IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	

DEBTOR'S MOTION FOR ORDERS (I)(A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING BREAKUP FEE AND EXPENSE REIMBURSEMENT; AND (F) GRANTING RELATED RELIEF; AND (II) (A) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (C) GRANTING RELATED RELIEF

The above-captioned debtor and debtor-in-possession (the "**Company**," or the "**Debtor**"), hereby moves (the "**Motion**") this court (the "**Court**") for the entry of orders pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "**Bankruptcy Rules**"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the "**Local Rules**"): (I)(A) approving proposed bidding procedures (the "**Bidding Procedures**")[2] (attached as

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance, CA 90501.

[2] To the extent of any conflict between this Motion and the Bidding Procedures, the terms of the Bidding Procedures attached to the Bidding Procedures Order shall govern.

Schedule 1 to the proposed form of Bidding Procedures Order attached hereto as **Exhibit A**) in connection with the sale (the "**Sale**") of all or substantially all of the Debtor's assets (the "**Purchased Assets**"), as described more fully herein; (B) scheduling the related auction (the "**Auction**") and setting the time, date and place of a later hearing to consider approval of the Sale (the "**Sale Hearing**"); (C) approving procedures related to the assumption and assignment (the "**Assumption and Assignment Procedures**") of certain of the Debtor's prepetition executory contracts and unexpired leases of nonresidential real property (collectively, the "**Assigned Contracts**"); (D) approving the form and manner of notice regarding the Sale of the Purchased Assets (the "**Sale Notice**") and the Sale Hearing; (E) approving the proposed bid protections including the termination fee (the "**Breakup Fee**") and expense reimbursement (the "**Expense Reimbursement**"), and (II)(A) authorizing the Sale of the Purchased Assets free and clear of (i) any lien, hypothecation, encumbrance, claim, liability, security interest, interest, mortgage, pledge, restriction, option, easement, encroachment, restriction on transfer or charge (including any conditional sale or other title retention agreement) (collectively, "**Liens**") and (ii) all debts arising under, relating to, or in connection with any acts of the Debtor, claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, rights with respect to Liens, claims, and encumbrances (a) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor's or the

purchaser's interests in the Purchased Assets, or any similar rights, or (b) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership ("**Claims**"); (B) approving the assumption and assignment of the Assigned Contracts pursuant to section 365 of the Bankruptcy Code, and waiving the fourteen-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d); and (C) granting such other and further relief as the Court deems just and proper. In further support of the Motion, the Debtor respectfully represents as follows:

JURISDICTION, VENUE AND PREDICATES FOR RELIEF

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b) and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is a core proceeding within the meaning of 28 U.S.C. § 157 (b)(2).

2. The statutory bases for the relief requested herein are sections 105, 363, 365, and 503 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and Local Rule 6004-1.

Status of the Case and Jurisdiction

3. On the date hereof (the "**Petition Date**"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code.

4. On the Petition Date, the Debtor also filed motions or applications seeking certain typical "first day" orders. The factual background regarding the Debtor, including its current and historical business operations and the events precipitating this chapter 11

filing, is set forth in detail in the Declaration of Dan Squiller in Support of Chapter 11 Petition and First Day Motions (the "**Squiller Declaration**"), filed concurrently herewith and fully incorporated herein by reference.

5. The Debtor has continued in possession of its properties and is operating and managing its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

6. No request has been made for the appointment of a trustee or examiner, and a creditors' committee has not yet been appointed in this case.

7. The Court has jurisdiction over this Motion 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 matter is core within the meaning of 28 U.S.C. § 157(b)(2).

The Debtor's Business Operations

8. The Debtor is a privately held corporation organized under Delaware law, headquartered in Torrance, CA with warehouse operations centers in Anaheim and Valencia, CA, and an operations center in Phoenix, AZ. The Debtor originated from Ken Button and Randy Bishop's purchase of Gemstar Builders in February 2008, which was subsequently renamed Verengo Solar, a d/b/a of Verengo, Inc. The Debtor's business focuses on the installation of solar photovoltaic systems and is one of the most well-known and respected brands in residential solar. Moreover, the Debtor offers a range of energy-saving products to help users to conserve the energy generated from their solar systems. The Debtor also markets and sells solar panels and semiconductor-based micro inverter systems in the United States. As of August 2016, the Debtor has installed 19,800 systems. One of the Debtor's key strategic initiatives going forward is coupling energy

storage with solar and the Debtor expects to be a leader in this segment by the time the market matures.

9. Following the Debtor's inception, operations were opened in California, New Jersey, New York, and Connecticut. In February 2015, however, all northeast operations were sold to NRG Energy, Inc.; contemporaneously, Northern and Central California operations were shut down. Notwithstanding, the Debtor remains the largest Southern California-based residential solar provider and its current business focus is California; and the Debtor's processes, operations, and supply chain are scalable for expansion into additional geographies.

10. For the year ending December 31, 2015, the Debtor achieved $82 million in revenue and 3,200 installations. Notwithstanding, the Debtor found itself experiencing reduced cash flow in 2016 and strained liquidity as a result. By pursuing this bankruptcy case using funds made available through the proposed DIP Credit Facility, the Debtor seeks to preserve and capitalize on any extant value of the company by executing a sale of substantially all of its assets under 11 U.S.C. § 363.

Prepetition Capital Structure

A. Secured Loans

11. The Debtor had a line of credit with Bridge Bank ("**Bridge**") with a high balance of $9.3M (the "**Secured Loan**"), which balance was reduced over time. On July 15, 2016, Bridge delivered a Notice of Default to the Company as a result of a payment default. On August 25, 2016 Bridge froze the account and thereafter funds were swept from the Company's bank account at Bridge, reducing the principal amount of the loan to approximately $983,000. On August 29, 2016, Bridge delivered a second Notice of Default to the Debtor as a result of various covenant defaults. Finally, on August 31,

2016, Bridge delivered a third Notice of Default to the Debtor as a result of various payment and covenant defaults. Immediately prior to the Petition Date, the Secured Loan was purchased from Bridge and is now held by Crius Solar Fulfillment, LLC ("**Crius Solar Fulfillment**"). As of the Petition Date, the outstanding aggregate principal amount of the Secured Loan was $2,272,000, which includes protective advances of $1,272,000 that were funded under the Secured Loan immediately prior to the Petition Date.

B. The Spruce Loans

12. CPF Asset Management, LLC, now known as Spruce Finance ("**Spruce**") loaned $8,500,000 to Verengo via the: (i) *CPF Loan Addendum to Standard Master Installer Contract* dated May 9, 2014; (ii) *Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated June 27, 2014; (iii) *Second Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated September 12, 2014; (iv) *First Amendment to Second Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated January 6, 2015; (v) *Third Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated September 23, 2015; and (vi) *First Amendment to Third Restated and Amended CPF Loan Addendum to Standard Master Installer Contract* dated December 2, 2015 (collectively, the "**Spruce Loans**"). Spruce is an independent company that facilitates Verengo's business by purchasing the installation projects from Verengo and acting as a finance company for Verengo's customers. Interest is accruing on the Spruce Loans but no principal payments have been made. The Company believes the Spruce Loans to be junior to the Bridge Bank Loan. Immediately prior to the Petition Date, the Spruce Loans were also acquired by Crius Solar Fulfillment.

C. Related Party Debt

13. Additional secured notes (the "**Senior Notes**"), believed to be junior to both the Bridge Bank Loan and the Spruce Loan, are as follows:

Angeleno	$	11,089,848
ClearSky		11,089,848
Arnold Fishman		422,191
BainBridge Partners		133,460
Org Bowen Campbell & Lauren Bishop		10,639
Bishop Living Trust		218,695
Total	$	22,964,682

No principal or interest payments are currently being made on the Senior Notes. Immediately prior to the Petition Date, Crius Solar Fulfillment acquired the Senior Notes held by Angeleno (as defined below) and ClearSky (as defined below).

14. The Debtor has entered into a DIP Credit Agreement with Crius Solar Fulfillment (in such capacity, the "**DIP Lender**") and is seeking Court authorization for the Debtor to obtain debtor-in-possession financing in the form of a revolving credit facility in the aggregate principal amount of up to $2,000,000 (the "**DIP Credit Facility**", extensions of credit under the DIP Credit Facility, the "**DIP Loans**") on the terms and conditions set forth therein.

Events Leading to Bankruptcy

15. In 2013, the Debtor began to experience quality problems with its installations in the eastern part of the US. Eventually, Verengo was suspended by the New York State Energy Research and Development Authority (NYSERDA), which prevented the Debtor from activating many of its installed systems until they were reinstalled. This resulted in additional costs to the Debtor and reduced cash flow. In January 2015, all northeast operations were sold to NRG Energy, Inc.;

contemporaneously, Northern and Central California operations were shut down. In addition, between 2012 and 2016 sales and marketing expenses for the origination part of the business were excessive and weighed on the Debtor's cash flow.

16. In 2016, the Debtor continued to experience reduced cash flow and strained liquidity as a result. As such, the Debtor implemented a focused business-to-business strategy, eliminating the unprofitable origination business and becoming an engineering, procurement and construction company. As a result of these initiatives, the Debtor reduced year-over-year operating expenditures by $26.0 million and indirect costs by $3.9 million. The Debtor also believes that its 2016 EBITDA will be positive by December, with 2017's forecasted cost reductions driven by reduced supply chain costs and volume increase. The Debtor projects $2.6MM of revenue from new accounts from August through December 2016.

17. Given the Debtor's inability to independently survive as a going concern, the board of directors of the Debtor has authorized the filing of this Chapter 11 Case to pursue a sale of the Debtor's assets. In order to fund the continued operations of the Debtor during the completion of the marketing process, the DIP Lender has agreed to provide the Debtor with postpetition financing pursuant to the DIP Credit Agreement.

18. The Debtor is facing a liquidity crisis requiring a curtailment of production, and is therefore unable to meet customer demand. The Debtor engaged in substantive discussions with strategic and financial advisors, including several investment banks, to raise outside capital. These discussions have not proven successful. While the Debtor has been able to negotiate certain modifications to the terms of certain equity and debt securities issued by the Debtor, the Debtor's financial position remains dire.

19. The DIP Lender has agreed to terms on which it will provide the Debtor with postpetition financing in the form of the DIP Credit Facility and the DIP Loans. The DIP Credit Facility and the DIP Loans will provide the Debtor with liquidity as it pursues a sale of its assets under section 363 of the Bankruptcy Code.

Prepetition Marketing Efforts

20. In complement to the Debtor's internal restructuring referenced above, the Debtor engaged Roth Capital Partners, LLC ("**Roth**") as an M&A Advisor in April 2016. Specifically, Roth was engaged to analyze the Debtor with respect to a valuation of the company, identify potential third party acquirers, and assist in structuring any transaction. Based on its knowledge of the solar industry, Roth executed a targeted outreach effort to groups it felt were well qualified as potential acquirers. This resulted in Roth contacting seventeen (17) strategic investors, holding in-depth discussions with seven (7), and securing four (4) groups under non-disclosure agreements. Despite these efforts, none of these discussions resulted in a transaction. In September 2016, the Debtor terminated Roth.

THE PROPOSED SALES PROCESS

21. The Bidding Procedures were developed consistent with the Debtor's competing needs to expedite the sale process and promote participation and active bidding. Moreover, the Bidding Procedures reflect the Debtor's objective of conducting the Auction in a controlled, but fair and open, fashion. As a result, the Debtor has concluded that the sale of its assets pursuant to section 363 of the Bankruptcy Code with an open and competitive auction process will maximize the value of its assets for the benefit of creditors.

A. Pre-Auction Bids

22. The Debtor solicited a pre-auction bid from Crius Solar Fulfillment resulting in the Debtor's entry into a stalking horse agreement (the "**Stalking Horse Agreement**"; attached hereto as **Exhibit C**) with Crius Solar Fulfillment (in such capacity, the "**Stalking Horse Purchaser**"). The members of Crius Solar Fulfillment are Crius Energy Corporation, Angeleno Investors III—Verengo Solar, L.P. ("**Angeleno**"), ClearSky Funding I LLC ("**ClearSky**"), and Spruce. Crius Solar Fulfillment was formed on or about September 22, 2016 to pursue the acquisition of the Secured Loan and the provision of the DIP Credit Facility, as well as to serve as the stalking horse purchaser of the Debtor's assets. In connection with the formation of Crius Solar Fulfillment, Angeleno, ClearSky and Spruce contributed their holdings of the Spruce Loans and the Senior Notes held by them to Crius Solar Fulfillment.

23. Crius Solar Fulfillment intends to credit bid $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan totaling $2,272,000, plus (z) such amount of Senior Notes necessary to total, when combined with the credit bid amounts from clauses (x) and (y), $11.7 million, for the purchase of all or substantially all of Verengo's assets.

24. The Debtor intends to retain SSG Advisors, LLC as its investment banker to, among other things, shop around the Stalking Horse Purchaser's offer in an effort to achieve the highest bid for the Debtor's assets.

B. Proposed Timeline

25. The Debtor desires to receive the greatest value for the Purchased Assets. Accordingly, the Debtor intends to offer the assets for sale in the hope that higher and better bids are generated for all or a portion of the Purchased Assets.

26. The Debtor proposes the following timeline in connection with the relief sought in this Motion:

EVENT	DATE
Bidding Procedures Hearing	Within 24 days of the Petition Date
Objection Deadline in Connection with Sale of Purchased Assets and Cure Amounts	Within 48 days of the Petition Date
Bid Deadline	Within 50 days of the Petition Date
Auction Date (if necessary)	Within 52 days of the Petition Date
Sale Hearing.	Within 55 days of the Petition Date

27. Absent a prompt sale pursuant to the proposed procedures and timeline, the Debtor believes that the going concern value of the Purchased Assets may be significantly compromised, rendering the possibility of a sale unlikely. The Debtor therefore submits that the proposed timeline is more than sufficient to complete a fair and open process that will maximize value for the Debtor's assets while at the same time preserve the going concern value.

RELIEF REQUESTED

28. By this Motion, the Debtor seeks orders: (i)(a) authorizing and approving the Bidding Procedures, (b) scheduling the Auction and the Sale Hearing; (c) approving the form and manner of Sale Notice attached to the Bidding Procedures Order as **Schedule 3**, (d) approving the Assumption and Assignment Procedures and the form and manner of the Cure Notice (as defined below), and (e) approving the Breakup Fee and Expense Reimbursement (such order, substantially in the form attached hereto as **Exhibit A** the "**Bidding Procedures Order**"); and (ii) authorizing and approving (a) the Sale of the Debtor's rights, title and interests in the Purchased Assets free and clear of all Liens and Claims, and (b) the assumption and assignment of the Assigned Contracts (such

order, substantially in the form attached hereto as **Exhibit B**, the "**Sale Order**"); and (iii) granting it such other relief as the Court deems just and proper.

29. Local Rule 6004-1 states that a sale motion:

> must highlight material terms, including but not limited to (a) whether the proposed form of sale order and/or the underlying purchase agreement constitutes a sale or contains . . . [certain enumerated provisions], (b) the location of any such provision in the proposed form of order or purchase agreement, and (c) the justification for the inclusion of such provision."

Del. Bankr. L.R. 6004-1(b)(iv). In addition, "[a] debtor may file a Sale Procedures Motion seeking approval of an order . . . approving bidding and auction procedures either as part of the Sale Motion or by a separate motion in anticipation of an auction and a proposed sale." Del. Bankr. L.R. 6004-1(c). As with a sale motion, the Local Rules provide that a debtor must highlight certain bid procedures order provisions in the motion seeking approval of the same. Del. Bankr. L.R. 6004-1(c)(i).

THE STALKING HORSE AGREEMENT

30. Pursuant to this Motion and Section 2.1 of the Stalking Horse Agreement, the Debtor is offering the Purchased Assets for sale which are comprised of all or substantially all of the Debtor's assets (excluding the Excluded Assets (as defined in the Stalking Horse Agreement)).

31. The Stalking Horse Agreement contemplates the sale of the Purchased Assets, subject to higher and/or better bids, on the following material terms:[3]

[3] The highlighted terms and summary of the Stalking Horse Agreement is provided for the benefit of the Court and other parties in interest. The Stalking Horse Agreement is incorporated herein by reference. To the extent of any conflict between this summary and the Stalking Horse Agreement, the terms of the Stalking Horse Agreement shall govern. Capitalized terms used but not otherwise defined in this summary shall have the meanings ascribed to them in the Stalking Horse Agreement.

Stalking Horse Purchaser	Crius Solar Fulfillment. The members of Crius Solar Fulfillment are Crius Energy Corporation, Angeleno, ClearSky, and Spruce.
Purchase Price	$11.9 million.
Agreements with Management	N/A
Releases	N/A
Auction to be Conducted	As described more thoroughly in the Bidding Procedures, the Debtor intends to conduct an open auction process if one or more Qualified Bids are received.
Closing and Other Deadlines	Closing deadline: 75 days from the Petition Date.
Good Faith Deposit	The Stalking Horse Purchaser is not required to make a good-faith deposit, but Qualified Competing Bidders are required to tender a cash deposit in the amount of ten percent (10%) of the proposed purchase price.
Interim Arrangements with Proposed Buyer	The Sale does not contemplate the Debtor entering into any interim agreements or arrangements with the Stalking Horse Purchaser (although the Stalking Horse Purchaser is the Debtor's Proposed DIP Lender).
Use of Proceeds	The Sale does not contain any provisions relating to the Debtor's use of the proceeds.
Record Retention	The Sale does not contain any provisions relating to record retention.
Sale of Avoidance Actions	The Bidding Procedures contemplate the sale of certain causes of action including Avoidance Actions.
Requested Findings as to Successor Liability	The Sale Order provides that Purchasers will not have any successor or transferee liability whatsoever for liabilities of the Debtor (whether under federal or state law or otherwise) as a result of the Sale. Sale Order, ¶ 10.
Credit Bid	The Stalking Horse Purchaser intends to credit bid $11.7

	million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan totaling $2,272,000, plus (z) such amount of Senior Notes necessary to total, when combined with the credit bid amounts from clauses (x) and (y), $11.7 million).
Relief from Bankruptcy Rule 6004(h)	The Debtor is seeking relief from the fourteen-day stay provided by Bankruptcy Rule 6004(h). Sale Order, ¶ 24.

32. In recognition of the Stalking Horse Purchaser's expenditure of time, energy, and resources, the Debtor has agreed that if the Stalking Horse Purchaser is not the Successful Bidder (as defined in the Bidding Procedures), the Debtor will pay the Stalking Horse Purchaser an amount in cash equal to (i) $475,000 as more fully described in the Stalking Horse Agreement (the "**Breakup Fee**") plus (ii) the aggregate amount of the reasonable, actual, and necessary, out-of-pocket expenses paid or incurred by the Stalking Horse Purchaser and its affiliates relating to or in connection with its bid (the "**Expense Reimbursement**"), subject to a cap of $175,000. The Debtor has further agreed that its obligation to pay the Breakup Fee and Expense Reimbursement pursuant to the Stalking Horse Agreement shall (i) survive termination of the Stalking Horse Agreement, (ii) to the extent owed by the Debtor, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code, and (iii) be payable within two (2) business days under the terms and conditions of the Stalking Horse Agreement and the Bidding Procedures Order, notwithstanding section 507(a) of the Bankruptcy Code.

PROPOSED BIDDING PROCEDURES

33. The Debtor believes that it is imperative that it promptly moves forward in hope that higher and better offers are generated for the Purchased Assets. Accordingly,

the Bidding Procedures (as summarized below and attached hereto as **Schedule 1**) were developed consistent with the Debtor's need to expedite the sale process, but with the objective of promoting further active bidding that will result in the highest or best offer for the Purchased Assets. Moreover, the Bidding Procedures reflect the Debtor's objective of conducting the Auction in a controlled, but fair and open, fashion that promotes interest in the Purchased Assets by financially-capable, motivated bidders who are likely to close a transaction.

A. Provisions Governing Qualifications of Bidders

34. Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process (a "**Potential Bidder**") must deliver the following to the Notice Parties (as defined below):

(i) a written disclosure of the identity of each entity including all affiliates, equity sources or other parties that will be or is associated with bidding for the Purchased Assets or otherwise participating in connection with such bid and the complete terms of any such participation; and

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor, which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

35. A Potential Bidder that delivers the documents and information described above and that the Debtor determines in its reasonable business judgment, after consultation with its advisors, is likely (based on availability of financing, experience and other considerations) to be able to consummate the sale, will be deemed a "**Qualified**

Bidder." The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith.

36. As promptly as practicable after a Potential Bidder delivers all of the materials required above (and in any event no later than two (2) business days thereafter), the Debtor will determine and will notify the Potential Bidder and the Notice Parties if such Potential Bidder is a Qualified Bidder.

B. Due Diligence

37. The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deems appropriate, in its reasonable discretion. The Debtor must promptly advise the Stalking Horse Purchaser in the event any other Qualified Bidder receives diligence the Stalking Horse Purchaser has not previously received and shall promptly be provided with access to such diligence materials.

38. The due diligence period shall end on the Bid Deadline. For the avoidance of doubt, neither the Debtor nor any of its respective representatives shall be obligated to furnish any due diligence information to any person other than a Qualified Bidder.

C. Provisions Governing Qualified Bids

39. A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a "**Qualified Bid**"):

(i) it fully discloses the identity of the Qualified Bidder;

(ii) it states that the applicable Qualified Bidder offers to purchase the Purchased Assets upon terms and conditions that the Debtor

reasonably determines are at least as favorable to the Debtor as those set forth in the Stalking Horse Agreement;

(iii) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, then the offer shall remain irrevocable until the earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the date that is fifteen (15) business days after entry of the Sale Order with respect to the Successful Bidder and sixteen (16) business days after entry of the Sale Order with respect to the Back-Up Bidder;

(iv) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;

(v) it sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals;

(vi) it includes a duly authorized and executed copy of a purchase agreement (a "**Purchase Agreement**"), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, together with copies marked ("**Marked Agreement**") to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court Motion; provided however, that such Purchase Agreement shall not include any financing or diligence conditions;

(vii) it includes written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on further third party approvals or commitments, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, or such other financial information as may be acceptable to the Debtor in its reasonable discretion (collectively, the "**Financials**") of the Qualified Bidder, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Qualified Bidder's equity holder(s) or other financial backer(s);

(viii) it provides for a cash purchase price at least $250,000 (the "**Minimum Overbid**") in excess of the aggregate consideration to be received by or for the benefit of the Debtor's estate upon consummation of the Stalking Horse Agreement ((a) $200,000 in cash, plus (b) cash in an amount sufficient to satisfy the Debtor's secured obligations being credit bid by the Stalking Horse Purchaser under the Stalking Horse Agreement (specifically, $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan totaling $2,272,000, plus (z) such amount of Senior Notes necessary to total, when combined with the credit bid amounts from clauses (x) and (y), $11.7 million), and otherwise has a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, that is greater or otherwise better than the value offered under the Stalking Horse Agreement including impact of the liabilities assumed in the Stalking Horse Agreement. The Minimum Overbid represents the sum of (A) the amount of the Breakup Fee (as defined below) of $475,000 and Expense Reimbursement of $175,000, plus (B) $250,000 plus (C) the Purchase Price of $11,900,000;

(ix) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;

(x) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;

(xi) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid;

(xii) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified

Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;

(xiii) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price;

(xiv) it contains in writing that the Qualified Bidder will pay off, in full, the DIP loan and become the DIP lender, with such payoff to occur within three (3) days of the Sale Hearing;

(xv) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;

(xvi) it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;

(xvii) it contains such other information reasonably requested by the Debtor; and

(xviii) it is received prior to the Bid Deadline.

40. Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid, for all purposes in connection with the Bidding Procedures, the Auction, and the Sale. The Stalking Horse Purchaser shall not be required to take any further action in order to participate in the Auction (if any) or, if the Stalking Horse Purchaser is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing.

41. The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) no later than two (2) business days following the expiration of the Bid Deadline.

42. Subject to the terms of the Stalking Horse Agreement and the Bidding Procedures, the Debtor reserves the right to adopt, implement, and/or waive such other, additional or existing procedures or requirements that serves to further an orderly Auction and bid process without further notice except to the Stalking Horse Purchaser and the other Qualified Bidders (such other Qualified Bidders referred to herein as "**Qualified Competing Bidders**").

43. The Debtor requests authority to solicit bids for the Purchased Assets utilizing the Bidding Procedures, substantially in the form attached as **Schedule 1** to the Bidding Procedures Order and summarized below. The Bidding Procedures describe, among other things, the assets to be sold, the manner in which bids become Qualified Bids, the coordination of diligence efforts among potential bidders, the Debtor, and its advisors and management, the receipt and negotiation of bids received, the conduct of any auction, and the selection and approval of the Successful Bidder (as defined in the Bidding Procedures).

44. The Bidding Procedures were developed consistent with the Debtor's competing needs to conduct an expedited sale process and to promote participation and active bidding. Moreover, the Bidding Procedures reflect the Debtor's objective of conducting an auction in a controlled, but fair and open, fashion, while ensuring that the highest and best bid is generated for the Purchased Assets.

45. The material terms of the Bidding Procedures are as follows:[4]

[4] The following description of the Bidding Procedures is a summary of the terms set forth in the Bidding Procedures attached to the Bidding Procedures Order as **Schedule 1**. To the extent of any conflict between this summary and the Bidding Procedures, the terms of the Bidding Procedures attached to the Bidding Procedures Order shall govern. Capitalized terms used but not defined in this section shall have the meanings ascribed to them in the Bidding Procedures.

Provisions Governing Qualification of Bidders	*Obligation to Deliver Financial Information to Debtor*. Any Potential Bidder who desires to become a bidder that is qualified to participate in the Auction and make a bid must submit to the Debtor: (a) a written disclosure of the identity of each entity including all affiliates, equity sources or other parties that will be or is associated with bidding for the Purchased Assets or otherwise participating in connection with such bid and the complete terms of any such participation; and (b) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor, which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.
Provisions Governing Qualified Bids	*Bid Deadline*. The Debtor proposes that the Bid Deadline be set no later than 50 days after the Petition Date. *Form of Bid*. In order to be eligible to participate in the Auction, a Bidder must deliver to the Notice Parties a written offer, which must provide or otherwise comply with, at minimum, the items noted below to be deemed a "Qualified Bid": (a) it fully discloses the identity of the Qualified Bidder; (b) it states that the applicable Qualified Bidder offers to purchase the Purchased Assets upon terms and conditions that the Debtor reasonably determines are at least as favorable to the Debtor as those set forth in the Stalking Horse Agreement; (c) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, then the offer shall remain irrevocable until the earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the date that is fifteen (15) business days after entry of the Sale Order with respect to the Successful Bidder and sixteen

	(16) business days after entry of the Sale Order with respect to the Back-Up Bidder; (d) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid; (e) it sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals; (f) it includes a duly authorized and executed copy of a Purchase Agreement, including the Purchase Price expressed in U.S. Dollars, together with all exhibits and schedules thereto, together with a Marked Agreement to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court Motion; provided however, that such Purchase Agreement shall not include any financing or diligence conditions; (g) it includes written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on further third party approvals or commitments, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement; such written evidence shall include the Qualified Bidder's Financials, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Qualified Bidder's equity holder(s) or other financial backer(s); (h) it provides for a cash purchase price at least $250,000 (the "**Minimum Overbid**") in excess of the aggregate consideration to be received by or for the benefit of the Debtor's estate upon consummation of the Stalking Horse Agreement ((a) $200,000 in cash, plus (b) cash in an amount sufficient to satisfy the Debtor's secured obligations being credit bid by the Stalking Horse Purchaser under the Stalking Horse Agreement (specifically, $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan totaling

	$2,272,000, plus (z) such amount of Senior Notes necessary to total, when combined with the credit bid amounts from clauses (x) and (y), $11.7 million), and otherwise has a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, that is greater or otherwise better than the value offered under the Stalking Horse Agreement including impact of the liabilities assumed in the Stalking Horse Agreement. The Minimum Overbid represents the sum of (A) the amount of the Breakup Fee (as defined below) of $475,000 and Expense Reimbursement of $175,000, plus (B) $250,000 plus (C) the Purchase Price of $11,900,000; (i) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs; (j) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases; (k) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, breakup fee, or similar type of payment in connection with its bid; (l) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;

	(m) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price; (n) it contains in writing that the Qualified Bidder will pay off, in full, the DIP loan and become the DIP lender, with such payoff to occur within three (3) days of the Sale Hearing; (o) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor; (p) it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court; (q) it contains such other information reasonably requested by the Debtor; and (r) it is received prior to the Bid Deadline.
Bid Protections	*Breakup Fee in an amount of $475,000 and Expense Reimbursement in an amount of $175,000.* *Bidding Increments*. Bidding at the Auction will start at the Auction Baseline Bid and will continue with minimum bid increments of $100,000.
Modification of Bidding Procedures	*Modification*. The Bidding Procedures may be modified by the Debtor (along with its advisors) with the consent of the Stalking Horse Purchaser.
Closing With Alternative Back-Up Bidder(s)	*Irrevocable Bid*. If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid to the Successful Bidder, as determined by the Debtor in the exercise of its business judgment, at the Auction shall be required to serve as the Back-Up Bidder and keep such bid open and irrevocable until sixteen (16) business days after entry of the Sale Order; provided that the Stalking Horse Purchaser shall not be required to be the Back-Up Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to

	consummate the sale with the Back-Up Bidder without further order of the Bankruptcy Court.
Provisions Governing the Auction	*Date/Time/Place of Auction*. In the event the Debtor receives one or more Qualified Bids (other than the Qualified Bid from the Stalking Horse Purchaser), the Debtor proposes to hold the Auction no later than 52 days after the Petition Date, at the offices of Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801. *No Collusion*. Each Qualified Bidder will be required to confirm that it has not engaged in any collusion with respect to the Auction or the proposed sale. *Participation and Attendance*. The Debtor and its representatives, the Stalking Horse Purchaser and any other Qualified Bidder shall participate at the Auction in person, and only the Purchaser and such other Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction. At least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtor will identify to the Stalking Horse Purchaser and all other Qualified Bidders which Qualified Bid the Debtor believes in its reasonable discretion is the highest or otherwise best offer (the "**Starting Bid**"). All Qualified Bidders who have timely submitted (e) Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person. The Debtor, after consultation with its advisors and with the consent of the Stalking Horse Purchaser, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction,

	provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction. Bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "**Subsequent Bid**") providing a net value to the estate of at least an additional $100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid that it believes to be the highest or otherwise better offer (the "**Leading Bid**"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Qualified Bidders will not have the opportunity to pass. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtor will give effect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor. *Transcription*. The Debtor shall arrange for the Auction to be transcribed.

46. The Debtor submits that implementation of the Bidding Procedures will not chill bidding for the Purchased Assets. Rather, approval of the Bidding Procedures is in the best interests of the Debtor, its estate, and its creditors in that it provides a structure and format for other potentially interested parties to formulate a bid for the Purchased Assets. Failure to approve the Bidding Procedures may jeopardize the Sale to Stalking Horse Purchaser to the detriment of the Debtor's creditors, employees, customers and vendors.

C. The Notice Procedures

47. The Debtor proposes to give notice within two (2) business days after the entry of the Bidding Procedures Order, of the time and place of the Auction, the time and place of the Sale Hearing, and the objection deadline for the Sale Hearing by sending the

Notice of Sale Procedures, Auction Date and Sale Hearing, substantially in the form attached as **Schedule 3** to the Bidding Procedures Order, to (a) the US Trustee, (b) any Official Committee of Unsecured Creditors, (c) any parties requesting notices in this case pursuant to Bankruptcy Rule 2002, (d) counsel to the Stalking Horse Purchaser, and (e) all Potential Bidders.

D. The Assumption and Assignment Procedures

48. The Debtor proposes a set of procedures to facilitate the Sale which would involve the assumption and assignment of the Assigned Contracts. The proposed Assumption and Assignment Procedures are contained in the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor That May Be Assumed and Assigned (the "**Cure Notice**"), attached to the Bidding Procedures Order as **Schedule 4**. The Debtor will serve the Cure Notice on all non-debtor counterparties to the Assigned Contracts or their counsel (if known) within two (2) business days after entry of the Bidding Procedures Order.

