, via CM/ECF filing, facsimile, and/or overnight delivery,[22] upon the following persons and/or entities: (a) the Office of the United States Trustee for the Northern District of Illinois; (b) counsel for the Secured Lenders; (c) the Debtor's 20 largest unsecured creditors; and (d) all other entities that has filed requests for notices pursuant to Rule 2002 of the Bankruptcy Rules (collectively, the "**Notice Recipients**"). Under the circumstances present in this Chapter 11 Case, the Debtor requests that the foregoing notice be deemed adequate and

[22] For those entities that filed requests for notices pursuant to Rule 2002, notice of the Motion and a copy thereof was also provided by e-mail delivery to extent an e-mail address was available.

reasonable under the Bankruptcy Code and Bankruptcy Rules for purposes of the entry of the Bidding Procedures Order and the commencement of the Sale Process.

68. Bankruptcy Rules 2002(a)(2) and 6004(a) require that notice of a proposed sale of substantially all of a debtor's assets be sent to all creditors. The Debtor proposes it serve that notice of the entry of the Bidding Procedures Order requested herein and notice of the Auction and the Sale Hearing in accordance with Bankruptcy Rules 2002(a)(2) and 6004, to the following persons: (a) the Notice Recipients; (b) all persons or entities reasonably known by the Debtor to has a lien on any of the Acquired Assets to be sold; (c) all counterparties to the Contracts and Leases, including the License Agreements; (d) all taxing authorities and other governmental units identified in the Debtor's creditors matrix; (e) any other applicable state taxing authorities for each state where the Acquired Assets are located; and (f) all other creditors in the Chapter 11 Case. Pursuant to Bankruptcy Rule 2002(m), the Debtor asserts that it would be impracticable to forward this Motion in its entirety to all of its unsecured creditors listed in its creditor matrices on file herein, and therefore request that the notice of the Auction and the Sale Hearing be made by delivering to each creditor by U.S. Mail, postage prepaid, a copy of the *Notice of Sale of Assets and Intended Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith* in the form attached hereto as Exhibit G ("**Notice of Sale**"), within one (1) business day of entry of the Bidding Procedures Order, and that such notice be deemed adequate and reasonable under the Bankruptcy Code and Bankruptcy Rules.

VIII. CONCLUSION

WHEREFORE, Quadrant 4 System Corporation, Debtor and Debtor in Possession herein, respectfully requests the entry of an order: (A) approving the sale process and bidding procedures with respect to the sale of the Subject Business Units and related Acquired Assets of

the estates; (B) approving the form and authorizing the Debtor to enter into the stalking horse agreements in substantially the forms attached hereto; (C) approving the bid protection and break-up fees; (D) scheduling a public auction and subsequent sale hearing; (E) authorizing the sale of the assets of the Debtor free and clear of liens, claims, encumbrances and interests; (F) authorizing the assumption and assignment of executory contracts and unexpired leases; (G) approving the form of notice and manner of notice of sale hearing and proposed assumption and assignment; and (H) awarding such other and further relief as is requested herein or is otherwise just and equitable.

Respectfully Submitted,

QUADRANT 4 SYSTEM CORPORATION

By: /s/ Chad H. Gettleman
One of its attorneys

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