49. The Debtor will attach to the Cure Notice its calculations of the undisputed cure amounts, if any, that the Debtor believes must be paid to cure all prepetition defaults under all Assigned Contracts (the "**Cure Amount**"). The Debtor proposes that if any counterparty to an Assigned Contract objects for any reason to the assumption and assignment of an Assigned Contract (an "**Assumption Objection**"), such counterparty must file and serve such Assumption Objection so as to be received by the Notice Parties by no later than (the "**Assumption Objection Deadline**"): (i) 7 days prior to the date of the Auction, provided, however, if any bidder other than the Stalking Horse Bidder is the Successful Bidder, then that any counterparty may file and serve an objection to the assumption and assignment of the Assigned Contract solely with respect

to the Successful Bidder's ability to provide adequate assurance of future performance under the Assigned Contract up to the time of the Sale Hearing, or raise it at the Sale Hearing; or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the motion to assume such Assigned Contract if such contract is to be assumed and assigned after the Sale Hearing). The Court will make any and all determinations concerning adequate assurance of future performance under the Assigned Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.

50. The Debtor requests that unless the counterparty to any Assigned Contract timely files and serves an Assumption Objection, such non-debtor party should (a) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Assigned Contract, and the Debtor shall be entitled to rely solely upon the Cure Amount, and (b) be forever barred and estopped from asserting or claiming against the Debtor, the Stalking Horse Purchaser or the Successful Bidder, as the case may be, or any other assignee of the Assigned Contract that any additional amounts are due or defaults exist, or conditions to assumption and assignment must be satisfied with respect to such Assigned Contract.

51. In the event that an Assumption Objection is timely filed and served, such Assumption Objection must set forth with specificity each and every asserted default in any executory contract or unexpired lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtor in the Cure Notice. After receipt of the Assumption Objection, the Debtor will attempt to reconcile any differences in the Cure Amount believed by the counterparty to exist. In

the event, however, the Debtor and the counterparty cannot consensually resolve the Cure Amount, the Debtor will segregate any disputed Cure Amounts ("**Disputed Cure Amounts**") pending the resolution of any such disputes by the Court or mutual agreement of the parties. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

52. In the event that the Successful Bidder is not the Stalking Horse Purchaser, immediately after the conclusion of the Auction, the Debtor will serve notice identifying the Successful Bidder upon each counterparty to an executory contract or unexpired lease to be assumed and assigned to the Successful Bidder. In this circumstance, each counterparty may object to the assumption and assignment of such executory contract or unexpired lease at any time before the Sale Hearing.

53. Notwithstanding anything to the contrary herein, through the date of closing, the Stalking Horse Purchaser or the Successful Bidder, as the case may be, shall have the right to exclude from the Purchased Assets any of the Assigned Contracts, and in such case any such excluded Assigned Contract shall constitute an Excluded Asset (as defined in the Stalking Horse Agreement) and shall not constitute, for any purpose whatsoever, a Purchased Asset and shall have the right to include any executory contract and/or unexpired lease and, in such case any such included executory contract and/or unexpired lease shall constitute a Purchased Asset to be purchased. Neither the Stalking Horse Purchaser nor the Successful Bidder shall incur any liability, obligation, or debt in connection with or related to such Excluded Asset.

54. To the extent that a non-debtor counterparty to an Assigned Contract was not provided with a Cure Notice (any such contract or lease a "**Previously Omitted**

Contract"), the Debtor will notify the Stalking Horse Purchaser or the Successful Bidder, as the case may be, within three (3) business days of the omission. The Debtor shall serve a notice (the "**Previously Omitted Contract Notice**") to the counterparties to the Previously Omitted Contract indicating the Debtor's intent to assume and assign the Previously Omitted Contract. The counterparties will have fourteen (14) days to object to the Cure Amount or the assumption. If the parties cannot agree on a resolution, the Debtor will seek an expedited hearing before the Court to determine the Cure Amount and approve the assumption. If there is no objection, then the counterparties will be deemed to have consented to the assumption and assignment and the Cure Amount, and such assumption and assignment and the Cure Amount shall be deemed approved by the Sale Order without further order of this Court.

E. Request to Set a Date for the Sale Hearing

55. The Debtor intends to present the Successful Bid and the Back-Up Bid, as the case may be, for approval by the Court pursuant to the provisions of sections 105, 363 and 365 of the Bankruptcy Code at the Sale Hearing to be scheduled by the Court. The Debtor respectfully requests that any such Sale Hearing be scheduled no later than 55 days following the Petition Date. Upon the failure to consummate a sale of the Purchased Assets after the Sale Hearing because of the occurrence of a breach or default of the Successful Bid, as the case may be, or the non-approval of this Court, the next highest or otherwise best Back-Up Bid, if any, as disclosed at the Sale Hearing, shall be deemed the Successful Bid without further order of the Court, and the parties shall be authorized to consummate the transaction contemplated by the Back-Up Bid.

56. The Debtor further requests, pursuant to Bankruptcy Rule 9014, that any and all objections to the relief to be considered at the Sale Hearing be filed seven days prior to the Sale Hearing.

F. Sale Free and Clear of Liens and Claims

57. The Debtor has agreed, and therefore requests that the Court hold, that upon Closing the conveyance of the Debtor's interest in the Purchased Assets will be a legal, valid, and effective transfer of such Purchased Assets, and, to the fullest extent permitted by sections 105, 363(f) and 365 of the Bankruptcy Code, or other applicable law, vests or will vest the Stalking Horse Purchaser with all right, title, and interest of the Debtor in and to the Purchased Assets free and clear of Liens and Claims (except for Assumed Liabilities).

58. All Liens and Claims of any kind or nature whatsoever will attach to the proceeds of the Sale (the "**Proceeds**") with the same force, validity, priority and effect, if any, as the Liens and Claims formerly had against the Purchased Assets, if any, subject to the Debtor's ability to challenge the extent, validity, priority and effect of the Liens and Claims.

BASIS FOR RELIEF

A. The Sale of the Purchased Assets Is a Product of the Debtor's Reasonable Business Judgment

59. Section 363(b)(1) of the Bankruptcy Code provides: "[t]he Trustee, 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. § 365(b). Section 105(a) of the Bankruptcy Code provides in relevant part: "[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

60. Virtually all courts have held that approval of a proposed sale of assets of a debtor under section 363 of the Bankruptcy Code outside the ordinary course of business and prior to the confirmation of a plan of reorganization is appropriate if a court finds that the transaction represents a reasonable business judgment on the part of the debtor. *See In re Abbotts Dairies of Pennsylvania, Inc.*, 788 F.2d 143 (3d Cir. 1986); *see also In re Delaware & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991) (holding that the following non-exclusive list of factors may be considered by a court in determining whether there is a sound business purpose for an asset sale: "the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition of the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the property; and whether the asset is decreasing or increasing in value"); *Vecchio v. Stroud Ford, Inc. (In re Stroud Ford, Inc.)*, 205 B.R. 722 (Bankr. M.D. Pa. 1996); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396, 399 (Bankr. W.D. Pa. 1991); *In re Indus. Valley Refrigeration & Air Conditioning Supplies, Inc.*, 77 B.R. 15, 21 (Bankr. E.D. Pa. 1987); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2d Cir. 1983); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386, 391 (6th Cir. 1986); *In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989); *In re Phoenix Steel Corp.*, 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that the elements necessary for approval of a section 363 sale in a chapter 11 case are "that the proposed sale is fair and equitable, that there is a good business reason for completing the sale and the transaction is in good faith").

61. The "sound business reason" test requires a debtor to establish four elements in order to justify the sale or lease of property outside the ordinary course of business, namely: (1) that a sound business purpose justifies the sale of assets outside the ordinary course of business; (2) that accurate and reasonable notice has been provided to interested persons; (3) that the debtor has obtained a fair and reasonable price; and (4) good faith. *See generally Abbotts Dairies*, 788 F.2d 143; *see also Titusville Country Club*, 128 B.R. at 399; *In re Sovereign Estates, Ltd.*, 104 B.R. 702, 704 (Bankr. E.D. Pa. 1989); *Phoenix Steel Corp.*, 82 B.R. at 335-36; *see also Stephens Indus.*, 789 F.2d at 390; *Lionel*, 722 F.2d at 1071. A debtor's showing of a sound business purpose need not be unduly exhaustive, but rather a debtor is "simply required to justify the proposed disposition with sound business reasons." *In re Baldwin United Corp.*, 43 B.R. 888, 906 (Bankr. S.D. Ohio 1984). Whether or not there are sufficient business reasons to justify a transaction depends upon the facts and circumstances of each case. *Lionel*, 722 F.2d at 1071.

62. Additionally, section 105(a) of the Bankruptcy Code provides a bankruptcy court with broad powers in the administration of a case under the Bankruptcy Code. Provided that a bankruptcy court does not employ its equitable powers to achieve a result not contemplated by the Bankruptcy Code, the exercise of its section 105(a) power is proper. *In re Fesco Plastics Corp.*, 996 F.2d 152, 154 (7th Cir. 1993); *Pincus v. Graduate Loan Ctr. (In re Pincus)*, 280 B.R. 303, 312 (Bankr. S.D.N.Y. 2002). Pursuant to section 105(a), a court may fashion an order or decree that helps preserve or protect the value of the debtor's assets. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) ("Section 105 sets out the power of the bankruptcy court

to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code."); *In re Cooper Props. Liquidating Trust, Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (noting that the bankruptcy court is "one of equity and as such it has a duty to protect whatever equities a debtor may have in property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws").

63. The proposed procedures for, and the sale of the Debtor's interests in the Purchased Assets, meet the "sound business reason" test. First, sound business purposes justify the sale. The Debtor believes that a prompt sale of the Purchased Assets conducted pursuant to the Bidding Procedures presents the best opportunity to realize the maximum value of the Purchased Assets for distribution to the Debtor's estate and the Debtor's creditors.

64. The Bidding Procedures are also justified by sound business purposes. The Bidding Procedures are designed to maximize the value received for the Purchased Assets. The procedures proposed herein allows for a timely and efficient auction process, while satisfying the various notice requirements of the Bankruptcy Rules and providing sufficient time for parties-in-interest to submit objections to the proposed sale and for bidders to formulate and submit competing proposals. Finally, the Bidding Procedures satisfy the good faith requirement of *Abbotts Dairies*.

65. The Debtor believes it is in the best interests of its estate, creditors, customers and employees to commence a bidding process immediately, as the Debtor has limited funding and resources to maximize the value of its assets. It is unlikely that the Debtor will be able to continue operating beyond the period of this proposed bidding process without additional funding, the source of which would be uncertain. The Debtor

has limited production operations and urgent cash needs. The purchase of raw materials and ongoing production operations, combined with a sale of the Debtor's assets, will help restore confidence with those parties the Debtor has done business with in the past. For these reasons, the Debtor has determined, based on its business judgment, that the best way to maximize the value of its estate for the benefit of its creditors, customers, employees and other parties in interest is through the immediate marketing and sale of the Purchased Assets pursuant to the Bidding Procedures.

66. The implementation of competitive bidding procedures to facilitate the sale of a debtor's assets outside of the ordinary course of a debtor's business is routinely approved by bankruptcy courts as a means of ensuring that such sale will generate the highest and best return for a debtor's estate. The Debtor submits that the opportunity for competitive bidding embodied in the Bidding Procedures will generate the highest or otherwise best offer for the Purchased Assets.

67. The Debtor believes that a prompt sale process is the best way to maximize the value of the Debtor's assets for the benefit of its estates, creditors and other stakeholders. The proposed Bidding Procedures described herein are fair, reasonable, and appropriate and are designed to maximize recovery with respect to the sale of the Purchased Assets.

68. As set forth above, the Debtor has demonstrated compelling and sound business justifications for the sale of the Purchased Assets pursuant to the Bidding Procedures. The Debtor therefore requests that the Court approve the proposed procedures for sale of the Purchased Assets to the highest or otherwise best bidder at the

Auction and approve the Sale presented to the Court at the Sale Hearing and authorize the Debtor to take such other steps as are necessary to consummate the Sale.

B. The Stalking Horse Purchaser Should be Granted the Protection of Section 363(m) of the Bankruptcy Code

69. The Debtor requests the Court to find that the Stalking Horse Purchaser is entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the Sale.

70. Specifically, section 363(m) of the Bankruptcy Code provides that:

> [t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) of the Bankruptcy Code thus protects the Stalking Horse Purchaser of assets sold pursuant to section 363 from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal.

71. While the Bankruptcy Code does not define "good faith," the Third Circuit in *Abbotts Dairies* held that:

> [t]he requirement that a purchaser act in good faith . . . 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.

788 F.2d at 147 (citations omitted); *see generally Marin v. Coated Sales, Inc., (In re Coated Sales, Inc.***)**, 1990 WL 212899 (S.D.N.Y. Dec. 13, 1990) (holding that party must demonstrate "fraud, collusion, or an attempt to take grossly unfair advantage of other

bidders" to show lack of good faith); *see also In re Pisces Leasing Corp.*, 66 B.R. 671, 673 (E.D.N.Y. 1986) (examining facts of each case, concentrating on "integrity of [an actor's] conduct during the sale proceedings") (*quoting In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

72. As the Debtor will demonstrate at the Sale Hearing, the Stalking Horse Purchaser is entitled to all of the protections of section 363(m) of the Bankruptcy Code.

C. The Breakup Fee and Expense Reimbursement are Necessary to Preserve the Value of the Debtor's Estate

73. The Debtor believes that having the ability to provide the Breakup Fee and the Expense Reimbursement to the Stalking Horse Purchaser will ensure the Debtor's ability to maximize the realizable value of the Purchased Assets for the benefit of the Debtor's estate, creditors and other parties-in-interest. Approval of breakup fees and expense reimbursements and other forms of bidding protections in connection with the sale of significant assets pursuant to section 363 of the Bankruptcy Code has become established practice in chapter 11 cases. Such bidding protections enable a debtor to ensure a sale to a contractually committed bidder at a price the debtor believes is fair, while providing the debtor with an opportunity to enhance the value received by its estate through an auction process. Historically, bankruptcy courts have approved bidding incentives similar to the Breakup Fee and the Expense Reimbursement pursuant to the "business judgment rule." *See e.g., Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.),* 147 B.R. 650 (S.D.N.Y. 1992); *In re 995 Fifth Ave. Assocs.*, L.P., 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989).

74. The United States Court of Appeals for the Third Circuit, however, has established standards for determining the propriety of bidding incentives in the

bankruptcy context. *In re Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3d Cir. 1999); *see also In re Reliant Energy Channelview LP*, 594 F.3d 200 (3d Cir. 2010). 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 postpetition benefit to the debtor's estate. *See O'Brien* 181 F.3d at 533. The Third Circuit defined at least two instances in which bidding incentives may benefit the estate. First a breakup fee or expense reimbursement may be necessary to preserve the value of the estate if the assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *O'Brien*, 181 F.3d at 537. Second, if the availability of breakup fees and expenses were to induce a bidder to research the value of the debtor and convert that value to a dollar figure 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.

75. The Breakup Fee and Expense Reimbursement are reasonable and appropriate in light of the size and nature of the transaction and the efforts that have been expended by the Stalking Horse Purchaser. The Debtor believes that the Breakup Fee and Expense Reimbursement promote competitive bidding and was necessary to induce the bid from the Stalking Horse Purchaser (as well as the provision of debtor-in-possession financing). The Debtor's ability to offer the Breakup Fee and Expense Reimbursement enables it to promote a sale of the Purchased Assets with the greatest benefit to the estate.

Moreover, the Breakup Fee and Expense Reimbursement will not diminish the estate. The Debtor does not intend to terminate the Stalking Horse Agreement if to do so would incur an obligation to pay the Breakup Fee and Expense Reimbursement, unless to accept an alternative bid, which bid must exceed the consideration offered by the Stalking Horse Purchaser by an amount sufficient to pay the Breakup Fee and Expense Reimbursement.

76. This Court has approved protections similar to the Breakup Fee and Expense Reimbursement as reasonable and consistent with the type and range of bidding protection typically approved. *See, e.g., In re Dendreon Corp.*, Case No. 14-12515 (PJW) (Bankr. D. Del. Dec. 17, 2014) (approving breakup fee and expense reimbursement); *In re Savient Pharm., Inc.*, Case No. 13-12680 (MFW) (Bankr. D. Del. Nov. 4, 2013)(approving breakup fee and expense reimbursement); *In re Synagro Techs., Inc.*, Case No. 13-11041 (BLS) (Bankr. D. Del. May 13, 2013) (approving breakup fee and expense reimbursement); *In re ICL Holding Co., Inc.*, Case No. 12-13319 (KG) (Bankr. D. Del. Jan. 25, 2013) (authorizing stalking horse expense reimbursement); *In re Magic Brands, LLC*, Case No. 10-11310 (BLS) (Bankr. D. Del. May 18, 2010) (authorizing stalking horse expense reimbursement); *In re Vertis Holdings, Inc.*, Case No. 12-12821 (CSS) (Bankr. D. Del. Nov. 2, 2012) (approving breakup fee and expense reimbursement).[5]

D. The Sale of the Debtor's Assets Should Be Free and Clear of Liens and Claims Pursuant to Section 363(f) of the Bankruptcy Code

77. Pursuant to, and to the fullest extent permitted by, section 363(f) of the Bankruptcy Code, the Debtor seeks authority to sell and transfer the Debtor's right,

[5] Because of the voluminous nature of the orders cited herein, they are not attached to this Motion. Copies of these orders, however, are available on request.

interest and title in the Purchased Assets to the Stalking Horse Purchaser or Successful Bidder free and clear of all liens, claims, encumbrances and other interests, with such liens, claims, encumbrances and other interests to attach to the Proceeds of the Sale, subject to any rights and defenses of the Debtor and other parties-in-interest with respect thereto. Under section 363(f) of the Bankruptcy Code, a debtor may sell all or part of its property free and clear of any and all liens, claims, encumbrances and other interests in such property if: (i) such a sale is permitted under applicable non-bankruptcy law; (ii) the party asserting such a lien, claim, or interest consents to such sale; (iii) the interest is a lien and the purchase price for the property is greater than the aggregate amount of all liens on the property; (iv) the interest is the subject of a bona fide dispute; or (v) the party asserting the lien, claim, or interest could be compelled, in a legal or equitable proceeding, to accept monetary satisfaction for such interest. 11 U.S.C. § 363(f); *see also Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (holding that section 363(f) is written in the disjunctive and that a court may approve a sale "free and clear" provided at least one of the requirements is met).

78. With respect to each creditor asserting a Lien or Claim, the Debtor believes that one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

79. A sale free and clear of Liens and Claims is necessary to maximize the value of the Purchased Assets. The Stalking Horse Purchaser would not consummate the Sale absent the ability to purchase the Purchased Assets free and clear of all Liens and Claims (except for Assumed Liabilities). A sale of the Purchased Assets other than one free and clear of all Liens and Claims would yield substantially less value for the

Debtor's estate, with less certainty than the transaction proposed by the Sale. Thus, the Sale is in the best interests of the Debtor, its estate and creditors, and all other parties-in-interest.

80. Moreover, Courts have held that they have the equitable power to authorize sales free and clear of interests that are not specifically covered by section 363(f). *See, e.g., In re Trans World Airlines, Inc.*, 2001 WL 1820325 at *3, 6 (Bankr. D. Del. March 27, 2001); *Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987). Approving the Sale free and clear of all adverse interests is warranted.

E. The Assumption and Assignment of the Assigned Contracts Should Be Authorized

81. Under section 365(a) of the Bankruptcy Code, 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). The standard governing court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports such assumption or rejection. *See, e.g., In re Stable Mews Assoc.*, 41 B.R. 594, 596 (Bankr. S.D.N.Y. 1984). If the debtor's business judgment has been reasonably exercised, a court should approve the assumption or rejection of an unexpired lease or executory contract. *See Group of Institutional Investors v. Chicago M. St., P. & P.R.R. Co., 318 U.S. 523 (1943); Sharon Steel*, 872 F.2d at 39-40.

82. The business judgment test "requires only that the trustee demonstrate that [assumption or] rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.)*, 72 B.R. 845,

846 (Bankr. W.D. Pa. 1987) (*quoting Stable Mews*, 41 B.R. at 596). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract or lease, it must "cure, or provide adequate assurance that the debtor will promptly cure," any default. 11 U.S.C. § 365(b)(1).

83. The debtor may elect to assign a properly assumed executory contract or lease if adequate assurance of future performance is provided. 11 U.S.C. 365(f)(2); *see L.R.S.C. v. Rickel Home Centers, Inc. (In re Rickel Home Centers, Inc.)*, 209 F.3d 291, 299 (3d Cir. 2000) ("[t]he Code generally favors free assignability as a means to maximize the value of the debtor's estate"); *Leonard v. General Motors Corp. (In re Headquarters Dodge, Inc.)*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist a trustee in realizing the full value of the debtor's assets).

84. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but 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 also 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). 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, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding adequate assurance of future performance 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).

85. To the extent any defaults exist under any Assigned Contract, any such default will be promptly cured or adequate assurance that such default will be cured will be provided prior to the assumption and assignment. If necessary, the Debtor will submit facts prior to or at the Sale Hearing to show the financial credibility of the Stalking Horse Purchaser or Successful Bidder, as the case may be, and willingness and ability to perform under the Assigned Contracts. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of the Stalking Horse Purchaser or Successful Bidder, as the case may be, to provide adequate assurance of future performance under the Assigned Contracts, as required under section 365(b)(1)(C) of the Bankruptcy Code.

86. In addition, the Debtor submits that it is an exercise of its sound business judgment to assume and assign, as the case may be, the Assigned Contracts to the Stalking Horse Purchaser or Successful Bidder, as the case may be, in connection with the consummation of the Sale, and that the assumption and assignment of the Assigned Contracts is in the best interests of the Debtor, its estate, its creditors, and all parties-in-interest. The Assigned Contracts being assigned to the Stalking Horse Purchaser (or Successful Bidder) are an integral part of the Purchased Assets being acquired by the Stalking Horse Purchaser (or Successful Bidder), and such assumption and assignment is reasonable and will enhance the value of the Debtor's estate. The Court should therefore authorize the Debtor to assume and assign the Assigned Contracts.

87. The Debtor further submits that the Assumption and Assignment Procedures, including the form of Cure Notice attached as **Exhibit 4** to the Bidding Procedures Order, are appropriate and reasonably tailored to provide counterparties to the

Assigned Contracts with adequate notice of the proposed assumption and assignment as well as proposed Cure Costs, if any. The Debtor believes that implementation of the Assumption and Assignment Procedures is appropriate under the circumstances and should be approved.

F. The Secured Parties Should be Allowed to Credit Bid

88. In connection with the Bidding Procedures, the Debtor is proposing that the Stalking Horse Purchaser will credit bid $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan totaling $2,272,000, plus (z) such amount of Senior Notes necessary to total, when combined with the credit bid amounts from clauses (x) and (y), $11.7 million, for the purchase of the Purchased Assets. The Debtor is proposing that no other secured creditor may credit bid its secured indebtedness, if any.

89. The Debtor seeks confirmation of the rights of the Stalking Horse Purchaser to credit bid. Confirmation of rights of the Stalking Horse Purchaser to credit bid is consistent with section 105(a) and section 363(k) of the Bankruptcy Code. That statute provides as follow:

> At a sale under subsection (b) of this section of property that is subject to a lien that secures an allowed claim, unless the court for cause orders otherwise the holder of such claim may bid at such sale, and, if the holder of such claim purchases such property, such holder may offset such claim against the purchase price of such property.

11 U.S.C. § 363(k).

90. Under section 363(k), a secured creditor is entitled to bid an amount up to its entire claim; the "offset" (*i.e.*, credit) is not limited to the value of the collateral. *See, e.g., In re Submicron Sys. Corp.*, 432 F.3d 448, 459 (3d Cir. 2006) ("It is well settled

among district and bankruptcy courts that creditors can bid the full face value of their secured claims under § 363(k)"); *In re Suncruz Casinos, LLC*, 298 B.R. 833, 839 (Bankr. S.D. Fla. 2003) ("The plain language of [section 363(k)] makes clear that the secured creditor may credit bid its *entire claim*, including any unsecured deficiency portion thereof.") (emphasis in original); *In re Morgan House Gen. P'Ship*, 1997 U.S. Dist. LEXIS 1306 at *1 (E.D. Pa. 1997); *In re Realty Invs., Ltd. V*, 72 B.R. 143, 146 (Bankr. C.D. Cal. 1987); *Criimi Mae Servs. Ltd. P'ship v. WDH Howell, LLC (In re WDH Howell, LLC)*, 298 B.R. 527, 532 n.8 (D.N.J. 2003).

91. Thus, the right to credit bid is not affected by any prior valuation of an allowed claim under section 506(a) of the Bankruptcy Code. *In re Submicron Sys. Corp.*, 432 F.3d at 461 ("§ 363 speaks to the full face value of a secured creditor's claim, not to the portion of that claim that is actually collateralized as described in § 506."); *In re Morgan House Gen. P'ship*, 1997 U.S. Dist. LEXIS 1306 at *5 (holding that creditors may bid "to the extent of their claim" under § 363(k)); *In re Midway Invs., Ltd.*, 187 B.R. 382, 391 n.12 (Bankr. S.D. Fla. 1995) ("[A] secured creditor may bid in the full amount of the creditor's allowed claim, including the secured portion and any unsecured portion thereof") (citing legislative history).

92. Nor is a section 506(a) valuation required before a sale pursuant to section 363(b) of the Bankruptcy Code can be approved. *In re Submicron Systems Corp.*, 432 F.3d at 461 ("*Section 363* attempts to *avoid* the complexities and inefficiencies of valuing collateral altogether by substituting the theoretically preferable mechanism of a free market sale to set the price. The provision is premised on the notion that the market's reaction to a sale best reflects the economic realities of assets' worth. Naturally, then,

courts are not required first to determine the assets' worth before approving such a market sale.") (emphasis in original).

G. Waiver of Automatic Fourteen-Day Stay Under Bankruptcy Rules 6004(h) and 6006(d)

93. Pursuant to Bankruptcy Rule 6004(h), unless the Court orders otherwise, all orders authorizing the sale of property pursuant to section 363 of the Bankruptcy Code are automatically stayed for fourteen days after entry of the order. Similarly, under Bankruptcy Rule 6006(d), unless the Court orders otherwise, all orders authorizing the assignment of contracts or unexpired leases are automatically stayed for fourteen days after entry of the order. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to request a stay pending appeal before the order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h); Advisory Committee Notes to Fed. R. Bankr. P. 6006(d).

94. Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen-day stay period, commentators agree that the fourteen-day stay period should be eliminated to allow a sale or other transaction to close immediately where there has been no objection to the procedure. *See generally* 10 *Collier on Bankruptcy* ¶ 6004.09 (15th ed. 1999). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time necessary to file such appeal. *Id.*

95. Because of the potentially diminishing value of the Purchased Assets, the Debtor needs the flexibility to close this sale promptly after all closing conditions have

been met or waived. The Debtor hereby requests that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

96. The Debtor reserves the right to adopt, implement, and/or waive such other, additional or existing Bidding Procedures or requirements that serves to further an orderly Auction, bid process, and to maximize value to the Debtor's estate.

NOTICE

97. The Debtor will provide notice of this Motion to: (a) the U.S. Trustee; (b) the creditors holding the 23 largest unsecured claims against the Debtor's estate, as identified in the Debtor's chapter 11 petition; (c) the Debtor's prepetition secured lenders; (d) counsel for the Crius Solar Fulfillment, LLC; (e) and the parties requesting notice pursuant to Rule 2002 of the Federal Rules of Bankruptcy Procedure. In light of the nature of the relief requested in this Application, the Debtor respectfully submits that no further notice is necessary.

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CONCLUSION

WHEREFORE, the Debtor respectfully requests that this Court (i) grant this Motion and the relief requested herein; (ii) enter the proposed orders attached hereto; and (iii) grant such other relief as it deems just and proper.

Dated: September 23, 2016
Wilmington, Delaware

BAYARD, P.A.

/s/ Scott D. Cousins

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Proposed Attorneys for Debtor and Debtor-in-Possession

EXHIBIT A

[Form of Bidding Procedures Order]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	**Related D.I.:** _____

ORDER (A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING BREAKUP FEE AND EXPENSE REIMBURSEMENT; AND (F) GRANTING RELATED RELIEF

This matter coming before the Court on the motion (the "**Motion**")[2] of the above-captioned debtor and debtor in possession (the "**Debtor**") for the entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "**Bankruptcy Rules**"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the "**Local Rules**"): (I)(A) approving procedures in connection with the sale of all or substantially all of the Debtor's assets; (B) scheduling the related auction and hearing to consider approval of sale; (C) approving procedures related to the assumption of certain executory contracts and unexpired leases; (D)

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance, CA 90501.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

approving the form and manner of notice thereof; (E) approving the breakup fee and expense reimbursement; and (F) granting related relief; and (II)(A) authorizing the sale of all or substantially all of the Debtor's assets pursuant to the successful bidder's asset purchase agreement free and clear of liens, claims, encumbrances, and other interests; (B) approving the assumption and assignment of certain executory contracts and unexpired leases related thereto; and (C) granting related relief; the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; and good and sufficient cause having been shown;

IT IS FURTHER FOUND AND DETERMINED THAT:

A. The Debtor's proposed notice of the Bidding Procedures, the Cure Procedures, the Auction and the hearing to approve the sale of the Purchased Assets (the "**Sale Hearing**") is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

B. The Bidding Procedures substantially in the form attached hereto as **Schedule 1** are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Purchased Assets.

C. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

D. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled are overruled.

3. The Bidding Procedures attached hereto as **Schedule 1** are APPROVED.

4. Crius Solar Fulfillment, LLC is hereby approved to be and designated as the Stalking Horse Purchaser.

5. Subject to the Bidding Procedures and approval of the sale at the Sale Hearing, the Debtor's entry into the Stalking Horse Agreement (including any amendments thereto) attached hereto as Exhibit C[3] to the Motion, is hereby approved.

6. The Breakup Fee and Expense Reimbursement are APPROVED and shall be paid when and as set forth in the Stalking Horse Agreement as an administrative claim of the estate under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall not be subordinate to any other administrative expense claims against the Debtor. Notwithstanding anything to the contrary contained herein in the event of termination of

[3] For the convenience of parties in interest, a chart listing important dates set forth in this Order is attached hereto as **Schedule 2**.

the Stalking Horse Agreement, upon timely payment of the Breakup Fee and Expense Reimbursement to the Stalking Horse Purchaser if due, the Debtor and its representatives, on the one hand, and the Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, will be deemed to have fully released and discharged each other from any liability resulting from the termination of the Stalking Horse Agreement, and neither Debtor and its representatives, on the one hand, and Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, nor any other Person, will have any other remedy or cause of action under or relating to the Stalking Horse Agreement or any applicable law, including for reimbursement of expenses. Any Breakup Fee and Expense Reimbursement payable pursuant to the terms of the Stalking Horse Agreement shall be payable without any further order of the Bankruptcy Court.

7. The Bid Deadline shall be [_____], 2016 at 9:00 a.m. (prevailing Eastern Time).

8. The Debtor shall have the exclusive right to determine whether a bid is a Qualified Bid and shall notify Qualified Bidders whether their bids have been recognized as such as promptly as practicable after a Qualified Bidder delivers all of the materials required by the Bidding Procedures. The Stalking Horse Agreement is a Qualified Bid for all purposes under the Bidding Procedures.

9. The Auction, if necessary, shall be held on [_____], 2016 at 10:00 a.m. (Eastern) at the offices of Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801 or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction.

10. At such Auction, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale, and the Auction shall be conducted openly and transcribed.

11. The Debtor shall determine which offer is the highest and otherwise best offer for the Purchased Assets, giving effect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor.

12. Neither the Stalking Horse Purchaser nor the Successful Bidder (if different) shall be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Stalking Horse Agreement (or, in the case of a Successful Bidder other than the Stalking Horse Purchaser, the applicable asset purchase agreement) or any other Sale related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

13. The Sale Hearing shall be held on[_____], 2016 at ____:00 __.m. (prevailing Eastern Time) before this Court, the U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, [_]th Floor, Courtroom [_]. Any objections to the Sale shall be filed and served so as to be received no later than [_____], 2016 at 4:00 p.m. (prevailing Eastern Time) by: (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller

(emiller@bayardlaw.com), (iii) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)), (iv) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the Notice Parties).

14. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and the Debtor shall have the exclusive right, in the exercise of its fiduciary obligations and business judgment, to cancel the Sale at any time subject to the terms of this Order, including the payment of the Breakup Fee and Expense Reimbursement to the Stalking Horse Purchaser in accordance with the terms of this Order and the Stalking Horse Agreement.

15. The following forms of notice are approved: (a) Notice of Sale Procedures, Auction Date and Sale Hearing, in the form substantially similar to that attached hereto as **Schedule 3** (the "**Procedures Notice**") and (b) the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor That May Be Assumed and Assigned (the "**Cure Notice**"), in the form substantially similar to that attached hereto as **Schedule 4**.

16. The Debtor shall, within two (2) business days after the entry of this Order, serve this Order by first class mail, postage prepaid on (a) the US Trustee, (b) any Official Committee of Unsecured Creditors, (c) any parties requesting notices in this case

pursuant to Bankruptcy Rule 2002, (d) counsel to the Stalking Horse Purchaser, and (e) all Potential Bidders, collectively with the parties specified in this paragraph, the "**Procedures Notice Parties**").

17. The Debtor shall serve the Motion and the Cure Notice upon each counterparty to the Assigned Contracts or their counsel (if known), by no later than [_____], 2016. The Cure Notice shall state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assigned Contracts must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assigned Contract in order to cure any defaults that exist under such contract (the "**Cure Amounts**").

18. If any counterparty to an Assigned Contract objects for any reason to the assumption and assignment of an Assigned Contract (an "**Assumption Objection**"), such counterparty must file and serve such Assumption Objection so as to be received by the Notice Parties by no later than (the "**Assumption Objection Deadline**"): (i) 4:00 p.m. (prevailing Eastern Time) on [_____], 2016, provided, however, if any bidder other than the Stalking Horse Bidder is the Successful Bidder, then that any counterparty may file and serve an objection to the assumption and assignment of the Assigned Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of future performance under the Assigned Contract up to the time of the Sale Hearing, or raise it at the Sale Hearing; or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the motion to assume such Assigned Contract if such contract is to be assumed and assigned after the Sale Hearing). The Court will make any

and all determinations concerning adequate assurance of future performance under the Assigned Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.

19. If a Contract or Lease is assumed and assigned pursuant to Court order, then except for Disputed Cure Amounts (as defined herein), the Assigned Contract counterparty shall receive no later than three (3) business days following the closing of the Sale, the Cure Amount, if any, as set forth in the Cure Notice. To the extent the Assigned Contract counterparty wishes to object to the Cure Amount, if any, set forth in the Cure Notice, its Assumption Objection must set forth with specificity each and every asserted default in any executory contract or unexpired lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtor in the Cure Notice.

20. In the event that the Debtor and the non-Debtor party cannot resolve the Cure Amount, the Debtor shall segregate any disputed Cure Amounts ("**Disputed Cure Amounts**") pending the resolution of any such disputes by the Court or mutual agreement of the parties. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing. Any counterparty to an Assigned Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of that set forth in the Cure Notice.

21. Except to the extent otherwise provided in the Successful Bidder's Purchase Agreement, the Debtor and the Debtor's estate shall be relieved of all liability

accruing or arising after the assumption and assignment of the Assigned Contracts pursuant to section 365(k) of the Bankruptcy Code.

22. To the extent the provisions of this Order are inconsistent with the provisions of any Exhibit or Schedule referenced herein or with the Motion, the provisions of this Order shall control.

23. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

24. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

Dated: _____, 2016
Wilmington, Delaware

_____
United States Bankruptcy Judge

Schedule 1

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed in connection with the sale of all or substantially all assets (the "**Assets**") of the Debtor, in connection with the chapter 11 case pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 16-12098 (____).

The Debtor entered into that certain asset purchase agreement, dated September 23, 2016 (together with the schedules and related documents thereto, the "**Stalking Horse Agreement**") between the Debtor and Crius Solar Fulfillment, LLC (the "**Stalking Horse Purchaser**"), pursuant to which the Stalking Horse Purchaser has agreed to acquire all or substantially all of the Assets (collectively, to the extent provided in the Stalking Horse Agreement, the "**Purchased Assets**") on the terms and conditions specified therein.

The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

I. ASSETS TO BE SOLD

The Debtor seeks to complete a sale of the Purchased Assets (the "**Sale**") and the assumption of certain liabilities described in Sections 2.3 and 2.5 of the Stalking Horse Agreement. The Stalking Horse Agreement will serve as the "stalking-horse" bid for the Purchased Assets. Except as otherwise provided in the Stalking Horse Agreement or such other approved purchase agreement of the Successful Bidder, all of the Sellers' right, title and interest in and to each Purchased Asset to be acquired shall be sold free and clear of all liens, hypothecations, encumbrances, claims, liabilities, security interests, interests, mortgages, pledges, restrictions, options, easements, encroachments, or restrictions on transfer of any kind or nature thereon and there against (collectively, the "**Liens**"), such Liens to attach solely to the net proceeds of the sale of such Purchased Assets

II. THE BID PROCEDURES

In order to ensure that the Debtor receives the maximum value for the Purchased Assets, it intends to conduct a sale process for the Purchased Assets pursuant to the procedures and on the timeline proposed herein.

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process (a "**Potential Bidder**") must deliver the following to the Notice Parties (as defined below):

(i) a written disclosure of the identity of each entity including all affiliates, equity sources or other parties that will be or is associated with bidding for the Purchased Assets or otherwise participating in connection with such bid and the complete terms of any such participation; and

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor, which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A Potential Bidder that delivers the documents and information described above and that the Debtor determines in its reasonable business judgment, after consultation with its advisors, is likely (based on availability of financing, experience and other considerations) to be able to consummate the sale, will be deemed a "**Qualified Bidder**." The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith.

As promptly as practicable after a Potential Bidder delivers all of the materials required above (and in any event no later than two (2) business days thereafter), the Debtor will determine and will notify the Potential Bidder and the Notice Parties if such Potential Bidder is a Qualified Bidder.

B. Due Diligence

The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deems appropriate, in its reasonable discretion. The Sellers must promptly advise the Stalking Horse Purchaser in the event any other Qualified Bidder receives diligence the Stalking Horse Purchaser has not previously received and shall promptly be provided with access to such diligence materials.

The due diligence period shall end on the Bid Deadline. For the avoidance of doubt, neither the Debtor nor any of its respective representatives shall be obligated to furnish any due diligence information to any person other than a Qualified Bidder.

C. Provisions Governing Qualified Bids

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a "**Qualified Bid**"):

(i) it fully discloses the identity of the Qualified Bidder;

(ii) it states that the applicable Qualified Bidder offers to purchase the Purchased Assets upon terms and conditions that the Debtor reasonably determines are at least as favorable to the Debtor as those set forth in the Stalking Horse Agreement, and follows the form and structure of the Stalking Horse Agreement;

(iii) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, then the offer shall remain irrevocable until

the earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the date that is fifteen (15) business days after entry of the Sale Order with respect to the Successful Bidder and sixteen (16) business days after entry of the Sale Order with respect to the Back-Up Bidder;

(iv) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;

(v) it sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals;

(vi) it includes a duly authorized and executed copy of a purchase or agreement (a "**Purchase Agreement**"), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, together with copies marked ("**Marked Agreement**") to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court Motion; provided however, that such Purchase Agreement shall not include any financing or diligence conditions;

(vii) it includes written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on further third party approvals or commitments, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, or such other financial information as may be acceptable to the Debtor in its reasonable discretion (collectively, the "**Financials**") of the Qualified Bidder, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Qualified Bidder's equity holder(s) or other financial backer(s);

(viii) it provides for a cash purchase price at least $250,000 (the "**Minimum Overbid**") in excess of the aggregate consideration to be received by or for the benefit of the Debtor's estate upon consummation of the Stalking Horse Agreement ((a) $200,000 in cash, plus (b) cash in an amount sufficient to satisfy the Debtor's secured obligations being credit bid by the Stalking Horse Purchaser under the Stalking Horse Agreement (specifically, $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan (as defined in the Stalking Horse Agreement totaling $2,272,000, plus (z) such amount of Senior Notes (as defined in the Stalking Horse Agreement) necessary to total, when combined with the

credit bid amounts from clauses (x) and (y), $11.7 million), and otherwise has a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, that is greater or otherwise better than the value offered under the Stalking Horse Agreement including impact of the liabilities assumed in the Stalking Horse Agreement. The Minimum Overbid represents the sum of (A) the amount of the Breakup Fee (as defined below) of $475,000 and Expense Reimbursement of $175,000, plus (B) $250,000 plus (C) the Purchase Price of $11,900,000;

(ix) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;

(x) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;

(xi) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

(xii) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;

(xiii) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price;

(xiv) it contains in writing that the Qualified Bidder will pay off, in full, the DIP loan and become the DIP lender, with such payoff to occur within three (3) days of the Sale Hearing;

(xv) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;

(xvi) it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;

(xvii) it contains such other information reasonably requested by the Debtor; and

(xviii) it is received prior to the Bid Deadline.

Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid, for all purposes in connection with the Bidding Procedures, the Auction, and the Sale. The Stalking Horse Purchaser shall not be required to take any further action in order to participate in the Auction (if any) or, if the Stalking Horse Purchaser is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing (as defined below).

The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) no later than two (2) business days following the expiration of the Bid Deadline.

D. Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "**Notice Parties**"): (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller (emiller@bayardlaw.com); (iii) financial advisor to the Debtor: SSG Capital Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428 (Attn: J. Scott Victor (jsvictor@ssgca.com)); (iv) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)); and (v) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the Notice Parties), so as to be received by the Debtor not later than 50 days after the Petition Date (the "**Bid Deadline**").

E. Credit Bidding

The Stalking Horse Purchaser holds security interests in the Purchased Assets and has included within its Stalking Horse Agreement a credit bid for the Purchased Assets. It may submit additional credit bids for the Purchased Assets as it deems necessary and desirable.

F. Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the Stalking Horse Agreement, and (4) any other factors deemed relevant by the Debtor in its reasonable discretion.

G. No Qualified Bids

If the Debtor does not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtor will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Purchased Assets.

H. Auction Process

If the Debtor receives one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtor will conduct an auction of the Purchased Assets (the "**Auction**"), which shall be transcribed, on a date that is no later than 52 days after the Petition Date (the "**Auction Date**") at the offices of Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction shall run in accordance with the following procedures:

(a) the Auction will be conducted openly and all creditors will be permitted to attend;

(b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction;

(c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;

(d) at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtor will identify to the Stalking Horse Purchaser and all other Qualified Bidders which Qualified Bid the Debtor believes in its reasonable discretion is the highest or otherwise best offer (the "**Starting Bid**");

(e) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the

Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;

(f) the Debtor, after consultation with its advisors and with the consent of the Stalking Horse Purchaser, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction; and

(g) bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "**Subsequent Bid**") providing a net value to the estate of at least an additional $100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid that it believes to be the highest or otherwise better offer (the "**Leading Bid**"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Qualified Bidders will not have the opportunity to pass. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtor will give effect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor.

B. Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtor, in consultation with its advisors, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the "**Successful Bid**" and the bidder(s) making such bid, collectively, the "**Successful Bidder**"), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, subject only to approval by the Court.

Unless otherwise agreed to by the Debtor and the Successful Bidder, within two (2) business days after the conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Within one (1) business day following the conclusion of the Auction, the Debtor shall file a notice identifying the Successful Bidder with the Court and, if the Stalking Horse Purchaser is not the Successful Bidder, shall serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

The Debtor will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing.

C. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

D. Back-Up Bidder

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid to the Successful Bidder, as determined by the Debtor in the exercise of its business judgment, at the Auction shall be required to serve as a back-up bidder (the "**Back-Up Bidder**") and keep such bid open and irrevocable until sixteen (16) business days after entry of the Sale Order; provided that the Stalking Horse Purchaser shall not be required to be the Back-Up Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Bankruptcy Court.

E. The Bid Protections

In recognition of this expenditure of time, energy, and resources, the Debtor has agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtor will pay the Stalking Horse Purchaser an amount in cash equal to (i) $475,000 as more fully described in the Stalking Horse Agreement (the "**Breakup Fee**") plus (ii) the aggregate amount of the reasonable, actual, and necessary, out-of-pocket expenses paid or incurred by the Stalking Horse Purchaser and its affiliates relating to or in connection with its bid (the "**Expense Reimbursement**"), subject to a cap of $175,000. The Breakup Fee and the Expense Reimbursement shall be payable as provided for pursuant to the terms of the Stalking Horse Agreement and nothing herein shall be deemed to limit or otherwise modify the terms thereof, including other circumstances pursuant to which the Breakup-Up Fee and Expense Reimbursement may be payable.

The Debtor has further agreed that its obligation to pay the Breakup Fee and Expense Reimbursement pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, shall, to the extent owed by the Debtor, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code and shall be payable [within two (2) business days] under the terms and conditions of the Stalking Horse Agreement and the Bankruptcy Court's order approving these Bidding Procedures, notwithstanding section 507(a) of the Bankruptcy Code.

III. Sale Hearing

The Debtor will seek entry of an order from the Court at the Sale Hearing to be scheduled no later than 55 days following the Petition Date, to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bid Procedures.

Schedule 2

(Significant Dates)

- **Assumption Objection Deadline:** [_____], **2016 at 4:00 p.m. (Eastern Time)**
- **Bid Deadline:** [_____], **2016 at 9:00 a.m. (Eastern Time)**
- **Auction:** [_____], **2016 at 10:00 a.m. (Eastern Time)**
- **Sale Objection Deadline:** [_____], **2016 at 4:00 p.m. (Eastern Time)**
- **Sale Hearing:** [_____], **2016 at __:00 _.m. (Eastern Time)**

Schedule 3

(Procedures Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	

NOTICE OF SALE PROCEDURES,
AUCTION DATE AND SALE HEARING

PLEASE TAKE NOTICE that on _____, the above-captioned Debtor and Debtor in possession (the "**Debtor**") filed the Motion of the Debtor and Debtor in Possession Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code for an Order (I)(A) Approving Procedures in Connection with the Sale of All or Substantially All of the Debtor's Assets; (B) Scheduling the Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Breakup Fee and Expense Reimbursement; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of All or Substantially All of the Debtor's Assets Pursuant to the Successful Bidder's Asset Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief (the "**Motion**").[2] The Debtor seeks, among other things, to sell all or substantially all assets (the "**Purchased Assets**") of the Debtor to Crius Solar Fulfillment, LLC (the "**Stalking Horse Purchaser**") or the bidder submitting the highest or otherwise best offer for the Purchased Assets (such bidder, the "**Successful Bidder**"), at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on _____, 2016, the Bankruptcy Court entered an order (the "**Bidding Procedures Order**") approving the Motion and the bidding procedures (the "**Bidding Procedures**"), which set the key dates and times related to the Sale of the Purchased Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures. To the extent that there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, an auction (the "**Auction**") to sell the Purchased Assets will be conducted on [_____], 2016

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance, CA 90501.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

at 10:00 a.m. (Eastern) at the offices of [_____], or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Purchased Assets to the Successful Bidder (the "**Sale Hearing**") before the , United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, [_]th Floor, Courtroom [_], on [_____]**, 2016** at __:00 _.m. (prevailing Eastern Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing. Objections to the Sale shall be filed and served **so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on** [_____]**, 2016** by: (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller (emiller@bayardlaw.com), (iii) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)), (iv) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the Notice Parties).

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to [Matthew P. Karlson, Managing Director, SSG Capital Advisors, LLC, Attn: Matthew P. Karlson, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428 or by emailing Matthew P. Karlson (mkarlson@ssgca.com).]

Dated: [_____], 2016

Respectfully submitted,

/s/ DRAFT

Scott D. Cousins
BAYARD P.A.
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: scousins@bayardlaw.com

Proposed Attorneys for Debtor and Debtor-in-Possession

Schedule 4

(Cure Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	

NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTOR THAT MAY BE ASSUMED AND ASSIGNED

PLEASE TAKE NOTICE that on [_____], the above-captioned Debtor and Debtor in possession (the "**Debtor**") filed the Motion of the Debtor and Debtor in Possession Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code for an Order (I)(A) Approving Procedures in Connection with the Sale of All or Substantially All of the Debtor's Assets; (B) Scheduling the Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Breakup Fee and Expense Reimbursement; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of Substantially All of the Debtor's Assets Pursuant to the Successful Bidder's Asset Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief (the "Motion").[2]

PLEASE TAKE FURTHER NOTICE that, on [_____], 2016, the Court entered an Order (the "**Bidding Procedures Order**") approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of all or substantially all of the assets (the "**Purchased Assets**") of the Debtor and (ii) procedures for the assumption and assignment of certain of the Debtor's executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that: (1) the Debtor entered into the Stalking Horse Agreement with Crius Solar Fulfillment, LLC (the "**Stalking Horse Purchaser**") and (2) your contract may be assumed and assigned to Crius under the Stalking Horse Agreement, or to such other Purchaser that may emerge as the Successful Bidder following the Auction (if any) conducted pursuant to the Bidding Procedures.

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance CA 90501.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE that the Motion also seeks Court approval of the sale (the "**Sale**") of the Purchased Assets to the Successful Bidder, free and clear of all liens, claims, interests and encumbrances pursuant to sections 105(a) and 363 of the Bankruptcy Code, including the assumption by the Debtor and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code (the "**Assigned Contracts**"). Within 24 hours after conclusion of the Auction (if any), unless otherwise agreed to by the Debtor, but in no event, at least one (1) business day prior to the Sale Hearing, the Debtor shall file a notice identifying the Successful Bidder with the Bankruptcy Court and, if the Stalking Horse Purchaser is not the Successful Bidder, serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

PLEASE TAKE FURTHER NOTICE that an evidentiary hearing (the "**Sale Hearing**") to approve the Sale and authorize the assumption and assignment of the Assigned Contracts will be held on [_____]**, 2016 at __:__ _.m** (prevailing Eastern Time), before the _____, United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, [_]th Floor, Courtroom [_]. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, consistent with the Bidding Procedures Order, the Debtor may seek to assume an executory contract or unexpired lease to which you may be a party. The Assigned Contract(s) are described on **Exhibit A** attached to this Notice. The amount shown on **Exhibit A** hereto as the "Cure Amount" is the amount, if any, based upon the Debtor's books and records, which the Debtor asserts is owed to cure any defaults existing under the Assigned Contract.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assigned Contract(s) on **Exhibit A** to which you are a party, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, an objection on or before [_____]**, 2016 at 4:00 p.m. (prevailing Eastern Time)**. Any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an objection to the Cure Amount contained in this Notice, you will receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set forth herein, if any. Any non-Debtor party to an Assigned Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that if you have any other objection to the Debtor's assumption and assignment of the Assigned Contract to which you may be a party, you also must file that objection in writing no later than 4:00 p.m. (prevailing Eastern Time) **on** [ ]**, 2016 at 4:00 p.m. (prevailing Eastern Time)**; provided, however, if any bidder other than the Stalking Horse Purchaser is the Successful Bidder, then that any counterparty to an Assigned Contract may file and serve an objection to the assumption and assignment of the Assigned Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of

future performance under the Assigned Contract up to the time of the Sale Hearing, or raise it at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that any objection you may file must be served so as to be received by the following parties by the applicable objection deadline date and time (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller (emiller@bayardlaw.com), (iii) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)), (iv) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the "**Notice Parties**").

PLEASE TAKE FURTHER NOTICE that the buyer shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under sections 365(b) and (f) of title 11 of the United States Code §§ 101-1532 (the "**Bankruptcy Code**"), in connection with the proposed assignment of any Assigned Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assigned Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, in the event that the Debtor and the non-Debtor party cannot resolve the Cure Amount, the Debtor shall segregate any disputed Cure Amounts ("**Disputed Cure Amounts**") pending the resolution of any such disputes by the Court or mutual agreement of the parties. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder, pursuant to section 365(k) of the Bankruptcy Code, the Debtor and the Debtor's estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assigned Contracts.

PLEASE TAKE FURTHER NOTICE that nothing contained herein shall obligate the Debtor to assume any Assigned Contracts or to pay any Cure Amount.[3]

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

[3] "Assigned Contracts" are those Contracts and Leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Purchased Assets; however, (i) the Stalking Horse Purchaser may exclude Contracts and Leases from the list of Assigned Contracts as provided in the Stalking Horse Agreement, and (ii) if different, the Successful Bidder may choose to exclude certain of the Debtor's Contracts or Leases from the list of Assigned Contracts as part of their Qualifying Bid, causing such Contracts and Leases not to be assumed by the Debtor.

ANY NON-DEBTOR PARTY TO ANY ASSIGNED CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSIGNED CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

Dated: [_____], 2016

Respectfully submitted,

/s/ DRAFT

Scott D. Cousins
BAYARD P.A.
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: scousins@bayardlaw.com

Proposed Attorneys for Debtor and Debtor-in-Possession

Exhibit A

(Assigned Contracts)

EXHIBIT C

EXECUTION VERSION

ASSET PURCHASE AGREEMENT

by and between

VERENGO, INC.

and

CRIUS SOLAR FULFILLMENT, LLC

Dated as of September 23, 2016

TABLE OF CONTENTS

EXHIBITS

OTHER

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this "Agreement") is made and entered into as of September 23, 2016 (the "Effective Date") by and among Verengo, Inc. ("Seller") and Crius Solar Fulfillment, LLC, a Delaware limited liability company (including its successors and assigns, "Buyer"). Seller and Buyer are sometimes individually referred to in this Agreement as a "Party" and together as the "Parties."

WHEREAS, Seller is engaged, among other things, in the Business (as hereinafter defined);

WHEREAS, Seller owns the Purchased Assets (as hereinafter defined);

WHEREAS, as promptly as practicable following the execution and delivery hereof (but in no event more than one (1) Business Day after the date of this Agreement), Seller shall file a voluntary petition for relief commencing a case (the "Bankruptcy Case") under Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court", and the date on which such petition for relief is filed being referred to as the "Petition Date");

WHEREAS, Buyer and Seller have entered or shall enter into that certain Senior Secured Debtor-in-Possession Credit Agreement (as it may be amended from time to time, the "DIP Credit Agreement");

WHEREAS, in connection with the Bankruptcy Case and, upon the terms and subject to the conditions set forth in this Agreement and in the Sale Order (as hereinafter defined), Seller wishes to sell, transfer, convey, assign and deliver to Buyer, and Buyer wishes to purchase and acquire, the Purchased Assets free and clear of all Liens, Claims, and Liabilities (other than Permitted Liens and Assumed Liabilities, each as hereinafter defined), all in accordance with Sections 105, 363 and 365 and the other applicable provisions of the Bankruptcy Code (the "Purchase"); and

WHEREAS, the execution and delivery of this Agreement and Seller's ability to consummate the transactions set forth in this Agreement are subject to, among other things, the entry of the Sale Order.

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

ARTICLE I

CERTAIN DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms have the meanings set forth below:

"Accounts Receivable" shall mean all accounts and notes receivable of Seller relating to the Business existing on the Closing Date.

"Affiliate" of any particular Person means any other Person controlling, controlled by or under common control with such Person. For purposes of this definition, "control" (including the terms "controlling," "controlled by" and "under common control with") means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

"Alternative Transaction" means (i) any sale involving, whether in whole or in part, all or any portion of the Purchased Assets, (ii) one or more sales, assignments, leases, transfers, or other dispositions, including through an asset sale, stock sale, merger, reorganization or other similar transaction, of all or any portion of the Purchased Assets to any Person (or group of Persons), whether in one transaction or a series of transactions, in each case other than to Buyer or its Affiliates, or (iii) any other transaction involving Seller or any of its Affiliates, but not Buyer or any of its Affiliates, that would, or would reasonably be expected to, prevent or materially delay or impede the transactions contemplated by this Agreement.

"Assignment and Assumption Agreement" means that assignment and assumption agreement substantially in the form attached hereto as Exhibit A.

"Auction" means the auction, if any, to be conducted in accordance with the Bid Procedures Order.

"Avoidance Actions" shall mean all preference claims, fraudulent transfer claims and avoidance actions or other related causes of action whether arising under the Bankruptcy Code, non-bankruptcy law, or otherwise, and the proceeds thereof, including actions available to Seller under Chapter 5 of the Bankruptcy Code, of whatever kind or nature, and whether asserted or unasserted.

"Bid Procedures Order" means the Order of the Bankruptcy Court approving the bid procedures described in Section 1.1(a) of the Seller Disclosure Letter, in the form attached hereto as Exhibit B, with such changes as are acceptable in form and substance to Buyer in its sole discretion.

"Bill of Sale" means that bill of sale substantially in the form attached hereto as Exhibit C.

"Business" means, as conducted by Seller, the business of selling and installing solar energy systems and batteries.

"Business Day" means any day except a Saturday, a Sunday or any other day on which commercial banks are required or authorized to close in New York, New York or Torrance, California.

"Claim" shall have the meaning ascribed to such term under Section 101(5) of the Bankruptcy Code

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means, with respect to a Person or business, any and all information (whether or not specifically labeled or identified as "confidential") relating to such Person or business, including, but not limited to, the following: (i) internal business information (including historical and projected financial information and budgets and information relating to strategic and staffing plans and practices, business, training, marketing, promotional and sales plans and practices, cost, rate and pricing structures and accounting and business methods) of such Person or business; (ii) identities of, individual requirements of, specific contractual arrangements with, and information about, suppliers, distributors, customers, independent contractors or other business relations of such Person or business; (iii) trade secrets, know-how, compilations of data and analyses, techniques, systems, formulae, recipes, research, records, reports, manuals, documentation, models, data and data bases relating thereto of such Person or business; (iv) inventions, innovations, improvements, developments, methods, designs, analyses, drawings, reports and all similar or related information (whether or not patentable) of such Person or business; and (v) other proprietary rights, documents or information of such Person or business.

"Consent" means any authorization, approval, consent, ratification, negative clearance, waiver, notice or filing by any Person or Governmental Entity, or a Final Order of the Bankruptcy Court that deems, or renders unnecessary, the same.

"Contract" means all contracts, leases, deeds, mortgages, licenses, instruments, notes, commitments, undertakings, indentures, joint ventures and all other agreements, commitments and legally binding arrangements, whether written or oral.

"Cure Amounts" means the amount of cash required to be paid (and in the case of any cure amounts in dispute, any potentially additional amounts required to be held in reserve during the pendency of such disputes, in accordance with the Bid Procedures Order) with respect to the Purchased Assets to cure all defaults under any Assigned Contract and compensate for any pecuniary losses or otherwise with respect to the Purchased Assets or to effectuate, pursuant to the Bankruptcy Code, the assumption by, and assignment to, Buyer of the Assigned Contracts and/or the Purchased Assets.

"Effective Date" means the date as of which this Agreement was executed as set forth in the preamble.

"Employment Agreements" means, collectively, the employment, independent contractor, consulting or similar agreements by and between Buyer and each of the Key Employees.

"Environmental Law(s)" means any federal, state, or local statute, regulation, ordinance, order, decree, or other requirement of Law (including, without limitation, common law) relating to protection of human health or welfare, natural resources or the environment or to the identification, generation, use, transportation, handling, discharge, emission, treatment, storage or disposal of any pollutant, contaminant, hazardous or solid waste, or any hazardous or toxic substance or material. Without limiting the generality of the foregoing, Environmental

Laws shall include, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq.; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 et seq.; the Clean Air Act, 42 U.S.C. § 7401 et seq.; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq.; the Safe Drinking Water Act, 42 U.S.C. 300(f) et seq.; the Occupational Safety and Health Act, 29 U.S.C. § 651 et seq.; and the Hazardous Materials Transportation Act, 49 U.S.C. § 5101 et seq.; each as amended, together with the regulations promulgated thereunder, permits issued thereunder, and analogous state and local statutes, regulations and ordinances.

"Equipment and Machinery" means those Purchased Assets consisting of: (a) equipment, machinery, furniture, fixtures and improvements, supplies and vehicles, (b) any rights of Seller to the warranties (to the extent assignable) and licenses received from manufacturers and sellers of the aforesaid items and (c) any related claims, credits, rights of recovery and set-off with respect thereto.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the rules and regulations promulgated thereunder.

"Final Order" means an order or judgment of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Bankruptcy Case (or the docket of such other court), which is and remains in full force and effect, has not been modified, amended, reversed, vacated or stayed and as to which (i) the time to appeal, petition for certiorari, or move for a new trial, re-argument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, re-argument or rehearing shall then be pending or (ii) if an appeal, writ of certiorari new trial, re-argument or rehearing thereof has been sought, such order or judgment of the Bankruptcy Court (or other court of competent jurisdiction) shall have been affirmed by the highest court to which such order was appealed, or certiorari shall have been denied, or a new trial, re-argument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, re-argument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Federal Rules of Bankruptcy Procedure, may be filed relating to such order, shall not cause an order not to be a Final Order.

"Fundamental Representation" means any of the representations and warranties set forth in Sections 4.2(a) (Authorization; Noncontravention), 4.15 (Brokerage), 4.16 (Title of Assets), 5.2(a) (Authorization; Noncontravention) and 5.5 (Brokerage).

"GAAP" means generally accepted accounting principles of the United States of America consistently applied, as in effect from time to time.

"Governmental Entity" means any multinational, United States or non- United States federal, state, territory, provincial, municipal or local court (including, for the avoidance of doubt, the Bankruptcy Court), arbitral tribunal, administrative agency, legislature or

commission or other governmental, quasi-governmental or regulatory agency or authority (including any bureau, division or department thereof) or any securities exchange.

"Indebtedness" means (i) any indebtedness for borrowed money; (ii) any indebtedness evidenced by any note, bond, debenture or other debt security or similar instrument; (iii) any Liabilities for the deferred purchase price of property (including any Purchased Asset) or services with respect to which Seller is liable, contingently or otherwise, as obligor or otherwise; (iv) any commitment by which Seller assures a creditor against loss (including contingent reimbursement obligations with respect to letters of credit); (v) any indebtedness guaranteed in any manner by Seller (including guarantees in the form of an agreement to repurchase or reimburse); (vi) any Liabilities under capitalized leases with respect to which Seller is liable, contingently or otherwise, as obligor, guarantor or otherwise, or with respect to which obligations Seller assures a creditor against loss; (vii) any indebtedness or Liabilities secured by a Lien on Seller's assets; (viii) any amounts owed by Seller to any Person under any noncompetition or consulting arrangements; (ix) any amounts owed to Affiliates of Seller, (including intercompany trade and accounts payable); and (x) all "cut" but uncashed checks issued by Seller that are outstanding as of the Closing Date.

"Intellectual Property" means all of the following in all jurisdictions throughout the world: (i) trademarks and service marks, trade dress, product configurations, trade names and other indications of origin, applications or registrations or existing at common law in any jurisdiction pertaining to the foregoing and all goodwill associated therewith; (ii) inventions, discoveries, improvements, ideas, know-how, formulas, methodology, processes, technology, software (including password unprotected interpretive code or source code, object code, development documentation, programming tools, drawings, rules, specifications and data) and applications and patents in any jurisdiction pertaining to the foregoing, including re-issues, continuations, divisions, continuations-in-part, renewals or extensions; (iii) trade secrets, including models, methodologies, specifications, rules, procedures, processes and other confidential information and the right in any jurisdiction to limit the use or disclosure thereof; (iv) copyrights in writings, designs, software, mask works or other works, applications or registrations in any jurisdiction for the foregoing and all moral rights related thereto; (v) database rights; (vi) Internet Web sites, domain names and applications and registrations pertaining thereto; (vii) all similar proprietary rights; (viii) books and records pertaining to the foregoing; and (ix) claims or causes of action arising out of or related to past, present or future infringement or misappropriation of the foregoing.

"Intellectual Property Assignments" means one or more assignments in form and substance satisfactory to Buyer transferring Seller's right, title and interest in and to the Intellectual Property to Buyer.

"Key Employees" means the employees of the Business set forth on Section 1.1(a) of the Buyer Disclosure Letter.

"Knowledge" means with respect to Seller, the knowledge of the individuals set forth in Section 1.1(b) of the Seller Disclosure Letter after due inquiry.

"Law" means any statute, law, ordinance, ruling, policy, rule or regulation of any Governmental Entity and all judicial or administrative interpretations thereof and any common law doctrine.

"Liabilities" means any and all Indebtedness, losses, charges, debts, damages, obligations, payments, costs and expenses, bonds, indemnities, liabilities and obligations of any nature, including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability, regardless of whether such claim, debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such claim, debt, obligation, duty or liability is immediately due and payable.

"Lien" or "Liens" means any lien, hypothecation, encumbrance, claim, liability, security interest, interest, mortgage, pledge, restriction, option, easement, encroachment, encumbrance, restriction on transfer or charge (including any conditional sale or other title retention agreement).

"Material Adverse Effect" means any change, development, event, fact, condition, effect or occurrence that, individually or in the aggregate, is or could reasonably be expected to be materially adverse to (i) the use, operation or value of the Purchased Assets, taken as a whole, or the Business, taken as a whole, or (ii) the ability of Seller to consummate the transactions contemplated hereby on a timely basis, excluding in the case of clause (i), any change, development, event, fact, condition, effect or occurrence, either alone or in combination, customarily resulting from or arising out of or in connection with (a) any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, licensors, licensees, partners or employees of the Business and solely related to the Bankruptcy Case, (b) changes in general economic, financial or securities markets or geopolitical conditions, (c) any actions required to be taken or omitted by Seller in accordance with this Agreement or any action or omission by Buyer in breach of this Agreement, (d) changes after the Effective Date in any applicable Laws or GAAP, and (e) any outbreak or escalation of hostilities or war or any act of terrorism or natural disaster or act of God; provided that in the case of each of clauses (b), (c) and (e), such matters shall be taken into account to the extent they have a disproportionate effect on the Business, taken as a whole, or the Purchased Assets, taken as a whole.

"Nondisclosure Agreement" means that certain Non-Disclosure Agreement between Seller and Crius Energy, LLC dated February 17, 2016.

"Order" means any judgment, order, injunction, decree, writ, permit or license issued or entered by or with any Governmental Entity or any arbitrator, whether preliminary, interlocutory or final, including any order entered by the Bankruptcy Court in the Bankruptcy Case (including the Bid Procedures Order and the Sale Order).

"Ordinary Course of Business" means the ordinary course of business, consistent with past practice.

"Permitted Liens" means (i) liens for Taxes not yet due and payable or for Taxes that may thereafter be paid without penalty or which are being contested in good faith by appropriate proceedings, (ii) statutory liens and rights of set-off of landlords, banks, carriers, warehousemen, mechanics, repairmen, workmen, suppliers and materialmen, in each case, incurred in the Ordinary Course of Business, (iii) rights of setoff or banker's liens upon deposits of cash in favor of banks or other depositary institutions, (iv) pledges or deposits under worker's compensation, unemployment insurance and social security laws to the extent required by applicable Law, (v) rights of third parties in real property pursuant to ground leases, leases, subleases, licenses, concessions or similar agreements that are set forth in Schedule 1.1(c), (vi) easements, covenants, conditions, restrictions and other similar matters of record or imperfections of title with respect to real property that do not individually or in the aggregate in any material respect interfere with the present use of the property subject thereto, (vii) local, county, state and federal ordinances, regulations, building codes or permits, now or hereafter in effect, relating to real property, or (viii) encroachments, overlaps, boundary line disputes and any other matters which would be disclosed by an accurate survey and inspection of real property and that do not materially impair the use of real property for its intended purpose.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated association, corporation, limited liability company, entity or Governmental Entity (whether federal, state, county, city or otherwise and including any instrumentality, division, agency or department thereof).

"Public Software" means any Software that contains, or is derived in any manner (in whole or in part) from, any Software that is distributed as free Software (as defined by the Free Software Foundation), open source Software (e.g., Linux or Software distributed under any license approved by the Open Source Initiative as of the date hereof as set forth at www.osi.org), or similar licensing or distribution models that require the distribution of source code to licensees free of charge.

"Representative" means, with respect to any Person, any and all directors, officers, employees, consultants, financial advisors, counsel, accountants and other agents of such Person.

"Retained Employees" means those employees of Seller who (i) provide services to the Business and (ii) do not for any reason commence employment with Buyer from and after the Closing Date.

"Sale Motion" means the motion, in form and substance satisfactory to Buyer, filed with the Bankruptcy Court seeking, among other things, approval of the Bid Procedures Order and the Sale Order.

"Sale Order" means an Order of the Bankruptcy Court that, among other things, approves and authorizes Seller to enter into this Agreement (or any amended version of such agreement agreed upon by the Parties in writing) and consummate the transactions contemplated by this Agreement, in the form attached hereto as Exhibit D, or otherwise in form and substance acceptable to Buyer in its sole discretion.

"Secured Loan" means the loan made pursuant to the Amended and Restated Business Financing Agreement between Seller and Buyer as success in interest to Western Alliance Bank, which was a successor in interest to Bridge Bank, National Association, dated as of March 20, 2014, as amended.

"Senior Notes" means the Secured Subordinated Convertible Promissory Notes between Seller as issuer and Buyer as holder and successor in interest to each of ClearSky Power & Technology Fund I LLC and Angeleno Investors III, L.P.

"Software" means computer software or firmware in any form, including object code, source code, computer instructions, commands, programs, modules, routines, procedures, rules, libraries, macros, algorithms, tools and scripts and all documentation of or for any of the foregoing.

"Subsidiary" means, with respect to any Person, any corporation, partnership, limited liability company, association or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (irrespective of whether, at the time, stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency) to vote in the election of directors, managers or trustees thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more of the other Subsidiaries of that Person or a combination thereof, or (ii) if a partnership, limited liability company, association or other business entity, either (A) a majority of the partnership or other similar ownership interest thereof is at the time owned or controlled, directly or indirectly, by that Person or one or more Subsidiaries of that Person or a combination thereof, or (B) such Person is a general partner, managing member or managing director of such partnership, limited liability company, association or other entity.

"Tax" or "Taxes" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property (including general and special real estate taxes and assessments, special service area charges, tax increment financing, charges, payments in lieu of taxes and similar charges and assessments), windfall profits, environmental (including tax under Code Section 59A), customs duties, capital stock, franchise, profits, withholding, foreign or domestic withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated or other tax, governmental fee, governmental assessment or governmental charge of a similar nature, whether computed on a separate or consolidated, unitary or combined basis or in any other manner including any interest, penalties or additions to Tax or additional amounts with respect to the foregoing whether disputed or not.

"Tax Returns" means returns, declarations, reports, claims for refund, information returns or other documents (including any related or supporting schedules, statements or information) filed or required to be filed in connection with the determination, assessment or collection of Taxes of any party or administration of any Laws, regulations or administrative requirements relating to Taxes.

"Transaction Documents" means this Agreement, the Bill(s) of Sale, the Assignment and Assumption Agreement, the Employment Agreements, all exhibits, schedules and other documents annexed hereto or thereto, or contemplated hereby or thereby, and the other agreements, instruments and documents expressly required to be delivered at the Closing.

1.2 Additional Definitions. Each of the following terms has the meaning ascribed to such term in the Article or Section set forth opposite such term:

Term	Article/Section
Agreement	Preamble
Appointee	8.1(e)
Assigned Contracts	2.5(c)
Assumed Liabilities	2.3
Bankruptcy Case	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Bankruptcy Rules	4.3
Breakup Fee	6.8(a)
Buyer	Preamble
Buyer Disclosure Letter	ARTICLE V
Cash Amount	3.1(a)
Closing	3.3(a)
Closing Date	3.3(a)
control	1.1
controlled by	6
Controlled Group	4.13(a)
controlling	1.1
Credit Bid Amount	3.1(a)
Deferred Asset	2.7(a)
DIP Credit Agreement	Recitals
DIP Financing Order	6.5(a)
Disclosing Party	6.9(a)
Effective Date	Preamble
Environmental Claim	4.14(e)
Environmental Permits	4.14(a)
Excluded Assets	2.2
Excluded Contracts	2.5(c)
Excluded Liabilities	2.4
Expense Reimbursement	6.8(a)
Lease	4.6(a)
Leased Real Property	4.6(a)
Licensed Software	4.8(f)
Parties	Preamble
Party	Preamble
Petition Date	Recitals
Plans	4.13(a)
Purchase	Recitals
Purchase Price	3.1(a)
Purchased Assets	2.1
Purchased Intellectual Property	4.8(a)
Receiving Party	6.9(a)
Response Period	6.14
Seller	Preamble
Seller Disclosure Letter	ARTICLE IV
under common control with	1.1

ARTICLE II

PURCHASE AND SALE OF PURCHASED ASSETS

2.1 Purchase and Sale of Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement, including approval of the Bankruptcy Court pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, at the Closing, Buyer agrees to purchase from Seller, and Seller agrees to sell, convey, assign, transfer and deliver to Buyer free and clear of all Liens, Claims and Liabilities (other than Assumed Liabilities), all of Seller's right, title and interest in, to and under the assets, properties and business, of every kind and description, wherever located and whether now existing or hereinafter acquired, owned, held, leased, licensed or used by Seller relating to the Business as the same shall exist on the Closing Date, including, without limitation, all Avoidance Actions and Accounts Receivable, but excluding the Excluded Assets (the "Purchased Assets").

2.2 Excluded Assets. Notwithstanding anything to the contrary contained herein, Seller shall retain, and Buyer shall not acquire pursuant to this Agreement, any properties, assets or rights of Seller other than the Purchased Assets. Buyer expressly understands and agrees that, subject to Section 2.6, the following properties, assets and rights (collectively, the "Excluded Assets") are expressly excluded from the purchase and sale contemplated hereby and, as such, are not included in the Purchased Assets:

(a) all stock and other ownership interests in Seller;

(b) Seller's articles of incorporation, by-laws, operating agreement or similar governance documents, qualifications to conduct business as a foreign corporation, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books and blank stock certificates and other documents relating solely to the organization, maintenance and existence of Seller as a corporation;

(c) Seller's claims for and rights to receive Tax refunds with respect to taxable periods (or portions thereof) ending on or prior to the Closing Date, and Tax Returns with respect to taxable periods (or portions thereof) ending on or prior to the Closing Date, and any notes, worksheets, files or documents relating thereto;

(d) all rights and obligations under the Plans and other assets relating thereto, and under the Excluded Contracts;

(e) the Purchase Price and all other rights of Seller under or pursuant to this Agreement and any other agreements entered into by Seller pursuant to this Agreement;

(f) any inventory of Seller that would otherwise constitute a Purchased Asset but for the fact that it is sold or otherwise disposed of, in the Ordinary Course of Business and in accordance with this Agreement, prior to the Closing Date;

(g) all rights of Seller arising under this Agreement and other Transaction Documents executed and delivered by Buyer;

(h) all originals of personnel records and other records that Seller is required by Law to retain in its possession;

(i) all causes of action against any holder of any Claim against Seller that could be used as a defense, counterclaim, or right of recoupment or setoff in respect of any Claim or cause of action brought, commenced or asserted by any Person against Seller; and

(j) those assets set forth on Section 2.2(j) of the Seller Disclosure Letter.

2.3 Assumption of Liabilities. Upon the terms and subject to the conditions set forth in this Agreement, Buyer agrees, effective as of the Closing (except as otherwise provided), to assume and shall agree to pay, perform and discharge when due, those Liabilities of Seller related to the ownership or use by Buyer of the Purchased Assets arising after the Closing Date and the other Liabilities of Seller set forth on Section 2.3 of the Seller Disclosure Letter (collectively, the "Assumed Liabilities").[1]

2.4 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement, Buyer shall not assume or in any way become liable for any Liabilities of any nature whatsoever other than the Assumed Liabilities, whether accrued, absolute, contingent or otherwise, whether known or unknown, whether due or to become due, whether related to the Business or the Purchased Assets or whether disclosed on the Seller Disclosure Letter (except as disclosed in Section 2.3 of the Seller Disclosure Letter), and regardless of when or by whom asserted (collectively referred to herein as the "Excluded Liabilities"), including, but not limited to, the following:

(a) any Liabilities of Seller under this Agreement, any other Transaction Document or any other agreement entered into by Seller in connection with the transactions contemplated by this Agreement (other than the Assumed Liabilities);

(b) any Liabilities of Seller for expenses, fees or Taxes incident to or arising out of the negotiation, preparation, approval or authorization of this Agreement or the consummation (or preparation for the consummation) of the transactions contemplated hereby (including all attorneys' and accountants' fees and brokerage fees);

(c) subject to Section 6.3(b), any Liabilities of Seller for Taxes for any period;

(d) any Liabilities of Seller (A) arising by reason of any violation or alleged violation of any federal, state, local or foreign law or any requirement of any Governmental Entity or (B) arising by reason of any breach or alleged breach by Seller of any agreement, contract, lease, license, commitment, instrument, or Order;

(e) any Liabilities of Seller relating to any legal action, proceeding or Claim arising out of or in connection with the conduct of the Business or any other conduct of Seller or

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[1] NTD: To be discussed scope of Assumed Liabilities.

its Affiliates, officers, directors, employees, consultants, agents or advisors, in each case, on or prior to the Closing Date;

(f) any Liabilities of Seller for Indebtedness;

(g) any Liabilities of Seller in respect of any of the Excluded Assets;

(h) all Liabilities for professional (including broker and advisory), U.S. Trustee and Court fees, costs and expenses that have been incurred or that are incurred or owed by Seller (or its bankruptcy estate) in connection with the preparation and administration of the Bankruptcy Case;

(i) severance, change in control, retention or other costs associated with any Retained Employees; and

(j) any other Liabilities of Seller not expressly assumed by Buyer pursuant to Section 2.3.

Seller hereby acknowledges that Seller is retaining the Excluded Liabilities and shall be solely responsible for the fulfillment or satisfaction of such Excluded Liabilities.

2.5 Assumption and Assignment of Contracts.

(a) As of the Effective Date, Seller has delivered Section 2.5(a) of the Seller Disclosure Letter to Buyer, which contains a list of all executory Contracts and unexpired leases relating to the Purchased Assets. Seller shall use reasonable best efforts to assume and assign the Assigned Contracts to Buyer, including using reasonable best efforts to facilitate any negotiations with the counterparties to such Assigned Contracts and to obtain an Order (which may be the Sale Order) containing a finding that the proposed assignment to and assumption of the Assigned Contracts by Buyer satisfies all applicable requirements of Section 365 of the Bankruptcy Code.

(b) Not later than five (5) Business Days after the Effective Date, Seller shall provide to Buyer an amended Section 2.5(a) of the Seller Disclosure Letter with Seller's good-faith best estimate of the Cure Amount with respect to each such executory Contract or unexpired lease; provided, however, that from and after the date of delivery of the amended Section 2.5(a) of the Seller Disclosure Letter hereunder until five (5) Business Days before the Closing, Seller may provide updates or supplements to Section 2.5(a) of the Seller Disclosure Letter solely to include revised Cure Amounts, which updates shall amend Section 2.5(a) of the Seller Disclosure Letter for all purposes hereof.

(c) No later than three (3) days before the date of the Auction scheduled by the Bid Procedures Order, Buyer shall provide to Seller Section 2.5(c) of the Buyer Disclosure Letter, which shall contain a list of those executory Contracts and unexpired leases set forth on Section 2.5(a) of the Seller Disclosure Letter, if any, that Buyer desires at that time to have assumed and assigned by Seller to Buyer (such designated contracts or leases, the "Assigned Contracts"; any Contracts or leases to be retained by Seller, the "Excluded Contracts"). With respect to each Assigned Contract, Buyer shall pay, satisfy, or discharge all Cure Amounts

thereto and such Cure Amounts shall be Assumed Liabilities for which Buyer is solely responsible, and for which Seller shall have no liability whatsoever. Buyer shall assume all rights and obligations of Seller arising on or after the Closing Date under the Assigned Contracts. Any Assigned Contract designated by Buyer shall be assumed by Seller and assigned to Buyer at the Closing or such other dates as specified in the Sale Order or this Agreement, as applicable. Notwithstanding anything to the contrary herein, on or before the Closing Date, Buyer shall have the right to amend or supplement Schedule 2.5(c) of the Buyer Disclosure Letter delivered to Seller hereunder, including, without limitation, the right to add or remove any Assigned Contract to or from the list of Assigned Contracts without any net effect on or adjustment to the Purchase Price.

(d) Notwithstanding anything in this Agreement to the contrary, Buyer may amend or revise Section 2.5(c) of the Buyer Disclosure Letter in order to add any Assigned Contract to, or remove any Assigned Contract from, Section 2.5(c) of the Buyer Disclosure Letter up to one (1) Business Day prior to the Closing Date, provided that such Assigned Contract has not been previously rejected in the Bankruptcy Case or has not terminated or expired pursuant to its terms or by order of the Bankruptcy Court. Automatically upon the addition of any Assigned Contract to Section 2.5(c) of the Buyer Disclosure Letter by Buyer in accordance with this Section 2.5(d), such added Assigned Contract shall be deemed an Assigned Contract for all purposes of this Agreement. Automatically upon the removal of any Assigned Contract from Section 2.5(c) of the Buyer Disclosure Letter by Buyer in accordance with Section 2.5(c) or this Section 2.5(d), such deleted Assigned Contract shall be deemed an Excluded Contract for all purposes of this Agreement.

(e) At the Closing, Seller shall assume and assign to Buyer the Assigned Contracts, in each case subject to Bankruptcy Court approval pursuant to Section 365 of the Bankruptcy Code and the Sale Order, including the provision, if any, by Buyer of adequate assurance as may be required under Section 365 of the Bankruptcy Code and payment of the Cure Amounts in respect of the Assigned Contracts as contemplated hereby.

2.6 Modification of Excluded Assets and Purchased Assets.

(a) Notwithstanding anything in this Agreement to the contrary, no later than two (2) days before the date of the Auction scheduled by the Bid Procedures Order, Buyer shall provide to Seller Section 2.6 of the Buyer Disclosure Letter, which shall contain a list (i) of those Excluded Assets, if any, that Buyer desires at that time to acquire and/or have assigned to Buyer, which Excluded Assets shall then be deemed Purchased Assets for all purposes under this Agreement and (ii) of those Purchased Assets that Buyer no longer desires to acquire and/or have assigned to Buyer, which shall then be deemed Excluded Assets for all purposes under this Agreement, in each case, other than Assigned Contracts and Excluded Contracts (which are addressed in Section 2.5), and without any net effect on or adjustment to the Purchase Price.

(b) Notwithstanding anything in this Agreement to the contrary, Buyer may amend or revise Section 2.6 of the Buyer Disclosure Letter in order to add any Excluded Asset to, or remove any Purchased Asset from, Section 2.6 of the Buyer Disclosure Letter up to one (1) Business Day prior to the Closing Date, without any net effect on or adjustment to the Purchase Price. Automatically upon the addition of any Excluded Asset to Section 2.6 of the Buyer

Disclosure Letter by Buyer in accordance with this Section 2.6(b), such added Excluded Asset shall be deemed a Purchased Asset for all purposes of this Agreement. Automatically upon the inclusion of any Purchased Asset on Section 2.6 of the Buyer Disclosure Letter by Buyer in accordance with this Section 2.6, such included Purchased Asset shall be deemed an Excluded Asset for all purposes of this Agreement.

2.7 Required Consents; Subsequent Actions.

(a) Except as to Assigned Contracts assigned pursuant to Section 365 of the Bankruptcy Code or the Sale Order, anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Purchased Asset or any right thereunder if an attempted assignment, without the Consent of a third party, would constitute a breach or in any way adversely affect the rights of Buyer or Seller thereunder, and Seller, at Buyer's expense, shall use their commercially reasonable efforts to obtain any such required Consent(s) as promptly as possible. Seller may not agree to pay any amount to obtain any Consent of a third party without Buyer's prior approval. Any Purchased Asset that has not been sold, conveyed, transferred, assigned or delivered to Buyer at the Closing shall be a "Deferred Asset".

(b) Following the Closing, the Parties shall have a continuing obligation to use their respective commercially reasonable efforts to cooperate with each other and to obtain promptly all Consents that cannot be effectively overridden or canceled by the Sale Order or other related Order (in form and substance satisfactory to Buyer in its sole discretion) of the Bankruptcy Court and that are necessary for the transfer of the Deferred Assets and each Party shall provide all of the assistance that is reasonably requested by the other Party in connection with securing such Consents.

(c) Seller shall, at any time and from time to time after the Closing Date, upon the request of Buyer and at the sole expense of Seller, do, execute, acknowledge and deliver, or cause to be done, executed, acknowledged and delivered, all such further deeds, assignments, transfers and conveyances, and take such other actions, as may be required for the better assigning, transferring, granting, conveying and confirming to Buyer or its successors and assigns, or for aiding and assisting in collecting and reducing to possession, any or all of the Purchased Assets (including, without limitation, any and all Deferred Assets). Seller hereby constitutes and appoints, effective as of the Closing Date, Buyer, its successors and assigns, as the true and lawful attorney of Seller with full power of substitution in the name of Buyer or in the name of Seller but for the benefit of Buyer (i) to collect for the account of Buyer all Accounts Receivable comprising Purchased Assets and any Purchased Asset (including, without limitation, any Deferred Assets), and (ii) to institute and prosecute all proceedings which Buyer may in its sole discretion deem proper in order to collect the Accounts Receivable comprising Purchased Assets or to assert or enforce any right, title or interest in, to or under any or all of the Purchased Assets (including, without limitation, any or all Deferred Assets) and to defend or compromise any and all actions, suits or proceedings in respect of any of the Purchased Assets (including, without limitation, the Deferred Assets). Buyer shall be entitled to retain for its own account any amounts collected pursuant to the foregoing powers, including any amounts payable as interest in respect thereof.

(d) In the event that either Buyer or Seller becomes aware within a period of twelve (12) months following the Closing Date that any of the Purchased Assets has not been transferred to Buyer (other than a Deferred Asset) or that any of the Excluded Assets has been transferred to Buyer, Buyer or Seller, as the case may be, shall promptly notify Seller or Buyer, as the case may be, and the Parties shall, as soon as reasonably practicable, ensure that such asset is transferred, with any necessary Consent, to (a) Buyer, in the case of any Purchased Asset which was not transferred to Buyer at Closing; or (b) Seller, in the case of any Excluded Asset which was transferred to Buyer at the Closing.

ARTICLE III

PURCHASE PRICE; CLOSING

3.1 Purchase Price.

(a) In full consideration for the sale and transfer by Seller of the Purchased Assets, and provided that all of the conditions precedent to the obligations of Buyer and Seller set forth in ARTICLE VII have been satisfied or waived by the relevant Parties at or prior to the Closing as described in ARTICLE VII, in addition to the assumption by Buyer of the Assumed Liabilities, Buyer will pay or cause to be paid aggregate consideration equal (i) $200,000 in cash (the "Cash Amount") and (ii) credit against the deemed satisfaction (A) in full of the amounts outstanding under the DIP Credit Agreement, (B) in full of the amounts outstanding under the Secured Loan, and (C) of such amounts outstanding under the Senior Notes as necessary to total, when combined with the credit bid amounts from clauses (A) and (B), $11,700,000, in each case held by Buyer at the Closing pursuant to Section 363(k) of the Bankruptcy Code (the "Credit Bid Amount", and together with the Cash Amount, the "Purchase Price"). Buyer shall pay (or shall cause one of its Affiliates to pay) the Cash Amount at the Closing to Seller, in cash.

3.2 Allocation of the Purchase Price. Within thirty (30) days after the Closing Date, Buyer will propose an allocation of the Purchase Price, the Assumed Liabilities and other relevant items among the Purchased Assets, and shall so notify Seller in writing, setting forth a proposed allocation. In the event that Seller does not agree with any aspect of Buyer's proposed allocation, Buyer, on the one hand, and Seller, on the other hand, shall attempt to resolve such differences in good faith within thirty (30) days. If, following such thirty (30) day period, Buyer and Seller are unable to resolve their differences with respect to the allocation of the Purchase Price, the Assumed Liabilities and other relevant items among the Purchased Assets, each Party shall be free to use an allocation that it deems to be appropriate, with respect to the Purchased Assets.

3.3 Closing; Closing Deliverables.

(a) The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, or remotely by facsimile or other electronic means as the Parties may mutually agree, as soon as practicable, but in any event within three (3) Business Days, after the last of the conditions set forth in ARTICLE VII is satisfied or waived by the relevant Party (other than those conditions that by their nature are to be satisfied at the Closing, but subject to

the fulfillment or waiver of those conditions), or at such other time, date or place as the Parties shall agree in writing (the date and time on which the Closing takes place are referred to collectively herein as the "Closing Date").

(b) At the Closing, Seller shall deliver or cause to be delivered to Buyer:

(i) a certificate in the form attached hereto as Exhibit E, signed by an authorized officer of Seller, dated as of the Closing Date, certifying that each of the conditions set forth in Section 7.3(a), Section 7.3(b), Section 7.3(d), Section 7.3(e), Section 7.3(f), Section 7.3(g) and Section 7.3(h) have been satisfied;

(ii) a counterpart to the Bill of Sale, duly executed by Seller;

(iii) a counterpart to the Assignment and Assumption Agreement, duly executed by Seller;

(iv) a counterpart to the Intellectual Property Assignments, duly executed by Seller;

(v) online access to all Software (licensed or unlicensed) included in the Purchased Assets for which access is limited to online access, and a full and complete copy of all Software included in the Purchased Assets on a standard electronic medium in a standard format, including all related documentation; and

(vi) a certified copy of the Sale Order entered by the Bankruptcy Court.

(c) At the Closing, Buyer shall deliver or cause to be delivered to Seller:

(i) an amount equal to the Cash Amount by wire transfer of immediately available funds to an account designated by Seller in writing to Buyer at least three (3) Business Days prior to the Closing;

(ii) a certificate in the form attached hereto as Exhibit F, signed by an authorized officer of Buyer, dated as of the Closing Date, certifying that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied;

(iii) a certificate certifying the satisfaction of the Credit Bid Amount upon the occurrence of the Closing;

(iv) a counterpart to the Assignment and Assumption Agreement, duly executed by Buyer; and

(v) a counterpart to the Intellectual Property Assignments, duly executed by Buyer.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF SELLER

Except as set forth in the disclosure letter (the "Seller Disclosure Letter") delivered by Seller to Buyer concurrently with the execution of this Agreement, Seller hereby represents and warrants to Buyer that the following are true and correct as of the Effective Date and as of the Closing Date:

4.1 Due Organization, Good Standing and Power of Seller. Seller is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite power and authority to own, lease and operate its properties and to carry on its business as now being conducted except where the failure to be so existing and in good standing or to have such power and authority would not, individually or in the aggregate, have a Material Adverse Effect. Seller is in good standing under the Laws of each jurisdiction where the character of its assets or properties or the conduct of its business requires such qualification, except where the failure to be in good standing would not reasonably be expected to materially and adversely affect this Agreement, the Purchased Assets and the Assumed Liabilities, taken as a whole, or prevent or materially delay Seller's ability to consummate the transactions contemplated by this Agreement.

4.2 Authorization; Noncontravention.Subject to entry of the Bid Procedures Order and the Sale Order, the execution, delivery and performance by Seller of this Agreement, the other Transaction Documents and all other instruments and agreements to which Seller is a party, the consummation by Seller of the transactions to which Seller is a party hereby and thereby and the performance of its obligations hereunder and thereunder have been, and in the case of documents required to be delivered at the Closing will be, as of the Closing, duly authorized and approved by all necessary corporate, limited liability company, member or other action. Subject to entry of the Bid Procedures Order and the Sale Order, assuming that this Agreement, the other Transaction Documents and all such other instruments and agreements constitute valid and binding obligations of Buyer hereto and thereto, this Agreement, the other Transaction Documents to which Seller is a party and all such other instruments and agreements to which Seller is a party constitute valid and binding obligations of Seller, enforceable against Seller in accordance with the terms hereof and thereof, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether considered in a proceeding in equity or at Law).

(b) Except as a result of the Bankruptcy Case and, subject to requisite Bankruptcy Court approval and the Sale Order, the execution and delivery by Seller of this Agreement and the other Transaction Documents to which Seller is a party do not, and the consummation of the transactions contemplated hereby and thereby will not:

(i) conflict with any of the provisions of the articles of incorporation, by-laws and any other governance documents of Seller; or

(ii) result in the creation or imposition of any Lien (other than a Permitted Lien) on any of the Purchased Assets.

4.3 Consents and Approvals. Except for consents, approvals or authorizations of, or declarations, filings or registrations with, the Bankruptcy Court, including obtaining Bankruptcy

Court approval pursuant to the entry of the Bid Procedures Order and the Sale Order and the expiration or waiver of the 14-day period set forth in rules 6004(h) and 3020(e) of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), as applicable and except for the consents of or filings set forth in Section 4.3 of the Seller Disclosure Letter, no Consent of or filing with any other Governmental Entity or any other Person must be obtained or made by Seller in connection with the execution and delivery of this Agreement or any other Transaction Document by Seller or the consummation by Seller of the transactions contemplated by this Agreement.

4.4 Absence of Changes. Except as set forth on Section 4.4 of the Seller Disclosure Letter, since December 31, 2014, there has not been:

(a) any material loss, damage, destruction or other casualty to the Purchased Assets; or

(b) any loss of the employment, services or benefits of any Key Employee.

4.5 Tax Matters. All Taxes of Seller relating to the Purchased Assets have been paid or adequately provided for and Seller knows of no proposed additional Tax assessment against any Purchased Asset. Seller has withheld and paid all Taxes related to the Purchased Assets and required to be withheld with respect to amounts paid or owing to any employee, creditor, independent contractor or other third party.

4.6 Leases.

(a) Section 4.6(a) of the Seller Disclosure Letter sets forth a list of all leases, licenses, permits, subleases and occupancy agreements, together with all amendments and supplements thereto, with respect to all properties in which Seller has a leasehold interest, whether as lessor or lessee and which are used in connection with the Business (each, a "Lease"). The real property covered by any Lease under which Seller is a lessee is referred to herein as the "Leased Real Property". Seller has furnished true, correct and complete copies of all Leases to Buyer or its representatives. No option has been exercised under any of such Leases, except options whose exercise has been evidenced by a written document, a true, complete and accurate copy of which has been delivered to Buyer or its representative with the corresponding Lease. Seller does not own any real property.

(b) Each Lease is in full force and effect, and no Lease has been modified or amended. Neither Seller nor any other party to a Lease has given to the other party written notice of or has made a claim with respect to any breach or default. Seller is not in default under any Lease and, to the Knowledge of Seller, no other party to a Lease is in default. No material amount due under any Lease remains unpaid and, to the Knowledge of Seller, the lessor under each Lease has completed all tenant improvement work and other alterations required to be performed by such lessor pursuant to the applicable Lease.

(c) Except as set forth in Section 4.6(c) of the Seller Disclosure Letter, none of the Leased Real Property is subject to any sublease, license or other agreement granting to any Person any right to the use, occupancy or enjoyment of such property or any portion thereof. The Leased Real Property, all improvements thereon and thereto, and the operations therein

conducted conform to all applicable health, fire, insurance, environmental, safety, zoning and building laws, ordinances and administrative regulations, licenses and permits and other regulations (including, without limitation, the Americans with Disabilities Act) except for possible nonconforming uses or violations that do not and will not interfere with the present use, operation or maintenance thereof by Seller as now used, operated or maintained or access thereto, and that do not and will not have a Material Adverse Effect, and that do not and will not give rise to any material penalty, fine or other liability, and no Seller has received any notice to the contrary.

4.7 Equipment and Machinery. Except as otherwise set forth in Section 4.7 of the Seller Disclosure Letter, as of the Effective Date, the Equipment and Machinery is free from material defects (patent and latent), has been maintained in accordance with normal industry practice, is in good operating condition and repair (ordinary wear and tear excepted) and is suitable for the purposes for which it presently is used.

4.8 Intellectual Property.

(a) The Purchased Assets consisting of Intellectual Property (the "Purchased Intellectual Property") are all subsisting and, to the Knowledge of Seller, valid and enforceable. Seller owns and possesses, free and clear of all Liens (other than Permitted Liens), all right, title and interest in and to the Intellectual Property included in the Purchased Intellectual Property. Seller is not subject to any Order that restricts or impairs the use of any Purchased Intellectual Property. The Purchased Intellectual Property includes all Intellectual Property owned or controlled by Seller used or necessary for use in the development or operation of the Software included in the Purchased Intellectual Property.

(b) The use of the Purchased Intellectual Property, including the Software included within the Purchased Intellectual Property, does not, to the Knowledge of Seller, conflict with, infringe, misappropriate, or violate any Intellectual Property of any Person, and within the past five (5) years there have been no claims pending or, to the Knowledge of Seller, threatened alleging any conflict with, or infringement, misappropriation or violation of any Person's Intellectual Property rights.

(c) To the Knowledge of Seller, no Person has infringed, misappropriated, or violated any right to, or is currently infringing, misappropriating, or violating any right to, any Purchased Intellectual Property. There are no claims pending or, to the Knowledge of Seller, threatened challenging Seller's ownership or use, or the validity or enforceability, of any Purchased Intellectual Property.

(d) Seller has taken commercially reasonable steps (including, without limitation, entering into confidentiality and nondisclosure agreements and work for hire or Intellectual Property assignment agreements) necessary to safeguard and maintain the secrecy and confidentiality of all trade secrets included in the Purchased Intellectual Property. All current and former officers and employees of, and consultants and independent contractors to, Seller who have contributed to the creation or development of any Purchased Intellectual Property have executed and delivered to Seller a Contract regarding the protection of proprietary information and the assignment to Seller, or by equivalent arrangement, of any Purchased

Intellectual Property. To the Knowledge of Seller, no such Person: (i) has breached any term of any such Contract or (ii) holds any right, title or interest, directly or indirectly, in whole or in part, in or to any Purchased Intellectual Property.

(e) Seller has not disclosed or delivered to any Person, or permitted the disclosure or delivery to any escrow agent or other Person of, any source code for the Software included in the Purchased Intellectual Property. To the Knowledge of Seller, no event has occurred and no circumstance or condition exists as a result of acts or omissions on the part of Seller (including the execution of this Agreement and the consummation of the transactions) or as a result of any other event or circumstance that, with or without notice or lapse of time, will or would reasonably be expected to, result in the disclosure or delivery to any Person of any source code for the Software included in the Purchased Intellectual Property.

(f) Section 4.8(f) of the Seller Disclosure Letter sets forth a true, accurate, and complete list of all third-party software used by Seller in connection with the Software included in the Purchased Intellectual Property (the "Licensed Software"). All use, reproduction, modification, distribution, and sublicensing of the Licensed Software by Seller is authorized pursuant to the terms of a valid license or right to which Seller is a party, and following the consummation of the transaction contemplated by this Agreement, Buyer shall have substantially the same rights with respect to the Licensed Software as held by Seller prior to the consummation of the transaction. Other than the Licensed Software, the Software included in the Purchased Intellectual Property is complete and capable of being compiled and executed with full functionality as described in its documentation.

(g) No Software included in the Purchased Intellectual Property, in whole or in part, is subject to the provisions of any Public Software or other source code license agreement that (i) requires the distribution of source code in connection with the distribution of or otherwise making available such Software in object code form; (ii) prohibits or limits Seller from charging a fee or receiving consideration in connection with sublicensing or distributing such Software (whether in source code or object code form); or (iii) allows a customer, or requires that a customer have, the right to decompile, disassemble or otherwise reverse engineer such Software.

(h) To the Knowledge of Seller, neither the Software included in the Purchased Intellectual Property, nor the Licensed Software distributed by Seller, contains any computer code or any other mechanisms which may (i) disrupt, disable, erase or harm in any way such Software's operation, or cause such Software to damage or corrupt any data, hardware, storage media, programs, equipment or communications or (ii) permit any Person to access such Software without authorization.

(i) The Software included in the Purchased Intellectual Property complies in all material respects with each applicable warranty or contractual commitment relating to the use, functionality, or performance of such Software, and there are no pending or, to the Knowledge of Seller, threatened claims alleging any such failure.

4.9 Compliance with Law. The operations of the Purchased Assets and the Leased Real Property have, in all material respects, been conducted in accordance with all applicable

Laws, regulations, orders and other requirements of all Governmental Entities having jurisdiction over Seller and its assets, properties and operations, including, without limitation, all such Laws, regulations, orders and requirements promulgated by or relating to consumer protection, currency exchange, equal opportunity, health, environmental protection, hazardous substances, conservation, wetlands, architectural barriers to the handicapped, fire, zoning and building, occupation safety, pension, securities and trading with the enemy matters. Seller has not received notice of any violation of any such Law, regulation, order or other legal requirement, and Seller is not in default with respect to any order, writ, judgment, award, injunction or decree of any Governmental Entity, applicable to any Purchased Asset.

4.10 Litigation. Except as set forth on Section 4.10 of the Seller Disclosure Letter, there are no claims, actions, suits, proceedings, labor disputes or investigations pending or, to the Knowledge of Seller, threatened (including, without limitation, any claim, action, suit, proceeding or investigation under any Environmental Law), before any Governmental Entity of any nature, brought by or against Seller or any of its officers, directors (or persons in similar positions), employees, agents or Affiliates involving, affecting or relating to any of the Purchased Assets or the transactions contemplated by this Agreement, nor is any basis known to Seller or any of its directors (or persons in similar positions) or officers for any such action, suit, proceeding or investigation. No Purchased Asset is subject to any order, writ, judgment, award, injunction or decree of any Governmental Entity, that affects or might affect any of the Purchased Assets, or that would or might interfere with the transactions contemplated by this Agreement.

4.11 Contracts.

(a) Section 4.11 of the Seller Disclosure Letter sets forth a complete and correct list of all material Contracts relating to the Business (in each case as in effect on the Effective Date), to which Seller is a party or under which any Purchased Asset is bound. Seller has made the Contracts identified in Section 4.11(a) of the Seller Disclosure Letter available to Buyer.

(b) Each Contract relating to the Purchased Assets is valid, binding and enforceable against the parties thereto in accordance with its terms, and in full force and effect on the Effective Date except (i) to the extent excused by or unenforceable as a result of the commencement or pendency of the Bankruptcy Case or the application of any provision of the Bankruptcy Code (but only to the extent such excuse, lack of enforceability or application of Law will continue to apply in favor of Buyer and its successors and assigns following Closing) and (ii) to the extent that the failure of such Contracts to be valid and binding would not have a Material Adverse Effect. Subject to Seller's limited cash resources both immediately prior to and during the pendency of the Bankruptcy Case to (i) conduct the Business in the Ordinary Course of Business, and (ii) maintain existing relations with customers, suppliers, creditors, business partners, directors, officers, employees and others having business dealings with the Business, in each case in a manner that is customary for companies similarly situated with Seller facing a filings for relief under Chapter 11 of Title 11 of the Bankruptcy Code, Seller has performed all material obligations required to be performed by it to date under, and is not in default or delinquent in performance, status or any other respect (claimed or actual) in connection with, any such Contract, and no event has occurred which, with due notice or lapse of

time or both, would constitute such a default. To the Knowledge of Seller, no other party to any Contract relating to the Purchased Assets is in default in respect thereof, and no event has occurred which, with due notice or lapse of time or both, would constitute such a default. Seller has delivered to Buyer or its representatives true and complete originals or copies of each Contract relating to the Purchased Assets.

4.12 Receivables. Except as set forth on Section 4.12 of the Seller Disclosure Letter, all Accounts Receivable comprising Purchased Assets payable as of the Effective Date, or acquired by Seller after the Effective Date and before the Closing Date, have been collected or are (or will be) current and collectible not later than the second anniversary of the Closing Date in amounts not less than the aggregate amount thereof (net of reserves established in accordance with prior practice and reflected on the balance sheet of Seller relating to the Purchased Assets) carried (or to be carried) on the books of Seller, and are not subject to any counterclaims or set-offs.

4.13 Employee Plans.

(a) Section 4.13(a) of the Seller Disclosure Letter sets forth all pension, savings, retirement, health, insurance, severance and other employee benefit or fringe benefit plans maintained or sponsored by Seller or any trade or business (whether or not incorporated) under common control with Seller within the meaning of Sections 414(b), (c), (m) or (o) of the Code (the "Controlled Group"), or with respect to which Seller or any other member of the Controlled Group has any responsibility or liability (including any contingent liability) (collectively referred to herein as the "Plans").

(b) There are no pending actions, claims or lawsuits which have been asserted, instituted or, to the Knowledge of Seller, threatened, against the Plans, the assets of any of the trusts under such Plans or the Plan sponsor or the Plan administrator, or, to the Knowledge of Seller, against any fiduciary of the Plans with respect to the operation of such Plans (other than routine benefit claims).

(c) Except as set forth in Section 4.13(c) of the Seller Disclosure Letter, there has been no "mass layoff" or "plant closing" as defined by WARN or any similar state or local "plant closing" law with respect to the current or former employees of Seller.

4.14 Environmental Matters.

(a) The operations of the Purchased Assets are, and for the past five years have been, in material compliance with all applicable Environmental Laws and, if any, licenses, permits, registrations, approvals and other authorizations issued thereunder ("Environmental Permits").

(b) To the Knowledge of Seller, no hazardous substance has come to be located on, at, beneath, or near any real property currently or formerly owned, operated, leased, or used by Seller or any of its respective predecessors as a result of or in connection with the operation of the Purchased Assets which will give rise to liability under any Environmental Law or to a need to undertake any action to respond to such hazardous substance.

(c) To the Knowledge of Seller, no real property currently or formerly owned, operated, leased or used by Seller contains or formerly contained any underground or aboveground storage tank, surface impoundment, landfill, land disposal area, polychlorinated biphenyls, asbestos, asbestos-containing material or urea formaldehyde insulation.

(d) Seller has not disposed of, transported or arranged for the disposal or transportation of any hazardous substance at or to any facility with respect to which any Purchased Asset is or would be liable for undertaking or paying for any environmental investigation or any other action to respond to the release or threatened release of any hazardous substance or is or would be required to pay natural resource damages.

(e) Seller has not received notice of, nor is there pending or, to the Knowledge of Seller, threatened against Seller, any claim, complaint, notice of violation or potential liability, request for information, investigation, proceeding, order, decree or lawsuit relating to any hazardous substance or pursuant to any Environmental Law relating in any way to any of the Purchased Assets ("Environmental Claim") nor, to the Knowledge of Seller, is there any basis for an Environmental Claim.

4.15 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Seller that would be binding upon or create any obligation on the part of Buyer.

4.16 Title and Sufficiency of Assets. Except as set forth in Section 4.16 of the Seller Disclosure Letter, Seller owns all of the Purchased Assets, free and clear of all Liens. The Purchased Assets constitute all of the privileges, rights, interests, properties and assets of Seller of every kind and description and wherever located that are material or necessary for the continued conduct of the Business following the Closing as conducted on the Effective Date and, subject to Buyer obtaining all required permits and licenses, are sufficient to operate the Business in substantially the same manner as it is conducted on the Effective Date.

4.17 Product Liability. With the exception of workers' compensation claims, automobile accidents and standard warranty claims that are material to the Business or the Purchased Assets, Seller has no material Liability arising out of any injury to individuals or

property as a result of the ownership, possession or use of any product manufactured, sold, leased, installed or delivered by Seller in connection with the Business.

4.18 Inventory. All inventory of solar energy systems (or any photovoltaic solar panels within any such system) and semiconductor-based micro inverter systems held by Seller for sale or installation in connection with the Business is of a quality or condition usable or saleable at prevailing market prices in the ordinary course of the operation of the Business and free of any known defect or other deficiency.

4.19 No Other Representations. Seller acknowledges that, except for the representations and warranties contained in ARTICLE VI and the certificate delivered to Buyer pursuant to Section 3.3(b)(i), neither Buyer nor any other Person on behalf of Buyer makes any express or implied representation or warranty with respect to or with respect to any information provided by or on behalf of Buyer to Seller.

ARTICLE V

REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Seller to enter into this Agreement and consummate the transactions contemplated hereby, except as set forth in the disclosure letter (the "Buyer Disclosure Letter") delivered by Buyer to Seller concurrently with the execution of this Agreement, Buyer hereby represents and warrants to Seller that the following are true and correct as of the Effective Date and as of the Closing Date:

5.1 Due Organization, Good Standing and Power of Buyer. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware and has all requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now being conducted. Buyer is in good standing under the Laws of each jurisdiction where the character of its assets or properties or the conduct of its business requires such qualification, except where the failure to be in good standing would not reasonably be expected to prevent, materially delay or impair Buyer's ability to consummate the transactions contemplated by this Agreement.

5.2 Authorization; Noncontravention.

(a) The execution, delivery and performance by Buyer of this Agreement, the other Transaction Documents and all other instruments and agreements to which Buyer is a party, the consummation by Buyer of the transactions hereby and thereby and the performance of its obligations hereunder and thereunder have been, and in the case of documents required to be delivered at the Closing will be, duly authorized and approved by all necessary action. This Agreement, the other Transaction Documents to which Buyer is a party and all such other instruments and agreements to which Buyer is a party constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with the terms thereof, except to the extent that such enforcement may be limited by applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether considered in a proceeding in equity or at law).

(b) The execution and delivery by Buyer of this Agreement and the other Transaction Documents to which Buyer is a party do not, and the consummation of the transactions contemplated hereby and thereby will not:

(i) conflict with any of the provisions of the certificate of formation, limited liability company agreement or similar governance document of Buyer; or

(ii) require any filing with or permit, Consent or approval of any Person under any Contract to which Buyer is a party or by which Buyer or any of its properties or assets are bound.

5.3 Consents and Approvals. Except for the consents of or filings with other Governmental Entities set forth in Section 5.3 of the Buyer Disclosure Letter, no Consent of or filing with any other Governmental Entity must be obtained or made by Buyer in connection with the execution and delivery of this Agreement or any other Transaction Document by Buyer or the consummation by Buyer of the transactions contemplated by this Agreement or any other Transaction Document.

5.4 Litigation. There are no actions, suits, proceedings, orders or investigations pending or, to the knowledge of Buyer, threatened, that would affect Buyer's ability to perform its obligations under this Agreement or any other Transaction Document or to consummate the transactions contemplated hereby or thereby.

5.5 Brokerage. There are no claims for brokerage commissions, finders' fees or similar compensation in connection with the transactions contemplated by this Agreement based on any arrangement or agreement made by or on behalf of Buyer.

5.6 Financing. On the Closing Date Buyer will have, sufficient funds available to deliver the Purchase Price to Seller and consummate the transactions contemplated by this Agreement, including the timely satisfaction of the Assumed Liabilities.

5.7 Forecasts. Buyer has received or may receive from Seller certain projections, forward-looking statements and other forecasts and certain business plan information related to the Purchased Assets. Buyer acknowledges that Seller makes no representation or warranty with respect to such estimates, projections, forecasts or plans (including the reasonableness of the assumptions underlying such estimates, projections, forecasts or plans).

5.8 Purchased Assets "AS IS"; Buyer's Acknowledgment Regarding Same. Buyer agrees, warrants, and represents that Buyer is purchasing the Purchased Assets on an "AS IS" and "WITH ALL FAULTS" basis based primarily on the representations and warranties of Seller set forth in ARTICLE IV. Buyer further acknowledges that the consideration for the Purchased Assets specified in this Agreement has been agreed upon by Seller and Buyer after good-faith arms-length negotiation in light of Buyer's agreement to purchase the Purchased Assets "AS IS" and "WITH ALL FAULTS" subject only to the representations and warranties of Seller set forth in ARTICLE IV. EXCEPT AS SET FORTH IN THIS AGREEMENT (INCLUDING THE REPRESENTATIONS AND WARRANTIES OF SELLER SET FORTH IN ARTICLE IV), SELLER MAKES NO EXPRESS WARRANTY, NO WARRANTY OF MERCHANTABILITY, NO WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE,

AND NO IMPLIED OR STATUTORY WARRANTY WHATSOEVER WITH RESPECT TO ANY REAL OR PERSONAL PROPERTY OR ANY FIXTURES OR THE PURCHASED ASSETS.

ARTICLE VI

COVENANTS

6.1 Conduct Pending the Closing. Except (i) as set forth in Section 6.1(a) of the Seller Disclosure Letter, (ii) as may be required by this Agreement or (iii) as required by applicable Law or Order or by a Governmental Entity, during the period commencing on the Effective Date and ending on the earlier of the Closing Date and the termination of this Agreement pursuant to Section 8.1, Seller shall operate the Business in the Ordinary Course of Business and without the prior written consent of Buyer, Seller shall not:

(a) make any sale, assignment, transfer, abandonment or other conveyance of the Purchased Assets or any part thereof, except in the Ordinary Course of Business;

(b) subject any of the Purchased Assets, or any part thereof, to any Lien or suffer such to exist other than Permitted Liens that will be released as of Closing;

(c) enter into any new (or amend any existing) employee benefit plan, program or arrangement, or enter into any new (or amend any existing) employment, severance or consulting agreement, grant any general increase in the compensation of officers or employees of the Business (including any such increase pursuant to any bonus, pension, profit-sharing or other plan or commitment) or grant any increase in the compensation payable or to become payable to any employee of the Business, except in accordance with pre-existing contractual provisions or consistent with past practice;

(d) settle, release or forgive any claim or litigation, or waive any right thereto, relating to the Purchased Assets;

(e) make, enter into, modify, amend in any material respect or terminate any Contract or Lease, or any bid or expenditure with respect to the Purchased Assets; or

(f) agree or commit to do any of the foregoing.

6.2 Public Announcements. Each Party shall (a) consult with each other Party before issuing any press release or otherwise making any public statement with respect to the transactions contemplated by this Agreement, (b) provide to the other Parties for review a copy of any such press release or public statement and (c) not issue any such press release or make any such public statement prior to such consultation and review and the receipt of the prior consent of the other Parties; provided, however, that if such Party is required to issue a press release or public statement by Law, regulation or the Bankruptcy Court, the Party required to issue the press release or public statement shall use commercially reasonable efforts to allow the other Parties reasonable time to comment on such release, statement or filing to the extent practicable and permitted by Law.

6.3 Tax Matters.

(a) Buyer and Seller agree to furnish or cause to be furnished to each other, as promptly as reasonably practicable, such information and assistance relating to the Purchased Assets as is reasonably necessary for the preparation and filing of any Tax Return, for the preparation for and proof of facts during any Tax audit, for the preparation for any Tax protest, for the prosecution or defense of any suit or other proceeding relating to Tax matters and for the answer of any governmental or regulatory inquiry relating to Tax matters; provided, however, that each Party shall reimburse the other Party for such other Party's reasonable out-of-pocket expenses in connection therewith.

(b) For purposes of this Agreement, all Taxes that are imposed on a periodic basis (which are not based on income) with respect to the Purchased Assets with respect to any taxable period that begins on or before and ends after the Closing Date shall be apportioned between the taxable periods (or portions thereof) ending on or prior to the Closing Date and the taxable periods (or portions thereof) ending on or prior to the Closing Date, proportionally in accordance with the number of days in each such portion of the period.

6.4 Bankruptcy Court Approval.

(a) Seller and Buyer acknowledge that this Agreement and the sale of the Purchased Assets and the assumption and assignment of the Assigned Contracts are subject to the entry by the Bankruptcy Court of the Bid Procedures Order and Sale Order.

(b) Within two (2) Business Days of the Petition Date, Seller shall file the Sale Motion for:

(i) The Sale Order, which shall, among other things:

(1) grant the Sale Motion;

(2) approve and authorize Seller to enter into this Agreement (or any amended version of such agreement agreed upon by the Parties in writing) and consummate the transactions contemplated herein;

(3) find that Buyer is a "good faith" purchaser within the meaning of Section 363(m) of the Bankruptcy Code and grant Buyer the full benefits and protections of Section 363(m) of the Bankruptcy Code;

(4) find that this Agreement was negotiated, proposed and entered into by Seller and Buyer without collusion, in good faith and from arms' length bargaining positions;

(5) find that due and adequate notice and an opportunity to be heard in accordance with all applicable Laws were given to the necessary parties in the Bankruptcy Case;

(6) determine that the Purchased Assets may be sold free and clear of all Liens and interests in full compliance with Section 363(f) of the Bankruptcy Code;

(7) authorize and direct Seller to sell the Purchased Assets to Buyer pursuant to this Agreement (or any amended version of such agreement agreed upon by the Parties in writing) and all applicable provisions of the Bankruptcy Code, free and clear of all Liens (including any and all "interests" in the Purchased Assets within the meaning of Section 363(b) of the Bankruptcy Code), Claims and Liabilities, other than the Assumed Liabilities and the Permitted Liens;

(8) approve the assumption and assignment of Assigned Contracts in accordance with this Agreement and conclusively determine the maximum potential amount of the Cure Amounts required to assume and assign each Assigned Contract;

(9) contain findings of fact and conclusions of law that Buyer (A) is not a successor to, or subject to successor liability for, Seller; (B) has not, de facto or otherwise, merged with or into Seller; (C) is not an alter ego or a continuation of Seller; and/or (D) does not have any responsibility for any obligations of Seller based on any theory of successor or similar theories of liability; and

(10) find that the Bankruptcy Court retains jurisdiction to resolve any claim or dispute arising out of or related to this Agreement and the Sale Order.

(ii) Entry of the Bid Procedures Order, which shall, among other things:

(1) name Buyer as the "stalking horse bidder";

(2) include a finding that the bid procedures and protections are approved;

(3) establish procedures for the assertion and determination of Cure Amounts;

(4) approve the Breakup Fee and Expense Reimbursement and provide that the Breakup Fee and Expense Reimbursement shall constitute administrative expenses of Seller with priority over any and all administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code until paid other than superpriority claims granted pursuant to the DIP Financing Order to Buyer;

(5) contain such other terms and conditions as are reasonably acceptable to Seller and Buyer.

(c) Seller agrees that it will use reasonable best efforts to take such actions as are reasonably requested by Buyer to assist, cooperate and consult with Buyer in order to secure entry by the Bankruptcy Court of the Bid Procedures Order and the Sale Order.

(d) If the Bid Procedures Order and the Sale Order or any other Orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order, Bid Procedures Order or other such order), and this Agreement has not otherwise been terminated by Buyer pursuant to Section 8.1, Seller shall take such steps to reasonably diligently defend such appeal, petition or motion and shall use their reasonable best efforts to obtain an expedited resolution of any such appeal, petition or motion. Neither the Sale Order nor the Bid Procedures Order shall be amended, modified, or supplemented without the prior written consent of Buyer.

6.5 DIP Financing Order; First Day Orders.

(a) Within one (1) Business Day of the Petition Date, Seller will file a motion seeking entry of an interim and final order, which, in the case of the interim order, shall be in the form of Exhibit G and in the case of the final order shall be substantially in the form of Exhibit G, subject to customary modifications for a final order and such other modifications as are satisfactory to Buyer (such orders, collectively, the "DIP Financing Order") authorizing Seller to perform its obligations under the DIP Credit Agreement and to use cash collateral. Any amendments, modifications or waivers to the DIP Credit Agreement or the DIP Financing Order shall only be effective with the prior consent of Buyer, and Seller shall not agree to any amendment, modification or waiver to the DIP Credit Agreement or DIP Financing Order unless Buyer has provided its prior written consent.

(b) On the Petition Date, Seller shall file motions for customary "first day" orders that Seller may deem necessary and appropriate and which Seller shall provide to Buyer as soon as practicable prior to filing. The proposed forms of "first day" and "second day" orders related to critical vendors, payment of wages, utilities, taxes, insurance and customer programs shall be in form and substance reasonably satisfactory to Buyer and, in all cases, shall be expressly subject to any budget approved by the DIP Financing Order.

6.6 Service of Sale Motion. Seller shall serve a copy of the Sale Motion and the accompanying attachments on the persons identified in Paragraph E of the Sale Order and such other persons as Buyer reasonably requests.

6.7 Copies of Pleadings. Seller shall, to the extent reasonably practicable, provide Buyer with drafts of all documents, motions, orders, filings or pleadings that it proposes to file with the Bankruptcy Court that relate to the approval of this Agreement and the consummation of the transactions contemplated hereby, and will provide Buyer with reasonable opportunity to review and approve such filings. Seller shall also promptly (and in any event within two (2)

Business Days) provide Buyer with copies of all pleadings received by or served by or upon Seller in connection with the Bankruptcy Case that relate to or, in Seller's judgment, are reasonably expected to affect the transactions provided for in this Agreement and which have not, to the Knowledge of Seller, otherwise been served on Buyer.

6.8 Breakup Fee; Expenses.

(a) Upon (a) entry into any Contract providing for a sale of the Purchased Assets to any third party who submits the prevailing bid at the Auction, and provided Buyer is not in breach of a material provision of this Agreement or (b) a termination of this Agreement by Buyer pursuant to Section 8.1(b), (d), (e), (f), (g), (h) or (i), Seller shall pay to Buyer from the proceeds of such sale in cash or other immediately available funds an amount equal to (i) $475,000 (the "Breakup Fee") plus (ii) reasonable, actual, and necessary, out-of-pocket expenses not to exceed $175,000 (the "Expense Reimbursement").

(b) The Parties acknowledge and agree that the terms and conditions set forth in this Section 6.8 with respect to the payment of the Breakup Fee and Expense Reimbursement are subject to the Bankruptcy Court entering the Bid Procedures Order. The Parties acknowledge that the agreements contained in this Section 6.8 are commercially reasonable and an integral part of the transactions, and that without these agreements, the Parties would not enter into this Agreement and consummate the transactions contemplated hereby. For the avoidance of doubt, the covenants set forth in this Section 6.8 are continuing obligations, separate and independent from the other obligations of the Parties (and shall not limit the Parties' other rights under or in respect of this Agreement), and survive termination of this Agreement.

(c) Except to the extent otherwise specifically provided herein, whether or not the transactions contemplated hereby are consummated, all fees, costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the Party incurring such fees, costs and expenses.

6.9 Confidentiality.

(a) Pre-Closing Confidentiality. Beginning on the Effective Date and ending on, but not including, the earlier of (i) the Closing Date and (ii) the two year anniversary of the Effective Date, either of Seller or Buyer who receives Confidential Information (such Party, the "Receiving Party") from Buyer or Seller, respectively (such Party that discloses any Confidential Information, the "Disclosing Party"), or any Representative or Affiliate on behalf of such Disclosing Party, shall not disclose to any third party such Confidential Information, except (A) to any of its Representatives or Affiliates who has a reasonable need to know the Confidential Information in connection with the consummation of the transactions contemplated by this Agreement and who agrees to comply with the provisions of this Section 6.9(a), (B) as required by Law, (C) as authorized by the Disclosing Party in writing, (D) if the Receiving Party knows such information at the time of disclosure by the Disclosing Party, free of any obligation to keep it confidential, (E) such information is or becomes generally known in the relevant industry without breach of this Agreement by the Receiving Party, (F) the Receiving Party independently develops such information without access to or use of the Confidential Information or (G) the Receiving Party rightfully obtains such information from a third party who has the right to

disclose it without violation of any confidentiality obligations. Each Party further agrees to use the same degree of care to protect the Confidential Information it receives from a Disclosing Party as it would use to protect its own information of a similar nature, but in no event shall a receiving Party use less than reasonable care. In the event that any Receiving Party is required by Law to disclose any Confidential Information of a Disclosing Party, such Receiving Party shall (x) to the extent legally permissible, notify the Disclosing Party in writing of the requirement and the extent of the required disclosure, and (y) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, to preserve the confidentiality of such information consistent with applicable Law.

(b) Post-Closing Confidentiality.

(i) Seller's Obligations. Beginning on the Closing Date and ending on the fifth anniversary of the Closing Date, Seller shall not disclose to any third party any Confidential Information (A) disclosed or made available to Seller by Buyer or any of Buyer's Representatives or Affiliates or (B) that relates primarily to the Purchased Assets or the Business, except (1) as required by Law, (2) as authorized by Buyer in writing, or (3) if such information is or becomes generally known in the relevant industry without breach of this Agreement by Seller. Seller further agrees to use the same degree of care to protect such Confidential Information from unauthorized use or disclosure as it would use to protect its own information of a similar nature, but in no event will it use less than reasonable care. In the event that Seller is required by Law to disclose any Confidential Information of Buyer or relating to the Purchased Assets, Seller shall (x) to the extent legally permitted, notify Buyer in writing of the requirement and the extent of the required disclosure and (y) reasonably cooperate with Buyer, at Buyer's expense, to preserve the confidentiality of such information consistent with applicable Law.

(ii) Buyer's Obligations. Beginning on the Closing Date and ending on the second anniversary of the Closing Date, Buyer shall not disclose to any third party any Confidential Information disclosed or made available to Buyer by Seller or any Representative or Affiliate of Seller and that relates primarily to Seller or the Excluded Assets, except (A) as required by Law, (B) as authorized by the Disclosing Party in writing, (C) if Buyer knows such information at the time of disclosure by the Disclosing Party, free of any obligation to keep it confidential, (D) such information is or becomes generally known in the relevant industry without breach of this Agreement by Buyer, (E) Buyer independently develops such information without access to or use of such Confidential Information or (F) Buyer rightfully obtains such information from a third party who has the right to disclose it without violation of any confidentiality obligations. Buyer further agrees to use the same degree of care to protect such Confidential Information from unauthorized use or disclosure as it would use to protect its own information of a similar nature, but in no event will it use less than reasonable care. In the event that Buyer is required by Law to disclose such Confidential Information, Buyer shall (i) to the extent legally permitted, notify the Disclosing Party in writing of the requirement and the extent of the required disclosure and (ii) reasonably cooperate with the Disclosing Party, at the Disclosing Party's expense, to preserve the confidentiality of such information consistent with applicable Law.

(c) Termination of Nondisclosure Agreement. Each of Seller and Buyer acknowledges and agrees that as of the Effective Date, all rights and obligations of any Party under the Nondisclosure Agreement terminate and the provisions of this Section 6.9 constitute the entire agreement with respect to the disclosure of Confidential Information in connection with the transactions contemplated by this Agreement.

6.10 Labor and Employment.

(a) On or prior to the Closing Date, Buyer may make good faith offers of employment, effective as of the Closing Date, to certain employees of the Business as determined by Buyer. Nothing contained in this Agreement shall be construed as an employment contract between Buyer and any employee of the Business. Offers of employment pursuant to this Section 6.10, if any, may be made by Buyer or one of its Affiliates on an "at-will" basis. Offers of employment pursuant to this Section 6.10, if any, will (i) be contingent on the Closing occurring; (ii) be subject to and in compliance with Buyer's or its Affiliate's standard human resources, ethics and compliance policies and procedures; (iii) supersede any prior employment or consulting agreements with Seller and (iv) be contingent on the completion, in a manner reasonably satisfactory to Buyer or its Affiliate, an employment application, passing a standard background check and signing any such restrictive covenants and other contractual provisions as Buyer or its Affiliate may in its discretion require.

(b) Buyer intends to establish a bonus compensation program for those employees of the Business who become employees of Buyer from and after the Closing, with the payment triggers and amounts of such bonuses, and the timing of payment thereof, to be determined by Buyer.

6.11 Sales and Transfer Taxes. All sales, use, excise, value-added, goods and services, transfer, recording, documentary, registration, conveyancing and similar taxes that may be imposed on the sale and transfer of the Purchased Assets (including any stamp, duty or other tax chargeable in respect of any instrument transferring property and any recording fees or expenses payable in connection with the sale and transfer of the Intellectual Property), together with any and all penalties, interest and additions to tax with respect thereto, shall be paid by Seller. Buyer and Seller shall cooperate in timely making all filings, returns, reports and forms as may be required to comply with the provisions of applicable law in connection with the payment of any such taxes described in the immediately preceding sentence. Buyer and Seller shall cooperate in providing each other with appropriate resale exemption certification and other similar tax and fee documentation.

6.12 Further Transfers. Seller shall execute and deliver such further instruments of conveyance and transfer and take such additional action as Buyer may reasonably request to effect, consummate, confirm or evidence the transfer to Buyer of the Purchased Assets and the assumption by Buyer of the Assumed Liabilities (including with respect to obtaining and maintaining all licenses, permits, authorizations, accreditations and consents necessary or desirable in connection therewith).

6.13 Non-Solicitation of Employees. For the two-year period following the Closing Date, Seller shall not, and shall cause its Affiliates not to, solicit for employment, offer to

employ, induce to leave the employ of, or provision of services to, Buyer or any of its Affiliates, or hire or employ or engage the services of, any employee of the Business who becomes an employee of Buyer or any of its Affiliates in connection with the transactions contemplated by this Agreement; provided, however, that nothing contained in this Section 6.13 shall prohibit or restrict Seller or any of its Affiliates from making general solicitations of employment that are not directed at any such employees of Buyer or any of its Affiliates.

6.14 Third Party Notices. Seller shall, promptly after the Effective Date (and in any event within seven (7) Business Days of the Effective Date), send a notice in writing to each counterparty to an Assigned Contract setting forth the proposed Cure Amount or other remedy for such Assigned Contract or Assumed Liability and the applicable period for response or objection (such period, the "Response Period"). Seller shall promptly notify Buyer of any responses received from any such counterparties.

ARTICLE VII

CONDITIONS PRECEDENT

7.1 Conditions to the Obligations of Each Party. The respective obligations of the Parties to consummate and cause the consummation of the Purchase shall be subject to the satisfaction (or waiver in writing by the Parties) at or prior to the Closing of each of the following conditions:

(a) Injunctions; Illegality. No Governmental Entity shall have issued, enacted, entered, promulgated or enforced any Law or Order restraining, enjoining or otherwise prohibiting the transactions contemplated by this Agreement and there shall be no proceeding pending by any Governmental Entity seeking any such Order.

(b) Sale Order. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall have become a Final Order.

(c) Bid Procedures Order. The Bankruptcy Court shall have entered the Bid Procedures Order, and the Bid Procedures Order shall have become a Final Order.

7.2 Conditions to Obligations of Seller. The obligation of Seller to consummate and cause the consummation of the transactions contemplated herein is subject to the satisfaction (or waiver in writing by Seller) at or prior to the Closing of each of the following further conditions:

(a) Representations and Warranties. The Fundamental Representations made by Buyer in ARTICLE V shall be true and correct in all respects as of the Effective Date and at the Closing with the same effect as though made at that time (other than those Fundamental Representations made by Buyer that speak as of a specified date, in which case such Fundamental Representations shall be true and correct in all respects as of such specified date) and the other representations and warranties made by Buyer in ARTICLE V shall be true and correct in all material respects as of the Effective Date and at the Closing with the same effect as though made at that time (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such specified date).

(b) Performance. Buyer shall have duly complied in all material respects with all covenants and agreements contained herein required to be complied with by Buyer at or prior to the Closing.

(c) Closing Deliverables. Buyer shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 3.3(c).

7.3 Conditions to Obligations of Buyer. The obligations of Buyer to consummate and cause the consummation of the Purchase is subject to the satisfaction (or waiver in writing by Buyer) at or prior to the Closing of each of the following further conditions:

(a) Representations and Warranties. The Fundamental Representations made by Seller in ARTICLE IV shall be true and correct in all respects as of the Effective Date and at the Closing with the same effect as though made at that time (other than those Fundamental Representations made by Seller that speak as of a specified date, in which case such Fundamental Representations shall be true and correct in all respects as of such specified date) and the other representations and warranties made by Seller in ARTICLE IV shall be true and correct in all material respects as of the Effective Date and at the Closing with the same effect as though made at that time (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties shall be true and correct in all material respects as of such specified date).

(b) Performance. Seller shall have duly complied in all material respects with all covenants and agreements contained herein required to be complied with by Seller at or prior to the Closing.

(c) Closing Deliverables. Seller shall have delivered, or caused to be delivered, to Buyer all of the items set forth in Section 3.3(b).

(d) Material Adverse Effect. During the period from the Effective Date to the Closing Date, there shall not have been any Material Adverse Effect.

(e) Employment Agreements. At least seven (7) of the Key Employees shall have delivered to Buyer a counterpart to each such Key Employee's Employment Agreement, which counterpart shall have been duly executed by each such Key Employee, and each such Employment Agreement shall be in full force and effect.

(f) Compliance with Orders. Seller shall have (i) commenced the Bankruptcy Case within one (1) Business Day of the date of this Agreement, (ii) filed the Sale Motion within two (2) Business Days of the Petition Date, (iii) obtained entry of the Bid Procedures Order within twenty-five (25) days of the Petition Date, (iv) obtained entry of the Sale Order within fifty-five (55) days of the Petition Date.

(g) Response Period. The Response Period shall have expired.

(h) Credit Bid. Buyer shall be a secured creditor of Seller holding valid, binding, enforceable and perfected first priority liens under the DIP Credit Agreement, the Secured Loan and the Senior Notes against the property of Seller's bankruptcy estates, and no

portion of the amount of Buyer's secured claims under the DIP Credit Agreement, the Secured Loan and the Senior Notes available to be applied against the purchase price in accordance with Section 3.1 shall have been subject to any challenge, avoidance, reduction (except on account of satisfaction), disallowance, recharacterization, impairment or subordination.

ARTICLE VIII

TERMINATION

8.1 Termination. This Agreement may be terminated, and the Purchase may be abandoned, at any time prior to the Closing:

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

(b) by Seller or Buyer if:

(i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited;

(ii) a Governmental Entity of competent jurisdiction shall have enacted, enforced or entered any Law, or an Order shall be in effect, that prohibits the consummation of the Closing; provided that the Party seeking to terminate this Agreement (and its Affiliates) shall have used commercially reasonable efforts to have any such Law declared invalid or inapplicable or Order a vacated; or

(iii) the Closing fails to occur on or prior to the seventy-fifth (75th) day following the Petition Date; provided, however, that this Agreement may not be terminated pursuant to this Section 8.1(b)(iii) by (A) Buyer if Buyer is in material breach of this Agreement, or (B) by Seller if Seller is in material breach of this Agreement.

(c) by Seller, if: (i) Buyer breaches any of its covenants, agreements, representations or warranties in this Agreement, which breach would (if occurring or continuing as of the Closing) give rise to the failure of a condition to the Closing set forth in Section 7.1 or Section 7.2 or (ii) there is any material breach by Buyer of the Bid Procedures Order or the Sale Order, and in either case of clause (i) or (ii), such breach is not curable or, if curable, is not cured by the fifth (5th) day after written notice thereof is given by Seller to Buyer; provided that Seller may not terminate this Agreement pursuant to this Section 8.1(c) if any of them is in material breach of this Agreement, the Bid Procedures Order or the Sale Order;

(d) by Buyer, if: (i) Seller breaches any of Seller's covenants, agreements, representations or warranties contained in this Agreement, which breach would (if occurring or continuing as of the Closing) give rise to the failure of a condition to the Closing set forth in Section 7.1 or Section 7.3 or (ii) there is any material breach by Seller of the Bid Procedures Order or the Sale Order, and in either case of clause (i) or (ii), such breach is not curable or, if curable, is not cured by the fifth (5th) day after written notice thereof is given by Buyer to Seller; provided that Buyer may not terminate this Agreement pursuant to this Section 8.1(d) if Buyer is in material breach of this Agreement, the Bid Procedures Order or the Sale Order;

(e) by Buyer if (i) Seller seek to have the Bankruptcy Court enter an Order (A) dismissing, or converting the Bankruptcy Case into a case under Chapter 7 of the Bankruptcy Code, or (B) appointing a trustee, or other Person responsible for operation or administration of Seller or its business or assets, or a responsible officer for Seller, or an examiner with enlarged power relating to the operation or administration of Seller or its business or assets (each, an "Appointee"), (ii) an order of dismissal of the Bankruptcy Case, conversion of the Bankruptcy Case into a case under chapter 7 of the Bankruptcy Code, or appointment of an Appointee is entered for any reason or (iii) any of the Sellers do not comply with the terms of the Bid Procedures;

(f) by Buyer, if: (i) Seller shall not have commenced the Bankruptcy Case within one (1) Business Day of the date of this Agreement, (ii) the Sale Motion is not filed within two (2) days of the Petition Date, (iii) the Bid Procedures Order is not entered within twenty-five (25) days of the Petition Date, (iv) the Sale Order is not entered within fifty-five (55) days of the Petition Date or (v) following entry of the Sale Order or the Bid Procedures Order, any of the Sale Order, the Bid Procedures Order or the Bid Procedures is stayed, reversed, modified, vacated or amended in any respect without the prior written consent of Buyer, and such stay, reversal, modification, vacation or amendment is not eliminated within ten (10) days; or

(g) by Buyer, if (i) the DIP Financing Order has not been entered on an interim basis prior to the fifth (5^{th}) Business Day immediately following the Petition Date, (ii) the DIP Financing Order has not been entered on a final basis prior to the day that is thirty-five (35) days after the Petition Date, (iii) an Event of Default (as defined in the DIP Credit Agreement) has occurred and is not waived or cured within the later of five (5) Business Days or any applicable cure period set forth in the DIP Agreement, (iv) the DIP Agreement of the DIP Financing Order is amended or modified without the prior consent of Buyer or (v) Seller's right to use cash collateral is terminated, suspended, limited or modified without the prior consent of Buyer;

(h) (A) by Buyer or, so long as Seller complies with the Bid Procedures Order, Seller, if Seller accepts a Qualifying Bid as the Successful Bid (each as defined in the Bid Procedures Order) from a Person other than Buyer or (B) by Buyer if Seller does not select Buyer as the Successful Bidder within two (2) business Days after the conclusion of the Auction (as defined in the Bid Procedures Order);

(i) automatically upon entry into any Contract or understanding providing for an Alternative Transaction.

8.2 Effect of Termination. In the event that this Agreement is terminated pursuant to Section 8.1, this Agreement and the rights and obligations of the Parties hereunder shall immediately become null and void and of no further force or effect without any further action by any Party; provided, however, that (a) the provisions of Section 6.2 (Public Announcements), Section 6.8 (Breakup Fee; Expenses), Section 6.9 (Confidentiality), Section 8.2 (Effect of Termination) and ARTICLE IX (Miscellaneous) shall survive any such termination and (b) no termination of this Agreement shall relieve any Party from Liability for any breach of this

Agreement occurring prior to such termination, or for the breach of any provision hereof that expressly survives the termination of this Agreement.

ARTICLE IX

MISCELLANEOUS

9.1 Survival of Representations and Warranties. Except in the case of fraud or willful misconduct, none of the representations and warranties contained in ARTICLE IV or ARTICLE V shall survive the Closing, and no Party shall be subject to any liability or claims (whether legal or equitable, arising under contract, tort or otherwise) for a breach of, or inaccuracy in, such Party's representations or warranties contained in ARTICLE IV or ARTICLE V, as applicable.

9.2 Expenses. Except as otherwise expressly provided in this Agreement, each Party shall pay all of its own costs and expenses (including attorneys', accountants' and investment bankers' fees and other out-of-pocket expenses) in connection with the negotiation and execution of this Agreement, the performance of its obligations hereunder and the consummation of the transactions contemplated hereby (it being understood by Seller, that if the Closing occurs, Buyer shall pay all of the costs and expenses of its Affiliates incurred in connection with the transactions contemplated hereby). Without limiting the foregoing, each Party shall pay its own expenses incurred in connection with its efforts to satisfy the conditions to consummate the transactions contemplated hereby.

9.3 Amendment and Waiver. This Agreement may be amended, and any provision of this Agreement may be waived; provided, however, that any such amendment or waiver shall be binding upon a Party only if set forth in a writing executed by such Party and referring specifically to the provision alleged to have been amended or waived. No course of dealing between the Parties shall be deemed effective to modify, amend or discharge any part of this Agreement or any rights or obligations of any Party under or by reason of this Agreement and a waiver of any provision by any Party on one occasion shall not be deemed to be a waiver of the same or any other provision on a future occasion.

9.4 Notices. All notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (i) when personally delivered, sent by facsimile or electronic mail (read receipt requested) or sent by reputable overnight express courier (charges prepaid), or (ii) three days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, demands and communications to Seller, on the one hand, and Buyer, on the other hand, shall be sent to the addresses indicated below:

Notices to Seller:

Verengo, Inc.
20285 S. Western Avenue, Suite 200
Torrance CA 90501
Attention: General Counsel
Email: legalnotices@verengosolar.com

with a copy (which shall not constitute notice) to:

Bayard, P.A.
222 Delaware Avenue, Suite 900
Wilmington, DE 19801
Attention: Scott Cousins
GianClaudio Finizio
Email: scousins@bayardlaw.com; gfinizio@bayardlaw.com

Notices to Buyer:

Crius Solar Fulfillment, LLC
c/o Crius Energy, LLC
1055 Washington Blvd., Floor 7
Stamford, CT 06901
Attention: Chief Legal Officer
Email: bclay@criusenergy.com

with a copy (which shall not constitute notice) to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
Attention: Mark Getachew
Paul Shalhoub
Email: mgetachew@willkie.com, pshalhoub@willkie.com

9.5 Assignment. Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party; provided that Buyer may assign its rights hereunder to an Affiliate. This Agreement shall inure to the benefit of and shall be binding upon the permitted successors and assigns of the Parties.

9.6 Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement or the application of any such provision to any Person or circumstance shall be held to be prohibited by or invalid, illegal or unenforceable under applicable Law in any respect by a court of competent jurisdiction, such provision shall be ineffective only to the extent of such prohibition or invalidity, illegality or unenforceability, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

9.7 Interpretation. The headings and captions used in this Agreement and the table of contents to this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Any capitalized term used in any Schedule attached hereto and not otherwise defined therein shall have the meaning set forth in this Agreement. The use of the word "including" herein shall mean "including without

limitation." Any of the terms defined herein may, unless the context otherwise requires, be used in the singular or the plural, depending on the reference.

9.8 Entire Agreement. This Agreement, the Transaction Documents and the other agreements and documents referred to herein contain the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersede all prior agreements and understandings, whether written or oral, relating to such subject matter in any way. All schedules, exhibits, addenda, disclosure letters and any other documents and instruments delivered pursuant to this Agreement are expressly made a part of this Agreement as though completely set forth herein.

9.9 Counterparts. This Agreement may be executed in one or more counterparts (including by means of telecopied or PDF signature pages), all of which shall be considered one and the same instrument, and shall become effective when one or more such counterparts have been signed by each of the Parties and delivered to the other Party.

9.10 Applicable Law; Jurisdiction.

(a) THIS AGREEMENT AND THE LEGAL RELATIONS BETWEEN THE PARTIES SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND THE APPLICABLE PROVISIONS OF THE BANKRUPTCY CODE, WITHOUT REGARD TO THE CONFLICT OF LAWS RULES THEREOF.

(b) EACH PARTY AGREES THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT AND THE AGREEMENTS, INSTRUMENTS AND DOCUMENTS CONTEMPLATED HEREBY AND THE PARTIES CONSENT TO AND AGREE TO SUBMIT TO THE EXCLUSIVE JURISDICTION OF SUCH COURT.

(c) EACH OF THE PARTIES HEREBY WAIVES AND AGREES NOT TO ASSERT IN ANY RECOGNITION OR ENFORCEMENT PROCEEDING, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY DEFENSE THAT (A) SUCH PARTY IS NOT PERSONALLY SUBJECT TO THE JURISDICTION OF SUCH COURT, (B) SUCH PARTY AND SUCH PARTY'S PROPERTY IS IMMUNE FROM ANY LEGAL PROCESS ISSUED BY SUCH COURT OR (C) ANY ACTION OR PROCEEDING COMMENCED IN SUCH COURT IS BROUGHT IN AN INCONVENIENT FORUM.

9.11 No Strict Construction. The Parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement will be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof will arise favoring or disfavoring any Party hereto because of the authorship of any provision of this Agreement.

9.12 Specific Performance. Each of the Parties recognizes that if the other Party breaches this Agreement or refuses to perform under the provisions of this Agreement, monetary damages alone would not be adequate to compensate the non-breaching Party for its injuries.

Seller and Buyer shall therefore be entitled, in addition to any other remedies that may be available, to obtain specific performance of the terms of this Agreement. The Parties further agree that neither Party shall be required to obtain, furnish or post any bond or similar instrument in connection with or as a condition to obtaining any remedy referred to in this Section 9.12, and each Party irrevocably waives any right it may have to require the obtaining, furnishing or posting of any such bond or similar instrument. If any action is brought by Seller or Buyer to enforce this Agreement, the non-breaching Party shall waive the defense that there is adequate remedy at Law.

9.13 No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties and their permitted assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties and such permitted assigns, any legal or equitable rights hereunder.

9.14 Waiver of Jury Trial. EACH OF THE PARTIES HEREBY IRREVOCABLY WAIVES, AND SHALL CAUSE ITS SUBSIDIARIES AND AFFILIATES TO WAIVE, ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

* * * * *

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be duly executed as of the date and year first written above.

SELLER:

VERENGO, INC.

By: _____
Name: Dan Squiller
Title: CEO

BUYER:

CRIUS SOLAR FULFILLMENT, LLC

By: _____
Name:
Title:

IN WITNESS WHEREOF, the Parties have caused this Asset Purchase Agreement to be duly executed as of the date and year first written above.

SELLER:

VERENGO, INC.

By:_____
Name:
Title:

BUYER:

CRIUS SOLAR FULFILLMENT, LLC

By:_____
Name: Michael Fallquist
Title: Chief Executive Officer

EXHIBIT A

Form of Assignment and Assumption Agreement

Exhibit A

ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this "**Assignment**") is made as of [●], 2016, by and between Verengo, Inc. ("**Seller**") and Crius Solar Fulfillment, LLC (including its successors and assigns, "**Buyer**"). Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Asset Purchase Agreement (as defined below).

WHEREAS, Seller and Buyer are parties to that certain Asset Purchase Agreement, dated as of [●], 2016 (the "**Asset Purchase Agreement**"), pursuant to which Buyer has agreed to purchase, and Seller has agreed to sell, convey, assign, transfer and deliver to Buyer, all of Seller's right, title and interest in, to and under the Purchased Assets (as defined therein) on the terms and conditions set forth in the Asset Purchase Agreement and in accordance with the Bankruptcy Code; and

WHEREAS, pursuant to the Asset Purchase Agreement and the Bankruptcy Code, Seller has agreed to assign all of Seller's right, title and interest in, to and under the applicable Purchased Assets, and Buyer has agreed to assume the Assumed Liabilities, and Buyer has not and shall not be deemed to have assumed or to be liable for, any Excluded Liabilities.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, upon the terms and subject to the conditions set forth in the Asset Purchase Agreement, the Bid Procedures Order and the Sale Order, it is hereby agreed that:

1. **Assignment and Assumption**. Effective as of the Closing Date, Seller agrees to and hereby does assign, sell, transfer and deliver to Buyer (i) all of Seller's right, title and interest in, to and under, the applicable Purchased Assets, as more specifically described on Schedule 1 attached hereto and (ii) all of Seller's Assumed Liabilities. Effective as of the Closing Date, Buyer hereby accepts the assignment of the Purchased Assets described on Schedule 1 attached hereto and the assumption of the Assumed Liabilities and agrees to pay, perform and discharge when due all of such Assumed Liabilities from and after the Closing Date pursuant to the terms of the Asset Purchase Agreement. Other than the Assumed Liabilities, Buyer shall not assume, nor shall anything in this Assignment or in the Asset Purchase Agreement be deemed to constitute a transfer to, or assumption by Buyer of, any of the Excluded Liabilities or any Liability of Seller, all of which are expressly retained by Seller.

2. **Terms of the Asset Purchase Agreement**. This Assignment is being delivered pursuant to the Asset Purchase Agreement, and is subject to the representations, warranties, conditions, limitations, covenants and agreements set forth in the Asset Purchase Agreement. Seller and Buyer acknowledge and agree that the representations, warranties, conditions, limitations, covenants and agreements contained in the Asset Purchase Agreement shall not be superseded hereby, but shall remain in full force and effect to the full extent provided therein. The rights and remedies of Buyer or Seller under the Asset Purchase Agreement shall not be deemed to be enlarged, modified, or in any way altered by the terms of this Assignment. In the

event of any conflict between the terms of the Asset Purchase Agreement and the terms of this Assignment, the terms of the Asset Purchase Agreement shall prevail.

3. **General Provisions**. Sections 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13 and 9.14 of the Asset Purchase Agreement are incorporated herein by reference.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties have executed this Assignment as of the date first above written.

Seller:

VERENGO, INC.

By:_____
Name:
Title:

Buyer:

CRIUS SOLAR FULFILLMENT, LLC

By:_____
Name:
Title:

SCHEDULE 1

18145174.12

EXHIBIT B

Form of Bid Procedures Order

Exhibit B

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	**Related D.I.:** _____

ORDER (A) APPROVING PROCEDURES IN CONNECTION WITH THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS; (B) SCHEDULING THE RELATED AUCTION AND HEARING TO CONSIDER APPROVAL OF SALE; (C) APPROVING PROCEDURES RELATED TO THE ASSUMPTION OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (D) APPROVING THE FORM AND MANNER OF NOTICE THEREOF; (E) APPROVING BREAKUP FEE AND EXPENSE REIMBURSEMENT; AND (F) GRANTING RELATED RELIEF

This matter coming before the Court on the motion (the "**Motion**")[2] of the above-captioned debtor and debtor in possession (the "**Debtor**") for the entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code (the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "**Bankruptcy Rules**"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the "**Local Rules**"): (I)(A) approving procedures in connection with the sale of all or substantially all of the Debtor's assets; (B) scheduling the related auction and hearing to consider approval of sale; (C) approving procedures related to the assumption of certain executory contracts and unexpired leases; (D)

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance, CA 90501.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

approving the form and manner of notice thereof; (E) approving the breakup fee and expense reimbursement; and (F) granting related relief; and (II)(A) authorizing the sale of all or substantially all of the Debtor's assets pursuant to the successful bidder's asset purchase agreement free and clear of liens, claims, encumbrances, and other interests; (B) approving the assumption and assignment of certain executory contracts and unexpired leases related thereto; and (C) granting related relief; the Court having found that (i) the Court has jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; (ii) venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409; (iii) this is a core proceeding pursuant to 28 U.S.C. § 157(b); and (iv) notice of the Motion was sufficient under the circumstances; and after due deliberation the Court having determined that the relief requested in the Motion is in the best interests of the Debtor, its estate and its creditors; and good and sufficient cause having been shown;

IT IS FURTHER FOUND AND DETERMINED THAT:

A. The Debtor's proposed notice of the Bidding Procedures, the Cure Procedures, the Auction and the hearing to approve the sale of the Purchased Assets (the "**Sale Hearing**") is appropriate and reasonably calculated to provide all interested parties with timely and proper notice, and no other or further notice is required.

B. The Bidding Procedures substantially in the form attached hereto as **Schedule 1** are fair, reasonable, and appropriate and are designed to maximize the recovery from the Sale of the Purchased Assets.

C. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

D. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived or settled are overruled.

3. The Bidding Procedures attached hereto as **Schedule 1** are APPROVED.

4. Crius Solar Fulfillment, LLC is hereby approved to be and designated as the Stalking Horse Purchaser.

5. Subject to the Bidding Procedures and approval of the sale at the Sale Hearing, the Debtor's entry into the Stalking Horse Agreement (including any amendments thereto) attached hereto as Exhibit C[3] to the Motion, is hereby approved.

6. The Breakup Fee and Expense Reimbursement are APPROVED and shall be paid when and as set forth in the Stalking Horse Agreement as an administrative claim of the estate under sections 503(b)(1)(A) and 507(a)(2) of the Bankruptcy Code and shall not be subordinate to any other administrative expense claims against the Debtor. Notwithstanding anything to the contrary contained herein in the event of termination of

[3] For the convenience of parties in interest, a chart listing important dates set forth in this Order is attached hereto as **Schedule 2**.

the Stalking Horse Agreement, upon timely payment of the Breakup Fee and Expense Reimbursement to the Stalking Horse Purchaser if due, the Debtor and its representatives, on the one hand, and the Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, will be deemed to have fully released and discharged each other from any liability resulting from the termination of the Stalking Horse Agreement, and neither Debtor and its representatives, on the one hand, and Stalking Horse Purchaser and its respective representatives and affiliates, on the other hand, nor any other Person, will have any other remedy or cause of action under or relating to the Stalking Horse Agreement or any applicable law, including for reimbursement of expenses. Any Breakup Fee and Expense Reimbursement payable pursuant to the terms of the Stalking Horse Agreement shall be payable without any further order of the Bankruptcy Court.

7. The Bid Deadline shall be [_____], 2016 at 9:00 a.m. (prevailing Eastern Time).

8. The Debtor shall have the exclusive right to determine whether a bid is a Qualified Bid and shall notify Qualified Bidders whether their bids have been recognized as such as promptly as practicable after a Qualified Bidder delivers all of the materials required by the Bidding Procedures. The Stalking Horse Agreement is a Qualified Bid for all purposes under the Bidding Procedures.

9. The Auction, if necessary, shall be held on [_____], 2016 at 10:00 a.m. (Eastern) at the offices of Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801 or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction.

10. At such Auction, each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale, and the Auction shall be conducted openly and transcribed.

11. The Debtor shall determine which offer is the highest and otherwise best offer for the Purchased Assets, giving effect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor.

12. Neither the Stalking Horse Purchaser nor the Successful Bidder (if different) shall be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Stalking Horse Agreement (or, in the case of a Successful Bidder other than the Stalking Horse Purchaser, the applicable asset purchase agreement) or any other Sale related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

13. The Sale Hearing shall be held on[_____], 2016 at ____:00 __.m. (prevailing Eastern Time) before this Court, the U.S. Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, [_]th Floor, Courtroom [_]. Any objections to the Sale shall be filed and served so as to be received no later than [_____], 2016 at 4:00 p.m. (prevailing Eastern Time) by: (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller

(emiller@bayardlaw.com), (iii) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)), (iv) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the Notice Parties).

14. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and the Debtor shall have the exclusive right, in the exercise of its fiduciary obligations and business judgment, to cancel the Sale at any time subject to the terms of this Order, including the payment of the Breakup Fee and Expense Reimbursement to the Stalking Horse Purchaser in accordance with the terms of this Order and the Stalking Horse Agreement.

15. The following forms of notice are approved: (a) Notice of Sale Procedures, Auction Date and Sale Hearing, in the form substantially similar to that attached hereto as **Schedule 3** (the "**Procedures Notice**") and (b) the Notice to Counterparties to Executory Contracts and Unexpired Leases of the Debtor That May Be Assumed and Assigned (the "**Cure Notice**"), in the form substantially similar to that attached hereto as **Schedule 4**.

16. The Debtor shall, within two (2) business days after the entry of this Order, serve this Order by first class mail, postage prepaid on (a) the US Trustee, (b) any Official Committee of Unsecured Creditors, (c) any parties requesting notices in this case

pursuant to Bankruptcy Rule 2002, (d) counsel to the Stalking Horse Purchaser, and (e) all Potential Bidders, collectively with the parties specified in this paragraph, the "**Procedures Notice Parties**").

17. The Debtor shall serve the Motion and the Cure Notice upon each counterparty to the Assigned Contracts or their counsel (if known), by no later than [_____], 2016. The Cure Notice shall state the date, time and place of the Sale Hearing as well as the date by which any objection to the assumption and assignment of Assigned Contracts must be filed and served. The Cure Notice also will identify the amounts, if any, that the Debtor believes are owed to each counterparty to an Assigned Contract in order to cure any defaults that exist under such contract (the "**Cure Amounts**").

18. If any counterparty to an Assigned Contract objects for any reason to the assumption and assignment of an Assigned Contract (an "**Assumption Objection**"), such counterparty must file and serve such Assumption Objection so as to be received by the Notice Parties by no later than (the "**Assumption Objection Deadline**"): (i) 4:00 p.m. (prevailing Eastern Time) on [_____], 2016, provided, however, if any bidder other than the Stalking Horse Bidder is the Successful Bidder, then that any counterparty may file and serve an objection to the assumption and assignment of the Assigned Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of future performance under the Assigned Contract up to the time of the Sale Hearing, or raise it at the Sale Hearing; or (ii) the date otherwise specified in the Cure Notice (or, alternatively, the date set forth in the motion to assume such Assigned Contract if such contract is to be assumed and assigned after the Sale Hearing). The Court will make any

and all determinations concerning adequate assurance of future performance under the Assigned Contracts pursuant to sections 365(b) and (f)(2) of the Bankruptcy Code at the Sale Hearing.

19. If a Contract or Lease is assumed and assigned pursuant to Court order, then except for Disputed Cure Amounts (as defined herein), the Assigned Contract counterparty shall receive no later than three (3) business days following the closing of the Sale, the Cure Amount, if any, as set forth in the Cure Notice. To the extent the Assigned Contract counterparty wishes to object to the Cure Amount, if any, set forth in the Cure Notice, its Assumption Objection must set forth with specificity each and every asserted default in any executory contract or unexpired lease and the monetary cure amount asserted by such counterparty to the extent it differs from the amount, if any, specified by the Debtor in the Cure Notice.

20. In the event that the Debtor and the non-Debtor party cannot resolve the Cure Amount, the Debtor shall segregate any disputed Cure Amounts ("**Disputed Cure Amounts**") pending the resolution of any such disputes by the Court or mutual agreement of the parties. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing. Any counterparty to an Assigned Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of that set forth in the Cure Notice.

21. Except to the extent otherwise provided in the Successful Bidder's Purchase Agreement, the Debtor and the Debtor's estate shall be relieved of all liability

accruing or arising after the assumption and assignment of the Assigned Contracts pursuant to section 365(k) of the Bankruptcy Code.

22. To the extent the provisions of this Order are inconsistent with the provisions of any Exhibit or Schedule referenced herein or with the Motion, the provisions of this Order shall control.

23. The Court shall retain jurisdiction over all matters arising from or related to the interpretation and implementation of this Order.

24. Notwithstanding the possible applicability of Bankruptcy Rules 6004, 6006, 7062, 9014 or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable.

Dated: _____, 2016
Wilmington, Delaware

_____
United States Bankruptcy Judge

Schedule 1

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed in connection with the sale of all or substantially all assets (the "**Assets**") of the Debtor, in connection with the chapter 11 case pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 16-12098 (____).

The Debtor entered into that certain asset purchase agreement, dated September 23, 2016 (together with the schedules and related documents thereto, the "**Stalking Horse Agreement**") between the Debtor and Crius Solar Fulfillment, LLC (the "**Stalking Horse Purchaser**"), pursuant to which the Stalking Horse Purchaser has agreed to acquire all or substantially all of the Assets (collectively, to the extent provided in the Stalking Horse Agreement, the "**Purchased Assets**") on the terms and conditions specified therein.

The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

I. ASSETS TO BE SOLD

The Debtor seeks to complete a sale of the Purchased Assets (the "**Sale**") and the assumption of certain liabilities described in Sections 2.3 and 2.5 of the Stalking Horse Agreement. The Stalking Horse Agreement will serve as the "stalking-horse" bid for the Purchased Assets. Except as otherwise provided in the Stalking Horse Agreement or such other approved purchase agreement of the Successful Bidder, all of the Sellers' right, title and interest in and to each Purchased Asset to be acquired shall be sold free and clear of all liens, hypothecations, encumbrances, claims, liabilities, security interests, interests, mortgages, pledges, restrictions, options, easements, encroachments, or restrictions on transfer of any kind or nature thereon and there against (collectively, the "**Liens**"), such Liens to attach solely to the net proceeds of the sale of such Purchased Assets

II. THE BID PROCEDURES

In order to ensure that the Debtor receives the maximum value for the Purchased Assets, it intends to conduct a sale process for the Purchased Assets pursuant to the procedures and on the timeline proposed herein.

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process (a "**Potential Bidder**") must deliver the following to the Notice Parties (as defined below):

(i) a written disclosure of the identity of each entity including all affiliates, equity sources or other parties that will be or is associated with bidding for the Purchased Assets or otherwise participating in connection with such bid and the complete terms of any such participation; and

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor, which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A Potential Bidder that delivers the documents and information described above and that the Debtor determines in its reasonable business judgment, after consultation with its advisors, is likely (based on availability of financing, experience and other considerations) to be able to consummate the sale, will be deemed a "**Qualified Bidder**." The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith.

As promptly as practicable after a Potential Bidder delivers all of the materials required above (and in any event no later than two (2) business days thereafter), the Debtor will determine and will notify the Potential Bidder and the Notice Parties if such Potential Bidder is a Qualified Bidder.

B. Due Diligence

The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deems appropriate, in its reasonable discretion. The Sellers must promptly advise the Stalking Horse Purchaser in the event any other Qualified Bidder receives diligence the Stalking Horse Purchaser has not previously received and shall promptly be provided with access to such diligence materials.

The due diligence period shall end on the Bid Deadline. For the avoidance of doubt, neither the Debtor nor any of its respective representatives shall be obligated to furnish any due diligence information to any person other than a Qualified Bidder.

C. Provisions Governing Qualified Bids

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a "**Qualified Bid**"):

(i) it fully discloses the identity of the Qualified Bidder;

(ii) it states that the applicable Qualified Bidder offers to purchase the Purchased Assets upon terms and conditions that the Debtor reasonably determines are at least as favorable to the Debtor as those set forth in the Stalking Horse Agreement, and follows the form and structure of the Stalking Horse Agreement;

(iii) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, then the offer shall remain irrevocable until

the earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the date that is fifteen (15) business days after entry of the Sale Order with respect to the Successful Bidder and sixteen (16) business days after entry of the Sale Order with respect to the Back-Up Bidder;

(iv) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;

(v) it sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals;

(vi) it includes a duly authorized and executed copy of a purchase or agreement (a "**Purchase Agreement**"), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, together with copies marked ("**Marked Agreement**") to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court Motion; provided however, that such Purchase Agreement shall not include any financing or diligence conditions;

(vii) it includes written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on further third party approvals or commitments, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, or such other financial information as may be acceptable to the Debtor in its reasonable discretion (collectively, the "**Financials**") of the Qualified Bidder, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Qualified Bidder's equity holder(s) or other financial backer(s);

(viii) it provides for a cash purchase price at least $250,000 (the "**Minimum Overbid**") in excess of the aggregate consideration to be received by or for the benefit of the Debtor's estate upon consummation of the Stalking Horse Agreement ((a) $200,000 in cash, plus (b) cash in an amount sufficient to satisfy the Debtor's secured obligations being credit bid by the Stalking Horse Purchaser under the Stalking Horse Agreement (specifically, $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan (as defined in the Stalking Horse Agreement totaling $2,272,000, plus (z) such amount of Senior Notes (as defined in the Stalking Horse Agreement) necessary to total, when combined with the

credit bid amounts from clauses (x) and (y), $11.7 million), and otherwise has a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, that is greater or otherwise better than the value offered under the Stalking Horse Agreement including impact of the liabilities assumed in the Stalking Horse Agreement. The Minimum Overbid represents the sum of (A) the amount of the Breakup Fee (as defined below) of $475,000 and Expense Reimbursement of $175,000, plus (B) $250,000 plus (C) the Purchase Price of $11,900,000;

(ix) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;

(x) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;

(xi) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

(xii) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;

(xiii) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price;

(xiv) it contains in writing that the Qualified Bidder will pay off, in full, the DIP loan and become the DIP lender, with such payoff to occur within three (3) days of the Sale Hearing;

(xv) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;

(xvi) it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;

(xvii) it contains such other information reasonably requested by the Debtor; and

(xviii) it is received prior to the Bid Deadline.

Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid, for all purposes in connection with the Bidding Procedures, the Auction, and the Sale. The Stalking Horse Purchaser shall not be required to take any further action in order to participate in the Auction (if any) or, if the Stalking Horse Purchaser is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing (as defined below).

The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) no later than two (2) business days following the expiration of the Bid Deadline.

D. Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "**Notice Parties**"): (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller (emiller@bayardlaw.com); (iii) financial advisor to the Debtor: SSG Capital Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428 (Attn: J. Scott Victor (jsvictor@ssgca.com)); (iv) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)); and (v) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the Notice Parties), so as to be received by the Debtor not later than 50 days after the Petition Date (the "**Bid Deadline**").

E. Credit Bidding

The Stalking Horse Purchaser holds security interests in the Purchased Assets and has included within its Stalking Horse Agreement a credit bid for the Purchased Assets. It may submit additional credit bids for the Purchased Assets as it deems necessary and desirable.

F. Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the Stalking Horse Agreement, and (4) any other factors deemed relevant by the Debtor in its reasonable discretion.

G. No Qualified Bids

If the Debtor does not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtor will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Purchased Assets.

H. Auction Process

If the Debtor receives one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtor will conduct an auction of the Purchased Assets (the "**Auction**"), which shall be transcribed, on a date that is no later than 52 days after the Petition Date (the "**Auction Date**") at the offices of Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction shall run in accordance with the following procedures:

(a) the Auction will be conducted openly and all creditors will be permitted to attend;

(b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction;

(c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;

(d) at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtor will identify to the Stalking Horse Purchaser and all other Qualified Bidders which Qualified Bid the Debtor believes in its reasonable discretion is the highest or otherwise best offer (the "**Starting Bid**");

(e) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the

Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;

(f) the Debtor, after consultation with its advisors and with the consent of the Stalking Horse Purchaser, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction; and

(g) bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "**Subsequent Bid**") providing a net value to the estate of at least an additional $100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid that it believes to be the highest or otherwise better offer (the "**Leading Bid**"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Qualified Bidders will not have the opportunity to pass. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtor will give effect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor.

B. Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtor, in consultation with its advisors, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the "**Successful Bid**" and the bidder(s) making such bid, collectively, the "**Successful Bidder**"), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, subject only to approval by the Court.

Unless otherwise agreed to by the Debtor and the Successful Bidder, within two (2) business days after the conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Within one (1) business day following the conclusion of the Auction, the Debtor shall file a notice identifying the Successful Bidder with the Court and, if the Stalking Horse Purchaser is not the Successful Bidder, shall serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

The Debtor will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing.

C. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

D. Back-Up Bidder

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid to the Successful Bidder, as determined by the Debtor in the exercise of its business judgment, at the Auction shall be required to serve as a back-up bidder (the "**Back-Up Bidder**") and keep such bid open and irrevocable until sixteen (16) business days after entry of the Sale Order; provided that the Stalking Horse Purchaser shall not be required to be the Back-Up Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Bankruptcy Court.

E. The Bid Protections

In recognition of this expenditure of time, energy, and resources, the Debtor has agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtor will pay the Stalking Horse Purchaser an amount in cash equal to (i) $475,000 as more fully described in the Stalking Horse Agreement (the "**Breakup Fee**") plus (ii) the aggregate amount of the reasonable, actual, and necessary, out-of-pocket expenses paid or incurred by the Stalking Horse Purchaser and its affiliates relating to or in connection with its bid (the "**Expense Reimbursement**"), subject to a cap of $175,000. The Breakup Fee and the Expense Reimbursement shall be payable as provided for pursuant to the terms of the Stalking Horse Agreement and nothing herein shall be deemed to limit or otherwise modify the terms thereof, including other circumstances pursuant to which the Breakup-Up Fee and Expense Reimbursement may be payable.

The Debtor has further agreed that its obligation to pay the Breakup Fee and Expense Reimbursement pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, shall, to the extent owed by the Debtor, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code and shall be payable [within two (2) business days] under the terms and conditions of the Stalking Horse Agreement and the Bankruptcy Court's order approving these Bidding Procedures, notwithstanding section 507(a) of the Bankruptcy Code.

III. Sale Hearing

The Debtor will seek entry of an order from the Court at the Sale Hearing to be scheduled no later than 55 days following the Petition Date, to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bid Procedures.

Schedule 2

(Significant Dates)

- **Assumption Objection Deadline:** **[_____], 2016 at 4:00 p.m. (Eastern Time)**
- **Bid Deadline:** **[_____], 2016 at 9:00 a.m. (Eastern Time)**
- **Auction:** **[_____], 2016 at 10:00 a.m. (Eastern Time)**
- **Sale Objection Deadline:** **[_____], 2016 at 4:00 p.m. (Eastern Time)**
- **Sale Hearing:** **[_____], 2016 at __:00 _.m. (Eastern Time)**

Schedule 3

(Procedures Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	

NOTICE OF SALE PROCEDURES,
AUCTION DATE AND SALE HEARING

PLEASE TAKE NOTICE that on _____, the above-captioned Debtor and Debtor in possession (the "**Debtor**") filed the Motion of the Debtor and Debtor in Possession Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code for an Order (I)(A) Approving Procedures in Connection with the Sale of All or Substantially All of the Debtor's Assets; (B) Scheduling the Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Breakup Fee and Expense Reimbursement; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of All or Substantially All of the Debtor's Assets Pursuant to the Successful Bidder's Asset Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief (the "**Motion**").[2] The Debtor seeks, among other things, to sell all or substantially all assets (the "**Purchased Assets**") of the Debtor to Crius Solar Fulfillment, LLC (the "**Stalking Horse Purchaser**") or the bidder submitting the highest or otherwise best offer for the Purchased Assets (such bidder, the "**Successful Bidder**"), at an auction free and clear of all liens, claims, encumbrances and other interests pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that, on _____, 2016, the Bankruptcy Court entered an order (the "**Bidding Procedures Order**") approving the Motion and the bidding procedures (the "**Bidding Procedures**"), which set the key dates and times related to the Sale of the Purchased Assets. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures. To the extent that there are any inconsistencies between the Bidding Procedures Order (including the Bidding Procedures) and the summary description of its terms and conditions contained in this Notice, the terms of the Bidding Procedures Order shall control.

PLEASE TAKE FURTHER NOTICE that, pursuant to the terms of the Bidding Procedures, an auction (the "**Auction**") to sell the Purchased Assets will be conducted on [_____], 2016

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance, CA 90501.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

at 10:00 a.m. (Eastern) at the offices of [_____], or at such other location as shall be identified in a notice filed with the Bankruptcy Court at least 24 hours before the Auction.

PLEASE TAKE FURTHER NOTICE that a hearing will be held to approve the sale of the Purchased Assets to the Successful Bidder (the "**Sale Hearing**") before the , United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, [_]th Floor, Courtroom [_], on [_____]**, 2016** at __:00 _.m. (prevailing Eastern Time), or at such time thereafter as counsel may be heard or at such other time as the Bankruptcy Court may determine. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing. Objections to the Sale shall be filed and served **so as to be received no later than 4:00 p.m. (prevailing Eastern Time) on** [_____]**, 2016** by: (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller (emiller@bayardlaw.com), (iii) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)), (iv) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the Notice Parties).

PLEASE TAKE FURTHER NOTICE that this Notice of the Auction and Sale Hearing is subject to the full terms and conditions of the Motion, Bidding Procedures Order and Bidding Procedures, which Bidding Procedures Order shall control in the event of any conflict, and the Debtor encourages parties in interest to review such documents in their entirety. Any party that has not received a copy of the Motion or the Bidding Procedures Order that wishes to obtain a copy of the Motion or the Bidding Procedures Order, including all exhibits thereto, may make such a request in writing to [Matthew P. Karlson, Managing Director, SSG Capital Advisors, LLC, Attn: Matthew P. Karlson, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428 or by emailing Matthew P. Karlson (mkarlson@ssgca.com).]

Dated: [_____], 2016

Respectfully submitted,

/s/ DRAFT

Scott D. Cousins
BAYARD P.A.
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: scousins@bayardlaw.com

Proposed Attorneys for Debtor and Debtor-in-Possession

Schedule 4

(Cure Notice)

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	

NOTICE TO COUNTERPARTIES TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES OF THE DEBTOR THAT MAY BE ASSUMED AND ASSIGNED

PLEASE TAKE NOTICE that on [_____], the above-captioned Debtor and Debtor in possession (the "**Debtor**") filed the Motion of the Debtor and Debtor in Possession Pursuant to sections 105(a), 363 and 365 of the Bankruptcy Code for an Order (I)(A) Approving Procedures in Connection with the Sale of All or Substantially All of the Debtor's Assets; (B) Scheduling the Related Auction and Hearing to Consider Approval of Sale; (C) Approving Procedures Related to the Assumption of Certain Executory Contracts and Unexpired Leases; (D) Approving the Form and Manner of Notice Thereof; (E) Approving Breakup Fee and Expense Reimbursement; and (F) Granting Related Relief; and (II)(A) Authorizing the Sale of Substantially All of the Debtor's Assets Pursuant to the Successful Bidder's Asset Purchase Agreement Free and Clear of Liens, Claims, Encumbrances, and Other Interests; (B) Approving the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases Related Thereto; and (C) Granting Related Relief (the "Motion").[2]

PLEASE TAKE FURTHER NOTICE that, on [_____], 2016, the Court entered an Order (the "**Bidding Procedures Order**") approving, among other things, the Bidding Procedures requested in the Motion, which Bidding Procedures Order governs (i) the bidding process for the sale of all or substantially all of the assets (the "**Purchased Assets**") of the Debtor and (ii) procedures for the assumption and assignment of certain of the Debtor's executory contracts and unexpired leases.

PLEASE TAKE FURTHER NOTICE that: (1) the Debtor entered into the Stalking Horse Agreement with Crius Solar Fulfillment, LLC (the "**Stalking Horse Purchaser**") and (2) your contract may be assumed and assigned to Crius under the Stalking Horse Agreement, or to such other Purchaser that may emerge as the Successful Bidder following the Auction (if any) conducted pursuant to the Bidding Procedures.

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[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance CA 90501.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

PLEASE TAKE FURTHER NOTICE that the Motion also seeks Court approval of the sale (the "**Sale**") of the Purchased Assets to the Successful Bidder, free and clear of all liens, claims, interests and encumbrances pursuant to sections 105(a) and 363 of the Bankruptcy Code, including the assumption by the Debtor and assignment to the buyer of certain executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code (the "**Assigned Contracts**"). Within 24 hours after conclusion of the Auction (if any), unless otherwise agreed to by the Debtor, but in no event, at least one (1) business day prior to the Sale Hearing, the Debtor shall file a notice identifying the Successful Bidder with the Bankruptcy Court and, if the Stalking Horse Purchaser is not the Successful Bidder, serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

PLEASE TAKE FURTHER NOTICE that an evidentiary hearing (the "**Sale Hearing**") to approve the Sale and authorize the assumption and assignment of the Assigned Contracts will be held on [_____]**, 2016 at __:__ _.m** (prevailing Eastern Time), before the _____, United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, [_]th Floor, Courtroom [_]. The Sale Hearing may be adjourned from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, consistent with the Bidding Procedures Order, the Debtor may seek to assume an executory contract or unexpired lease to which you may be a party. The Assigned Contract(s) are described on **Exhibit A** attached to this Notice. The amount shown on **Exhibit A** hereto as the "Cure Amount" is the amount, if any, based upon the Debtor's books and records, which the Debtor asserts is owed to cure any defaults existing under the Assigned Contract.

PLEASE TAKE FURTHER NOTICE that if you disagree with the Cure Amount shown for the Assigned Contract(s) on **Exhibit A** to which you are a party, you must file in writing with the United States Bankruptcy Court for the District of Delaware, 824 Market Street, Wilmington, Delaware 19801, an objection on or before [_____]**, 2016 at 4:00 p.m. (prevailing Eastern Time)**. Any objection must set forth the specific default or defaults alleged and set forth any cure amount as alleged by you. If a contract or lease is assumed and assigned pursuant to a Court order approving same, then unless you properly file and serve an objection to the Cure Amount contained in this Notice, you will receive at the time of the closing of the sale (or as soon as reasonably practicable thereafter), the Cure Amount set forth herein, if any. Any non-Debtor party to an Assigned Contract that fails to timely file and serve an objection to the Cure Amounts shall be forever barred from asserting that a Cure Amount is owed in an amount in excess of the amount, if any, set forth in the attached **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that if you have any other objection to the Debtor's assumption and assignment of the Assigned Contract to which you may be a party, you also must file that objection in writing no later than 4:00 p.m. (prevailing Eastern Time) **on** [ ]**, 2016 at 4:00 p.m. (prevailing Eastern Time)**; provided, however, if any bidder other than the Stalking Horse Purchaser is the Successful Bidder, then that any counterparty to an Assigned Contract may file and serve an objection to the assumption and assignment of the Assigned Contract solely with respect to the Successful Bidder's ability to provide adequate assurance of

future performance under the Assigned Contract up to the time of the Sale Hearing, or raise it at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that any objection you may file must be served so as to be received by the following parties by the applicable objection deadline date and time (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller (emiller@bayardlaw.com), (iii) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)), (iv) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the "**Notice Parties**").

PLEASE TAKE FURTHER NOTICE that the buyer shall be responsible for satisfying any requirements regarding adequate assurance of future performance that may be imposed under sections 365(b) and (f) of title 11 of the United States Code §§ 101-1532 (the "**Bankruptcy Code**"), in connection with the proposed assignment of any Assigned Contract. The Court shall make its determinations concerning adequate assurance of future performance under the Assigned Contracts pursuant to 11 U.S.C. §§ 365(b) and (f) at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, in the event that the Debtor and the non-Debtor party cannot resolve the Cure Amount, the Debtor shall segregate any disputed Cure Amounts ("**Disputed Cure Amounts**") pending the resolution of any such disputes by the Court or mutual agreement of the parties. Assumption Objections may be resolved by the Court at the Sale Hearing, or at a separate hearing either before or after the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, except to the extent otherwise provided in the Purchase Agreement with the Successful Bidder, pursuant to section 365(k) of the Bankruptcy Code, the Debtor and the Debtor's estate shall be relieved of all liability accruing or arising after the effective date of assumption and assignment of the Assigned Contracts.

PLEASE TAKE FURTHER NOTICE that nothing contained herein shall obligate the Debtor to assume any Assigned Contracts or to pay any Cure Amount.[3]

PLEASE TAKE FURTHER NOTICE THAT IF YOU DO NOT TIMELY FILE AND SERVE AN OBJECTION AS STATED ABOVE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITH NO FURTHER NOTICE.

[3] "Assigned Contracts" are those Contracts and Leases that the Debtor believes may be assumed and assigned as part of the orderly transfer of the Purchased Assets; however, (i) the Stalking Horse Purchaser may exclude Contracts and Leases from the list of Assigned Contracts as provided in the Stalking Horse Agreement, and (ii) if different, the Successful Bidder may choose to exclude certain of the Debtor's Contracts or Leases from the list of Assigned Contracts as part of their Qualifying Bid, causing such Contracts and Leases not to be assumed by the Debtor.

ANY NON-DEBTOR PARTY TO ANY ASSIGNED CONTRACT WHO DOES NOT FILE A TIMELY OBJECTION TO THE CURE AMOUNT FOR SUCH ASSIGNED CONTRACT IS DEEMED TO HAVE CONSENTED TO SUCH CURE AMOUNT.

Dated: [_____], 2016

Respectfully submitted,

/s/ DRAFT

Scott D. Cousins
BAYARD P.A.
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19801
Telephone: (302) 655-5000
Facsimile: (302) 658-6395
Email: scousins@bayardlaw.com

Proposed Attorneys for Debtor and Debtor-in-Possession

Exhibit A

(Assigned Contracts)

EXHIBIT C

Form of Bill of Sale

Exhibit C

BILL OF SALE

This BILL OF SALE ("**Bill of Sale**") is made as of [●], 2016, by and among Verengo, Inc. ("**Seller**") and Crius Solar Fulfillment, LLC (including its successors and assigns, "**Buyer**"), in connection with that certain Asset Purchase Agreement, dated as of [●], 2016 (the "**Asset Purchase Agreement**"), by and between Buyer and Seller, which provides for the sale of the Purchased Assets (as defined therein) by Seller to Buyer. Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the Asset Purchase Agreement.

WHEREAS, pursuant to the Asset Purchase Agreement, Seller has agreed to sell, transfer, convey, assign and deliver to Buyer, and Buyer has agreed to purchase and accept, all of Seller's rights, title and interest in, to and under the Purchased Assets; and

WHEREAS, Seller owns all rights, title and interest in, to and under the Purchased Assets identified on Schedule 1 hereto.

NOW, THEREFORE, in consideration of the foregoing premises and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, upon the terms and subject to the conditions set forth in the Asset Purchase Agreement, the Bid Procedures Order and the Sale Order, it is hereby agreed that, effective as of the date hereof:

1. Asset Conveyance. Seller does hereby irrevocably and unconditionally sell, transfer, convey, assign and deliver to Buyer all of Seller's right, title and interest in, to and under the Purchased Assets, as more specifically described on Schedule 1 attached hereto, free and clear of all Liens, Claims and Liabilities (other than Assumed Liabilities).

2. Terms of the Asset Purchase Agreement. This Bill of Sale is being delivered pursuant to the Asset Purchase Agreement, and is subject to the representations, warranties, conditions, limitations, covenants and agreements set forth in the Asset Purchase Agreement. Seller and Buyer acknowledge and agree that the representations, warranties, conditions, limitations, covenants and agreements contained in the Asset Purchase Agreement shall not be superseded hereby, but shall remain in full force and effect to the full extent provided therein. The rights and remedies of Buyer or Seller under the Asset Purchase Agreement shall not be deemed to be enlarged, modified, or in any way altered by the terms of this Bill of Sale. In the event of any conflict between the terms of the Asset Purchase Agreement and the terms of this Bill of Sale, the terms of the Asset Purchase Agreement shall prevail.

3. General Provisions. Sections 9.3, 9.4, 9.5, 9.6, 9.7, 9.8, 9.9, 9.10, 9.11, 9.12, 9.13 and 9.14 of the Asset Purchase Agreement are incorporated herein by reference.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the undersigned have executed this Bill of Sale as of the date first above written.

Seller:

VERENGO, INC.

By:_____
Name:
Title:

Buyer:

CRIUS SOLAR FULFILLMENT, LLC

By:_____
Name:
Title:

SCHEDULE 1

18145174.12

EXHIBIT D

Form of Sale Order

Exhibit D

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	

ORDER (A) AUTHORIZING THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS PURSUANT TO THE BUYER'S ASSET PURCHASE AGREEMENT FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS; (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES RELATED THERETO; AND (C) GRANTING RELATED RELIEF

This matter coming before the Court on the motion (the "**Motion**")[2] of the above-captioned debtor and debtor in possession (the "**Debtor**") for the entry of an order pursuant to sections 105(a), 363 and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "**Bankruptcy Code**"), Rules 2002, 6004, 6006, 9007 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended from time to time, the "**Bankruptcy Rules**"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedures of the Bankruptcy Court for the District of Delaware (the "**Local Rules**") (I)(A) approving procedures in connection with the sale of all or substantially all of the Debtor's assets (the "**Sale**"); (B) scheduling the related auction and hearing to consider approval of sale; (C) approving procedures related to the assumption of certain executory contracts and unexpired leases; (D) approving the form and manner of notice thereof; (E)

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. 6114. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200 Torrance, CA 90501.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

approving expense reimbursement; and (F) granting related relief; and (II)(A) authorizing the sale of all or substantially all of the Debtor's assets pursuant to the buyer's asset purchase agreement free and clear of liens, claims, encumbrances, and other interests; (B) approving the assumption and assignment of certain executory contracts and unexpired leases related thereto; and (C) granting related relief; and this Court having entered an order on [ ] [D.I. ____] (the "**Bidding Procedures Order**") approving, among other things, the proposed procedures for bidding at the auction appended to the Bidding Procedures Order (the "**Bidding Procedures**"), notice of the sale of all or substantially all of the Debtor's assets (as defined in detail in the Asset Purchase Agreement, the "**Purchased Assets**"), and procedures for determining and fixing cure costs to be paid in respect of the Assigned Contracts[3] (the "**Cure Costs**"); and the Debtor having determined, after a full marketing process, that the highest and best bid for the Purchased Assets was received from [_____] ("**Buyer**"); and Buyer and the Debtor having entered into that certain Asset Purchase Agreement, dated [ ], 2016 (as may be amended or supplemented pursuant to its terms, the "**Asset Purchase Agreement**")[4] pursuant to which Buyer shall acquire the Purchased Assets subject to its bid; and adequate and sufficient notice of the Motion and the Asset Purchase Agreement, and all transactions contemplated thereunder, having been provided; and all interested parties having been afforded an opportunity to be heard with respect to the Motion and all relief related thereto; and the Court having reviewed and considered (i) the Motion and all relief

[3] The "Assigned Contracts" shall consist of the Assigned Contracts set forth in the Asset Purchase Agreement (as defined herein).

[4] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Asset Purchase Agreement or, if not defined in the Agreement, in the Motion.

related thereto, and (ii) the objections thereto; and the Court having heard statements of counsel and the evidence proffered or adduced in support of the relief requested by the Debtor in the Motion at the hearing before the Court on [ ], 2016 (the "**Sale Hearing**"); and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor, it is hereby

FOUND AND DETERMINED THAT:

A. This Court has jurisdiction over the Motion under 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated as of February 29, 2012. This is a core proceeding under 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue of this case and the Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

B. As evidenced by the affidavits of service [and publication] filed with this Court and based on representations of counsel at the Sale Hearing, (i) due, proper, timely, adequate and sufficient notice of the Motion, the Auction, the Sale Hearing, the Sale and the transactions contemplated thereby, including without limitation, the assumption and assignment of the Assigned Contracts, has been provided in accordance with sections 102(1), 105(a), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9006, and in compliance with the Bidding Procedures Order, the Bidding Procedures and the Asset Purchase Agreement; (ii) such notice was good, sufficient and appropriate under the circumstances; and (iii) no other or further notice of the Motion, the Auction, the Sale Hearing, the Sale or the transactions contemplated thereby (including,

without limitation, the assumption and assignment of the Assigned Contracts), is or shall be required.

C. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

D. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

E. A reasonable opportunity to object and be heard with respect to the Sale and the Motion and the relief requested therein (including the transactions contemplated by the Asset Purchase Agreement and the assumption and assignment of the Assigned Contracts to Buyer and any Cure Costs, as such amounts have been scheduled by the Debtor or transmitted pursuant to a written notice delivered to the applicable counterparty) has been afforded to all interested persons and entities, including the following: (i) the Office of the United States Trustee; (ii) counsel to the Buyer; (iii) counsel to any Official Committee of Unsecured Creditors appointed in this case (the "**Committee**"); (iv) all entities known to have expressed a *bona fide* interest in purchasing the Purchased Assets; (v) all entities known to have asserted any Lien in or upon any of the Purchased Assets; (vi) all federal, state and local taxing authorities that have jurisdiction over the Debtor; (vii) all regulatory authorities or recording offices that have a reasonably known interest in the relief requested in the Motion; (viii) all governmental agencies having jurisdiction over the Debtor with respect to environmental laws; (ix) parties to governmental approvals, permits or licenses; (x) the United States

Attorney's office and the attorneys general of all states in which the Purchased Assets are located; (xi) all non-Debtor parties to the Assigned Contracts; and (xii) all other parties that had filed a notice of appearance and demand for service of papers in this bankruptcy case under Bankruptcy Rule 2002 as of the date of the Motion.

F. The Debtor may sell the Purchased Assets free and clear of all interests and Liens and Claims (each as defined below), because each entity with any such interest in any Purchased Assets to be transferred pursuant to the Asset Purchase Agreement, including the Assigned Contracts, (i) has consented to the Sale (including the assumption and assignment of the Assigned Contracts) or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such interest; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code, and therefore, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Those holders of any such interest who did not object, or who withdrew their objections, to the Motion are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of any such interest who did object are adequately protected by having such interests, if any, attach to the cash proceeds of the Sale ultimately attributable to the property against or in which they claim an interest, subject to the terms hereof.

G. Good and sufficient reasons for approval of the Asset Purchase Agreement and the Sale have been articulated. The relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors and other parties in interest.

H. The Debtor has demonstrated both (i) good, sufficient and sound business purpose and justification and (ii) compelling circumstances for the Sale other than in the

ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, in that, among other things, the immediate consummation of the Sale to the Buyer is necessary and appropriate to maximize the value of the Debtor's estate; the Sale will provide the means for the Debtor to maximize distributions to creditors; and absent consummation of the Sale, the Debtor may be forced to discontinue their operations and liquidate.

I. Subject only to the entry of this Order, the Debtor has full corporate power and authority to execute the Asset Purchase Agreement, and all other documents contemplated thereby, and to consummate the transactions contemplated by the Asset Purchase Agreement. The Asset Purchase Agreement and all of the transactions contemplated thereby have been duly and validly authorized by all necessary corporate action of the Debtor. No consents or approvals, other than the consent and approval of this Court, are required for the Debtor to consummate the Sale.

J. The Asset Purchase Agreement was negotiated, proposed and entered into by the Debtor and the Buyer without collusion, in good faith and from arms'-length bargaining positions. Neither the Debtor nor the Buyer have engaged in any conduct that would cause or permit the Asset Purchase Agreement to be avoided under section 363(n) of the Bankruptcy Code.

K. The Buyer is a good faith purchaser under section 363(m) of the Bankruptcy Code and, as such, is entitled to all of the protections afforded thereby. The Buyer will be acting in good faith within the meaning of section 363(m) of the Bankruptcy Code in closing the transactions contemplated by the Asset Purchase Agreement and at all times after the entry of this Order.

L. The consideration provided by the Buyer pursuant to the Asset Purchase Agreement (i) is fair and reasonable, (ii) is the highest and best offer for the Purchased Assets, and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, possession or the District of Columbia.

M. The Asset Purchase Agreement was not entered into for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code and under the laws of the United States, any state, territory, possession, or the District of Columbia.

N. The transfer of the Purchased Assets to the Buyer pursuant to the Asset Purchase Agreement will be a legal, valid, and effective transfer of the Purchased Assets, and vests or will vest the Buyer with all right, title, and interest of the Debtor to the Purchased Assets free and clear of: (a) any lien, hypothecation, encumbrance, claim, liability, security interest, interest, mortgage, pledge, restriction, option, easement, encroachment, restriction on transfer or charge (including any conditional sale or other title retention agreement) (collectively, "**Liens**") and (b) all debts arising under, relating to, or in connection with any acts of the Debtor, claims (as that term is defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, interests and matters of any kind and nature, whether arising prior to or subsequent to the commencement of this case, and whether imposed by agreement, understanding, law, equity or otherwise (including, without limitation, rights with respect to Liens, claims, and encumbrances (i) that purport to give to any party a right or option to effect any forfeiture, modification, right of first refusal, or termination of the Debtor's or the Buyer's interests in the Purchased Assets, or

any similar rights, or (ii) in respect of taxes, restrictions, rights of first refusal, charges or interests of any kind or nature, if any, including, but not limited to, any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership) (collectively, including the Excluded Liabilities as defined in the Asset Purchase Agreement, "**Claims**"), with the exception of the Assumed Liabilities (each as defined in the Asset Purchase Agreement), with all such non-assumed Liens and Claims to attach to the Debtor's interest in the proceeds of the Sale (the "**Sale Proceeds**") in order of priority, subject to any rights, claims and defenses of the Debtor with respect thereto.

O. Neither the Buyer nor its affiliates, successors or assigns, shall be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets, to: (1) be a successor (or other such similarly situated party) to the Debtor (other than with respect to the Assumed Liabilities and any other obligations arising under the Assigned Contracts from and after the Closing Date as expressly stated in the Asset Purchase Agreement); (2) have, *de facto* or otherwise, merged with or into any of the Debtor; (3) be an alter ego or a continuation of the Debtor; and/or (4) the Buyer does not have any responsibility for any obligations of the Debtor based on any theory of successor or similar theories of liability.

P. The Debtor has demonstrated that assuming and assigning the Assigned Contracts in connection with the Sale is an exercise of its sound business judgment, and that such assumption and assignment is in the best interests of the Debtor's estates.

Q. The Debtor has cured, or has provided adequate assurance of cure of, any default existing prior to the Closing Date, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, under any of the Assigned Contracts that will be assigned to the

Buyer as of the Closing Date, and have provided compensation or adequate assurance of compensation to any non-Debtor party to such contracts or leases for any of their actual pecuniary losses resulting from any default arising prior to the Closing Date under any of such Assigned Contracts, within the meaning of section 365(b)(1)(B) of the Bankruptcy Code.

R. As of the Closing Date, each Assigned Contract will be in full force and effect and enforceable against the non-Debtor party thereto in accordance with its terms.

S. On or before the Closing Date, the Debtor shall pay in full (to the extent not previously satisfied), pursuant to section 365 of the Bankruptcy Code and this Order, the undisputed Cure Costs of or relating to the assumption and assignment of the Assigned Contracts, and will segregate the disputed portion of any Cure Costs pending the resolution of any such dispute by this Court or mutual agreement of the parties. Any non-Debtor party to any Assigned Contract who objected to the Cure Costs (a "**Cure Cost Objection**") is protected by having such disputed portion of such Cure Cost segregated on or before the Closing Date.

T. The Debtor has, to the extent necessary, satisfied the requirements of sections 365(b)(1) and 365(f) of the Bankruptcy Code in connection with the Sale, the assumption and assignment of the Assigned Contracts (except with respect to disputed Cure Costs, which shall be dealt with pursuant to the terms set forth hereinafter), and shall upon assignment thereof on the Closing Date, be relieved from any liability for any breach thereof.

IT IS HEREBY ORDERED THAT:

1. As set forth below, the Motion is GRANTED and APPROVED, and the Sale contemplated thereby and by the Asset Purchase Agreement is approved as set forth in this Order.

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

3. The consideration provided by the Buyer for the Purchased Assets, as embodied in the Asset Purchase Agreement, (i) is fair and reasonable; (ii) is the highest and otherwise best offer for the Purchased Assets; and (iii) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, and the laws of any state, territory, possession, and the District of Columbia. The Buyer's consideration for the Purchased Assets is hereby approved.

Approval of the Asset Purchase Agreement

4. Pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, the Sale by the Debtor to the Buyer of the Purchased Assets and transactions related thereto, upon the closing under the Asset Purchase Agreement, are authorized and approved in all respects.

5. The Asset Purchase Agreement annexed hereto as **Exhibit 1** is hereby approved pursuant to section 363(b) of the Bankruptcy Code and the Debtor is authorized to consummate and perform all of its obligations under the Asset Purchase Agreement and to execute such other documents and take such other actions as are necessary or appropriate to effectuate the Asset Purchase Agreement. The Buyer shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code

to enforce any of its remedies under the Asset Purchase Agreement or any other Sale related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence.

6. Pursuant to section 365 of the Bankruptcy Code, the Debtor will be deemed to have assumed the Asset Purchase Agreement as of the Closing Date.

Transfer of Purchased Assets

7. Pursuant to section 363(b) and 363(f) of the Bankruptcy Code, the Debtor is authorized and directed to sell the Purchased Assets to the Buyer pursuant to the Asset Purchase Agreement and all applicable provisions of the Bankruptcy Code, free and clear of all Liens and Claims other than the Assumed Liabilities, except as otherwise provided in the Asset Purchase Agreement, with any and all such Liens to attach to proceeds of such sale with the same validity, priority, force and effect such Liens had on the Purchased Assets immediately prior to the Sale and subject to the rights, claims, defenses, and objections, if any, of the Debtor and all interested parties with respect to any such asserted Liens.

8. Except as expressly permitted by the Asset Purchase Agreement, all persons and entities, including, but not limited to, all debt security holders, equity security holders, governmental, tax and regulatory authorities, lenders, trade and other creditors, holding interests or Claims of any kind or nature whatsoever against or in the Debtor or the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinated), arising under or out of, in connection with, or in any way relating to, the Debtor, the Purchased Assets, the operation of the Debtor's businesses prior to the

Closing Date or the transfer of the Purchased Assets to the Buyer, shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting or otherwise pursuing against the Buyer, its property, its successors and assigns, its affiliates or the Purchased Assets, such persons' or entities' interests, Liens or Claims (with the exception of Assumed Liabilities). Following the Closing Date, no holder of a Lien, or an interest in or Claim against the Debtor (other than holders of Assumed Liabilities) shall interfere with the Buyer's title to or use and enjoyment of the Purchased Assets based on or related to such Lien, Claims or interests, and all such Liens, Claims and interests, if any, shall be, and hereby are channeled, transferred and attached solely and exclusively to the Sale Proceeds.

9. The transfer of the Purchased Assets to the Buyer pursuant to the Asset Purchase Agreement shall not result in (i) the Buyer having any liability or responsibility for any Claim (other than for Permitted Lien or Assumed Liabilities) against the Debtor or against an insider of the Debtor, or (ii) the Buyer having any liability or responsibility to the Debtor except pursuant to the Asset Purchase Agreement and this Order.

10. The Buyer shall have no liability or responsibility for any liability or other obligation of the Debtor arising under or related to the Purchased Assets other than as expressly set forth in the Asset Purchase Agreement. Without limiting the effect or scope of the foregoing, the transfer of the Purchased Assets from the Debtor to the Buyer does not and will not subject the Buyer or its affiliates, successors or assigns or their respective properties (including the Purchased Assets) to any liability for Claims against the Debtor or the Purchased Assets by reason of such transfer under the laws of the United States or any state, territory or possession thereof applicable to such transactions. Neither the

Buyer nor its affiliates, successors or assigns shall be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets to: (a) be a successor (or other such similarly situated party) to the Debtor (other than with respect to the Assumed Liabilities and any other obligations arising under the Assigned Contracts from and after the Closing Date as expressly stated in the Asset Purchase Agreement); (b) have, *de facto* or otherwise, merged with or into any of the Debtor; (c) be an alter ego or a continuation of the Debtor; and/or (d) the Buyer does not have any responsibility for any obligations of the Debtor based on any theory of successor or similar theories of liability. Neither the Buyer nor its affiliates, successors or assigns is acquiring or assuming any liability, warranty or other obligation of the Debtor, including, without limitation, any tax incurred but unpaid by the Debtor prior to the Closing Date, including, but not limited to, any tax, any fine or penalty relating to a tax, or any addition to tax, whether or not previously assessed, fixed or audited, whether or not paid, and whether or not contested before and adjudicated by a judicial or administrative tribunal of competent jurisdiction, except as otherwise expressly provided in the Asset Purchase Agreement.

11. On the Closing Date, this Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Purchased Assets or a bill of sale transferring good and marketable title in the Purchased Assets to the Buyer. Each and every federal, state, and local governmental agency or department is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

12. This Order is and shall be effective as a determination that, all Liens shall be, and are, without further action by any person or entity, released with respect to the Purchased Assets or Assigned Contracts as of the Closing Date.

13. This Order shall be binding upon and shall govern the acts of all entities, including without limitation all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any of the Purchased Assets.

Assumption and Assignment of Assigned Contracts

14. The Debtor is hereby authorized, in accordance with sections 105(a), 363 and 365 of the Bankruptcy Code, to (a) assume and assign to the Buyer, effective upon the Closing Date, the Assigned Contracts, and/or to transfer, sell and deliver to the Buyer all of the Debtor's right, title and interest in and to the Assigned Contracts, free and clear of all Liens, Claims and interests of any kind or nature whatsoever, and (b) execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Assigned Contracts to the Buyer.

15. The requirements of sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code are hereby deemed satisfied with respect to the Assigned Contracts.

16. The Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer, in accordance with their respective terms, notwithstanding any provision in any such Assigned Contract (including provisions of the

type described in sections 365(b)(2), (e)(1), (f)(1) and (f)(3) of the Bankruptcy Code) which prohibits, restricts or conditions such assignment or transfer. The non-Debtor party to each Assigned Contract shall be deemed to have consented to such assignment under section 365(c)(1)(B) of the Bankruptcy Code, and the Buyer shall enjoy all of the rights and benefits under each such Assigned Contract as of the Closing Date without the necessity of obtaining such non-Debtor party's written consent to the assumption and assignment thereof.

17. Pursuant to section 365(k) of the Bankruptcy Code, the Debtor and its estates shall be relieved from any liability for any breach of any Assigned Contract after such assignment to and assumption by the Buyer on the Closing Date.

18. All liquidated monetary defaults, claims or other obligations of the Debtor arising or accruing under each Assigned Contract prior to the assumption of such Assigned Contract (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be promptly cured by the Debtor upon assumption and assignment as provided in section 365(b)(1) of the Bankruptcy Code.

19. If the Debtor receives a Cure Cost Objection, it shall attempt to resolve such disputed Cure Cost with the party asserting the objection. If consensual resolution of the Cure Cost Objection cannot be reached, the Debtor will (i) pay in full the undisputed portion of such Cure Cost on or before the Closing Date and (ii) segregate the disputed portion of such Cure Cost (the "**Segregated Amounts**") pending the resolution of the Cure Cost Objection by this Court or by mutual agreement of the parties. In light of these procedures, the fact that any Cure Cost Objection is not resolved shall not

prevent or delay the assumption and assignment of any Assigned Contract as of the Closing Date, and the objectors' only recourse after the Closing Date shall be to the Segregated Amounts.

20. Subject to the terms hereof with respect to the Segregated Amounts, all defaults or other obligations of the Debtor under the Assigned Contracts arising or accruing prior to the Closing Date have been cured or shall promptly be cured by the Debtor in accordance with the terms hereof such that the Buyer shall have no liability or obligation with respect to any default or obligation arising or accruing under any Assigned Contract prior to the Closing Date, except to the extent expressly provided in the Asset Purchase Agreement. Each non-Debtor party to an Assigned Contract is forever barred, estopped and permanently enjoined from asserting against the Buyer, its affiliates, or its and their property, any breach or default under any Assigned Contract, any claim of lack of consent relating to the assignment thereof, or any counterclaim, defense, setoff, right of recoupment or any other matter arising prior to the Closing Date or with regard to the assumption and assignment thereof pursuant to the Asset Purchase Agreement or this Order.

21. Upon assignment of the Assigned Contracts to the Buyer on the Closing Date, no default shall exist under any Assigned Contract and no non-Debtor party to any Assigned Contract shall be permitted to declare a default by the Buyer under such Assigned Contract or otherwise take action against the Buyer as a result of any Debtor's financial condition, bankruptcy or failure to perform any of its obligations under the Assigned Contract, including any failure to pay any amounts necessary to cure any Debtor's defaults thereunder. Upon entry of this Order and assumption and assignment

of the Assigned Contracts, the Buyer shall be deemed in compliance with all terms and provisions of the Assigned Contracts.

22. Nothing contained in any chapter 11 plan confirmed in this case or the order confirming any chapter 11 plan, nor any order dismissing any case or converting it to chapter 7 shall conflict with or derogate from the provisions of the Asset Purchase Agreement, any documents or instrument executed in connection therewith, or the terms of this Order.

23. Notwithstanding anything to the contrary in this Order, upon assumption of the Assigned Contracts, the Buyer is assuming all liabilities arising under the Assigned Contracts arising and accruing on and after the Closing Date.

Additional Provisions

24. The stays provided for in Bankruptcy Rules 6004(h) and 6006(d) are hereby waived and this Order shall be effective immediately upon its entry.

25. The terms of this Order shall be binding on the Buyer and its successors, the Debtor, creditors of the Debtor and all other parties in interest in the Bankruptcy Cases, and any successors of the Debtor, including any trustee or examiner appointed in this case or upon a conversion of this case to chapter 7 of the Bankruptcy Code.

26. The Buyer is a purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and is entitled to the benefits and protections afforded by section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including, without limitation, the

assumption and assignment of any of the Assigned Contracts), unless such authorization is duly stayed pending such appeal.

27. This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to interpret, implement and enforce the terms and provisions of, and resolve any disputes arising under or related to, this Order and the Asset Purchase Agreement, all amendments thereto, any waivers and consents thereunder, and each of the agreements and documents executed pursuant to or in connection therewith in all respects.

28. The failure specifically to include any particular provisions of the Asset Purchase Agreement or any of the documents, agreements or instruments executed in connection therewith in this Order shall not diminish or impair the force of such provision, document, agreement or instrument, it being the intent of the Court that the Asset Purchase Agreement and each document, agreement or instrument be authorized and approved in its entirety.

29. The Asset Purchase Agreement and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto in accordance with the terms thereof without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtor's estate.

Dated: _____, 2016
Wilmington, Delaware

_____
United States Bankruptcy Judge

Exhibit 1

(Asset Purchase Agreement)

EXHIBIT E

Form of Seller's Certificate

Exhibit E

SELLER'S CLOSING DATE CERTIFICATE

Reference is made to that certain Asset Purchase Agreement, dated as of [●], 2016 (as may be amended, amended and restated, supplemented or modified from time to time, the "Agreement"), between Verengo, Inc. ("Seller") and Crius Solar Fulfillment, LLC ("Buyer"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

The undersigned, a duly authorized officer of Seller, hereby certifies on behalf of Seller to Buyer, in his capacity as a duly authorized officer of Seller and not in his individual capacity, as of the date hereof that:

1. The Fundamental Representations made by Seller in Article IV of the Agreement were true and correct in all respects as of the Effective Date and are true and correct in all respects as of the date hereof with the same effect as though made at that time (other than those Fundamental Representations made by Seller that speak as of a specified date, in which case such Fundamental Representations were true and correct in all respects as of such specified date) and the other representations and warranties made by Seller in Article IV of the Agreement were true and correct in all material respects as of the Effective Date and are true and correct in all material respects as of the date hereof with the same effect as though made at that time (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties were true and correct in all material respects as of such specified date).

2. Seller has duly complied in all material respects with all covenants and agreements contained in the Agreement required to be complied with by Seller at or prior to the Closing.

3. During the period from the Effective Date to the Closing Date, there has not been any Material Adverse Effect.

4. At least seven (7) of the Key Employees have delivered to Buyer a counterpart to each such Key Employee's Employment Agreement, which counterpart has been duly executed by such Key Employee and each such Employment Agreement is in full force and effect.

5. Seller (i) commenced the Bankruptcy Case within one (1) Business Day of the date of the Agreement, (ii) filed the Sale Motion within two (2) Business Days of the Petition Date, (iii) obtained entry of the Bid Procedures Order within twenty-five (25) days of the Petition Date, and (iv) obtained entry of the Sale Order within fifty-five (55) days of the Petition Date.

6. The Response Period has expired.

7. Buyer is a secured creditor of Seller holding valid, binding, enforceable and perfected first priority liens under the DIP Credit Agreement, the Secured Loan and the Senior Notes against the property of Seller's bankruptcy estates, and no portion of the amount of Buyer's secured claims under the DIP Credit Agreement, the Secured Loan and the Senior Notes available to be applied against the purchase price in accordance with Section 3.1 of the

Agreement has been subject to any challenge, avoidance, reduction (except on account of satisfaction), disallowance, recharacterization, impairment or subordination.

The foregoing certifications are made and delivered as of [●], 2016.

VERENGO, INC.

By:_____
Name:
Title:

EXHIBIT F

Form of Buyer's Certificate

Exhibit F

BUYER'S CLOSING DATE CERTIFICATE

Reference is made to that certain Asset Purchase Agreement, dated as of [●], 2016 (as may be amended, amended and restated, supplemented or modified from time to time, the "Agreement"), between Verengo, Inc. ("Seller") and Crius Solar Fulfillment, LLC ("Buyer"). Capitalized terms used and not otherwise defined herein shall have the meanings assigned to such terms in the Agreement.

The undersigned, a duly authorized officer of Buyer, hereby certifies on behalf of Buyer to Seller, in his capacity as a duly authorized officer of Buyer and not in his individual capacity, as of the date hereof that:

1. The Fundamental Representations made by Buyer in Article V of the Agreement were true and correct in all respects as of the Effective Date and are true and correct in all respects as of the date hereof with the same effect as though made at that time (other than those Fundamental Representations made by Buyer that speak as of a specified date, in which case such Fundamental Representations were true and correct in all respects as of such specified date) and the other representations and warranties made by Buyer in Article V of the Agreement were true and correct in all material respects as of the Effective Date and are true and correct in all material respects as of the date hereof with the same effect as though made at that time (other than those representations and warranties that speak as of a specified date, in which case such representations and warranties were true and correct in all material respects as of such specified date).

2. Buyer has duly complied in all material respects with all covenants and agreements contained in the Agreement required to be complied with by Buyer at or prior to the Closing.

The foregoing certifications are made and delivered as of [__], 2016.

CRIUS SOLAR FULFILLMENT, LLC:

_____
Name:
Title:

EXHIBIT G

Form of DIP Financing Order

Exhibit G

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re	Chapter 11
VERENGO, INC.,[1]	Case No.: 16-12098 ( )
Debtor.	

INTERIM ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), 364(c), 364(d), 364(e) AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTOR TO CONTINUE TO USE CASH AND/OR CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated September 23, 2016 (the "**Motion**") of Verengo, Inc. ("**Verengo**"), the debtor and debtor in possession (the "**Debtor**") in the above-captioned chapter 11 case (the "**Case**"), commenced on September 23, 2016 (the "**Petition Date**") under sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (as amended, the "**Bankruptcy Code**"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "**Bankruptcy Rules**"), and Rule 4001-2, 4001-3, 9013-1(f) and (g) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (this "**Court**") seeking:

(I) authorization for the Debtor to obtain debtor-in-possession financing in the form of a revolving credit facility in the aggregate principal amount of up to $2,000,000 (the "**DIP Credit Facility**," extensions of credit under the DIP Credit Facility, the "**DIP**

[1] The Debtor and the last four digits of its identification number are as follows: Verengo, Inc. [6114]. The address of the Debtor's corporate headquarters is 20285 S. Western Avenue, Suite 200, Torrance, CA 90501.

Loans"), among Verengo, as borrower (in such capacity the "**DIP Borrower**"), and Crius Solar Fulfillment, LLC (in such capacity, the "**DIP Lender**"); on the terms and conditions set forth in:

- this interim order (this "**Order**" or the "**Interim Order**") and any final order (the "**Final Order**"); and
- the DIP Credit Agreement (substantially in the form annexed to the Motion as Exhibit B, and as hereafter amended, supplemented or otherwise modified, the "**DIP Credit Agreement**," and, together with and all other agreements, documents and instruments executed and delivered in connection with the DIP Credit Agreement, as hereafter amended, supplemented or otherwise modified, the "**DIP Documents**").

(II) authorization for the Debtor to execute and deliver the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform its obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(III) authorization for the Debtor to (a) continue to use cash and/or cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, "**Cash Collateral**"), pursuant to section 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined below), and (b) provide adequate protection to the following parties with respect to the applicable prepetition secured debt obligations:

(i) the first lien lender under the Amended and Restated Business Financing Agreement, dated as of March 20, 2014 (as amended, supplemented or otherwise modified, the "**First Lien BFA**", and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the "**First Lien Documents**"), between Verengo in its capacity as a borrower thereunder and Crius Solar Fulfillment, LLC as the lender thereunder (and successor to Bridge Bank, National Association) (in such capacity, the "**First Lien Lender"**);

(ii) the second lien lenders (collectively, the "**Second Lien Lenders**") under the Note Purchase Agreement, dated as of January 15, 2015, the Amended and Restated Note Purchase Agreement, dated as of September 24, 2015, and the Note

Purchase Agreement, dated as of December 2, 2015 (as each may be amended, supplemented or otherwise modified, the "**Second Lien NPAs**", and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the "**Second Lien Documents**"), each among Verengo in its capacity as issuer thereunder, Angeleno Investors III, L.P., ClearSky Power & Technology Fund I LLC, and any other Second Lien Lenders party thereto from time to time (the First Lien Lender and the Second Lien Lenders, collectively referred to as the "**Prepetition Secured Parties**");

(IV) authorization for the DIP Lender to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement);

(V) authorization to grant liens to the DIP Lender on the proceeds of (a) the Debtor's prepetition and postpetition commercial tort claims and (b) any claims and causes of action of the Debtor or its estate (but not on the actual claims and causes of action) arising under sections 502(d), 544, 545, 547, 548, 550, 551, or 553 of the Bankruptcy Code (collectively, the "**Avoidance Actions**"); and

(VI) the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined below) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and the limited waiver of section 552(b) and the equitable doctrine of marshaling and similar doctrines.

A hearing on the Motion having been held by this Court on September [_____], 2016 (the "**Hearing**") to consider interim approval of the Motion pursuant to the terms of this Interim Order, and upon the record made by the Debtor at the Hearing, including without limitation, the admission into evidence of the *Declaration of Dan Squiller in Support of the Debtor's Chapter 11 Petition and Request for First Day Relief* filed on the Petition Date, and the other evidence

submitted or adduced and the arguments of counsel made at the Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction*. This Court has core jurisdiction over the Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice*. Notice of the Motion and the relief requested therein was served by the Debtor on: (a) the Office of the United States Trustee; (b) the Debtor's twenty (20) largest unsecured creditors; (c) counsel to the First Lien Lender; (d) counsel to the Second Lien Lenders; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service and state taxing authorities for states in which the Debtor conducts business; (g) the Debtor's existing banks; (h) following formation, if formed, the official committee of unsecured creditors (the "**Committee**"); (i) those parties who have filed a notice of appearance in these cases; and (j) counsel to the DIP Lender (collectively, the "**Notice Parties**"). Under the circumstances, the notice given by the Debtor of the Motion and the relief requested therein constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c), and no further notice of the relief sought is necessary or required.

3. *Interim Approval of Motion*. The relief requested in the Motion is granted only on an interim basis as set forth herein. Except as otherwise expressly provided in this Interim Order, any objection to the entry of this Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled by the Court with respect to the relief granted by this Interim Order, without prejudice to objections that may be interposed to the final approval of the Motion.

4. *Debtor's Stipulations*. The Debtor admits, stipulates, and agrees to the following without prejudice to the rights of any Committee and any other party to challenge such admissions, stipulations, acknowledgments or agreements (but subject to the limitations thereon contained in paragraphs 20 and 21):

(a) as of the Petition Date, the Debtor was truly and justly indebted and liable to the First Lien Lender, without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than $2,272,000 in respect of loans and other extensions of credit made pursuant to the First Lien BFA, plus any accrued and unpaid interest thereon, fees, costs, expenses (including fees and expenses of attorneys), charges, and indemnities related thereto as provided in the First Lien Documents, plus all other outstanding amounts that would constitute Obligations under and as defined in the First Lien BFA, whether or not evidenced by any note, agreement or instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable as provided in the First Lien Documents; (collectively, the "**Prepetition First Lien Obligations**");

(b) the liens and security interests granted by the Debtor to the First Lien Lender to secure the Prepetition First Lien Obligations (the "**Prepetition First Liens**") are (i) valid, binding, perfected, enforceable, first priority liens on and security interests in the Debtor's personal property constituting Collateral (as defined in the First Lien BFA Agreement and including all Cash Collateral, the "**Prepetition Collateral**"), (ii) not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise, and (iii) subject and

subordinate only to, after giving effect to this Interim Order, the Carve-Out (as defined below) and the liens and security interests granted to secure the DIP Loans and the First Lien Adequate Protection Obligations (as defined below);

(c) the Prepetition First Lien Obligations (i) constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and (ii) are not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise;

(d) as of the Petition Date, the Debtor was truly and justly indebted to the Second Lien Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount, plus accrued and unpaid interest thereon, of not less than $30,164,369.59 million in respect of the notes issued under the Second Lien NPAs, plus any accrued and unpaid fees and expenses (including fees and expenses of attorneys and advisors) related thereto as provided in the Second Lien Documents, plus all other outstanding amounts under the Second Lien NPAs, whether or not evidenced by any note, agreement or instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable as provided in the Second Lien Documents (collectively, the "**Prepetition Second Lien Obligations**");

(e) the liens and security interests granted by the Debtor to the Second Lien Lenders to secure the Prepetition Second Lien Obligations (the "**Prepetition Second Liens**", and together with the Prepetition First Liens, the "**Prepetition Liens**") are (i) valid,

binding, perfected, enforceable, second priority (subject to permitted exceptions under the Second Lien NPAs) liens on and security interests in the Prepetition Collateral constituting Collateral, (ii) not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination (except as set forth in the Subordination Agreement (defined below)), cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise, and (iii) subject and subordinate only to (A) after giving effect to this Interim Order, the Carve-Out and the liens and security interests granted to secure the DIP Loans and the Adequate Protection Obligations (as defined below), (B) the liens securing the Prepetition First Lien Obligations with respect to the Collateral (as defined in the Subordination Agreement) and (C) certain liens permitted under any of the Second Lien Documents;

(f) the Prepetition Second Lien Obligations (i) constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and (ii) are not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination (except as set forth in the Subordination Agreement (defined below)), cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise;

(g) the First Lien Lender, the Second Lien Lenders, and Verengo are parties to that certain Second Amended and Restated Subordination Agreement, dated as of December 2, 2015 (as amended, supplemented or otherwise modified, the "**Subordination**

Agreement"), which sets forth the relative lien priorities and other rights and remedies of the First Lien Lender and the Second Lien Lenders with respect to, among other things, the Prepetition Collateral and such Subordination Agreement is binding and enforceable against the parties thereto in accordance with its terms; and

(h) the Budget (as defined below) includes all reasonable, necessary, and foreseeable expenses to be incurred in the ordinary course of business in connection with the operation of the Debtor's business for the period set forth in the Budget.

5. *Findings Regarding the DIP Loans*.

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Debtor has a critical need to obtain the DIP Loans and to use the Prepetition Collateral, including the Cash Collateral, in order to, among other things, permit the orderly continuation of its business, preserve the going concern value of the Debtor, make adequate protection payments, make payroll and satisfy other working capital and general corporate purposes of the Debtor (including costs related to the Case).

(c) The Debtor is unable to obtain financing on more favorable terms from sources other than the DIP Lender pursuant to, and for the purposes set forth in, the DIP Documents and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor is also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting priming liens under section 364(d)(1) of the Bankruptcy Code and the Superpriority Claims (as defined below), in each case on the terms and conditions set forth in this Interim Order and the DIP Documents.

(d) The terms of the DIP Loans, the terms of the Adequate Protection Obligations and Adequate Protection Liens granted to the Prepetition Secured Parties, as applicable, and the terms on which the Debtor may continue to use the Prepetition Collateral (including the Cash Collateral) pursuant to this Interim Order are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Documents and the use of the Prepetition Collateral (including the Cash Collateral) have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtor, the DIP Lender, the Prepetition Secured Parties, and all of the Debtor's obligations and indebtedness arising under or in connection with the DIP Documents, this Interim Order and the DIP Loans (collectively, the "**DIP Obligations**") shall be deemed to have been extended by the DIP Lender in "good faith" as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(f) The First Lien Lender has consented to the Debtor's use of Cash Collateral and the other Prepetition Collateral on the terms and conditions provided in this Interim Order, and the Debtor's entry into the DIP Documents in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents. For the avoidance of doubt, this consent includes without limitation the granting of the DIP Liens on a priming basis under section 364(d) of the Bankruptcy Code.

(g) The Second Lien Lenders have consented or are deemed under the Subordination Agreement to have consented to the Debtor's use of Cash Collateral and the other Prepetition Collateral, and the Debtor's entry into the DIP Documents in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents. For the avoidance of doubt, this consent includes without limitation the granting of the DIP Liens on a priming basis under section 364(d) of the Bankruptcy Code.

(h) Each of the Prepetition Secured Parties has acted in good faith regarding the DIP Loans and the Debtor's continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtor's estate and continued operation of its business (including payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof. The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to §§ 361, 362 and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including the Cash Collateral) are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; *provided* that nothing in this Interim Order or the other DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Loans authorized by this Interim Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair

the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Subordination Agreement, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties and nothing herein prejudices, limits, or otherwise impairs the rights of any party in interest to oppose such relief.

(i) The Debtor has requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). The borrowing of the DIP Loans and the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Interim Order and the DIP Documents are in the best interest of the Debtor's estate.

6. *Budget*. The Budget is achievable and will allow the Debtor to operate in the Case without the accrual of unpaid administrative expenses. The DIP Lender and the Prepetition Secured Parties are relying upon the Debtor's compliance with the Budget in accordance with this Interim Order in determining to enter into DIP Loan Documents and authorize the use of Cash Collateral.

7. *Interim Authorization of the DIP Loans and the DIP Documents*.

(a) The Debtor is hereby authorized (i) to enter into and perform under the DIP Documents and (ii) to borrow under the DIP Credit Agreement up to an aggregate principal amount of $1,500,000 of the DIP Loans, the proceeds of which shall be used for only the purposes permitted under the DIP Documents, including, without limitation, working capital and other general corporate purposes of the Debtor (including costs related to the Case), and to pay interest, fees and expenses in connection with the DIP Loans and the Adequate Protection Obligations.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized and empowered to perform all acts and to execute and deliver

all instruments and documents that the DIP Lender determines to be reasonably required or necessary for the Debtor's performance of their obligations under the applicable DIP Documents, including without limitation:

(i) the execution, delivery and performance of the DIP Documents;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case in accordance with the terms of the applicable DIP Documents and in such form as the Debtor and the DIP Lender may agree, and no further approval of this Court shall be required for any amendment, waiver, consent or other modification to and under the DIP Documents (and any fees, paid-in-kind fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not (A) shorten the maturity of the DIP Loans, or (B) increase the principal amount of, or the rate of interest payable on, the DIP Loans;

(iii) the non-refundable payment to the DIP Lender of all fees (which fees shall be, and shall be deemed to have been, approved upon entry of this Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations referred to in the DIP Credit

Agreements and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents (and the reasonable fees and expenses of counsel for the DIP Lender, incurred on or prior to the date hereof) as provided in this Interim Order without the need to file retention motions or fee applications, or to provide notice to any party,

(iv) the payment of all prepetition and postpetition fees, costs and expenses of the professionals to the DIP Lender. Invoices for payment of such fees and expenses set forth in this paragraph 8(b)(iv) may be in summary form and redacted to protect against privilege and confidential issues and shall be provided to counsel for the Debtor, counsel to any Committee, if appointed, and the U.S. Trustee (collectively, the "**Fee Notice Parties**"). If no objection to the payment of the requested fees and expenses are made in writing by the Fee Notice Parties within ten (10) calendar days after delivery of such invoices, then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtor. If an objection (solely as to reasonableness) is made by any of the Fee Notice Parties within the ten-day objection period to the payment of the requested fees and expenses, then only the disputed portion of such fees and expenses shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court, and the undisputed portion shall be promptly paid by the Debtor; and

(v) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon the execution thereof, the DIP Documents shall constitute valid, binding and unavoidable obligations of the Debtor, enforceable against the Debtor in accordance with the terms of this Interim Order and the DIP Documents. No obligation, payment, transfer or grant of security by the Debtor under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim or counterclaim.

8. *DIP Superpriority Claims*.

(a) Except to the extent expressly set forth in this Interim Order in respect of the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims (the "**Superpriority Claims**") against the Debtor with priority over any and all administrative expenses, adequate protection and diminution in value claims (including all Adequate Protection Obligations) and all other claims against the Debtor or its estate, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual

lien, levy or attachment, which allowed Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and post-petition property of the Debtor, including, without limitation, any and all cash and Cash Collateral of the Debtor, other than the Avoidance Actions, but, subject to the entry of a Final Order, the Superpriority Claims shall have recourse to any proceeds or other property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement or otherwise ("**Avoidance Proceeds**"). Any payments, distributions or other proceeds received on account of such Superpriority Claims shall be promptly delivered to the DIP Lender to be applied on account of the DIP Obligations in such order as is specified in the DIP Documents. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(b) For purposes hereof, the "**Carve-Out**" shall mean (i) any fees payable to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to section 1930(a) of title 28 of the United States Code, and any interest on such fees payable pursuant to section 3717 of title 31 of the United States Code in such amount as agreed to by the U.S. Trustee or as determined by the Court, (ii) the reasonable fees and expenses up to $10,000 incurred by a trustee appointed in the Debtor's case under section 726(b) of the Bankruptcy Code (irrespective of whether the Carve-Out Notice (as defined below) has been delivered), and (iii) up to $50,000 of allowed fees, expenses and disbursements of professionals retained by order of this Court (including any Committee) incurred after the occurrence of a Carve-Out Event (defined below) plus all unpaid professional fees, expenses and disbursements allowed

by this Court for professionals employed by the estates and retained by order of this Court (collectively, the "**Estate Professionals**") up to the amount provided for such Estate Professionals on a line item basis in the Budget (including any previously unused amounts) that were incurred prior to the occurrence of a Carve-Out Event (regardless of when such fees, expenses and disbursements become allowed by order of this Court). For the purposes hereof, a "**Carve-Out Event**" shall occur upon the occurrence and during the continuance of an Event of Default under the DIP Credit Agreement upon (i) delivery of a written notice thereof by the DIP Lender to the Debtor (a "**Carve-Out Notice**") or (ii) in respect of which the Debtor has knowledge and fails to provide notice to the DIP Lender within five (5) days of obtaining such knowledge; provided that, no Carve-Out Event shall be deemed to have occurred if any such Event of Default is subsequently waived by the DIP Lender. So long as no Carve-Out Event shall have occurred and be continuing, the Carve-Out shall not be reduced by the payment of fees, expenses and disbursements of professionals retained by order of this Court, and allowed by this Court and payable under sections 328, 330 and 331 of the Bankruptcy Code. Upon the occurrence of a Carve-Out Event, the right of the Debtor to pay professional fees incurred under clause (iii) above without reduction of the Carve-Out in clause (iii) above shall terminate (unless the underlying Event of Default or termination event is subsequently waived by the DIP Lender) upon the occurrence of the Carve-Out Event, the Debtor shall provide immediate notice by facsimile and email to the U.S. Trustee and to all retained professionals informing them that a Carve-Out Event has occurred and that the Debtor's ability to pay professionals is subject to the Carve-Out.

(c) Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the

investigation (except as permitted pursuant to paragraph 20 below), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Lender or any of the Prepetition Secured Parties (whether in such capacity or otherwise) or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents, the First Lien BFA or the Second Lien NPAs, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lender; (c) attempts to prevent, hinder or otherwise delay any of the DIP Lender's assertion, enforcement or realization upon any DIP Collateral (as defined below) in accordance with the DIP Documents and the Final Order other than to seek a determination that an Event of Default has not occurred or is not continuing; or (d) paying any amount on account of any claims arising before the commencement of the Case unless such payments are approved by an order of the Court and contained in the Budget.

(d) Following entry of this Interim Order, so long as the Debtor is entitled to make draws under the DIP Credit Agreement and no DIP Event of Default shall have occurred, the Debtor shall be authorized to transfer funds to the Bayard, PA Client Trust Account (the "Expense Reserve Account") on a weekly basis, the fees and expenses of the Estate Professionals that may be paid pursuant to, but subject to the amounts contained in, the Budget (as defined below) for such week. Such funds shall be held for the benefit of the Estate Professionals, to be applied to the fees and expenses of such Estate Professionals (to the extent such forth in the Budget for the applicable Estate Professional) that are approved

for payment pursuant to one or more orders of the Bankruptcy Court. Any fees and expenses payable to Estate Professionals shall be paid first out of the Expense Reserve Account, and all amounts deposited in the Expense Reserve Account shall reduce, on a dollar for dollar basis, the Carve-Out and Carve-Out Amounts. To the extent that the fees and expenses of the Estate Professionals performed prior to the Termination Date and allowed pursuant to one or more orders of the Bankruptcy Court are less than the amounts funded into the Expense Reserve Account, the excess amounts in the Expense Reserve Account shall be remitted to the DIP Lender to reduce the obligations under the DIP Credit Agreement.

9. *DIP Liens*. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Lender of any property, the following security interests and liens are hereby granted by the Debtor to the DIP Lender (all property identified in clauses (a), (b) and (c) of this paragraph 9 being collectively referred to as the "**DIP Collateral**"), but subject and subordinate to the Carve-Out (all such liens and security interests granted to the DIP Lender pursuant to this Interim Order, the "**DIP Liens**") and having the priorities set forth in this paragraph 9:

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all tangible and intangible prepetition and postpetition property of the Debtor or its estate, whether existing on or as of the Petition Date or thereafter acquired, that is not subject to either (i) valid, perfected, non-avoidable and enforceable liens in existence on or as of the Petition Date, or (ii) valid liens perfected

subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, (collectively, the "**Unencumbered Property**"); provided, that the Unencumbered Property shall not include the Avoidance Actions, but, subject to the entry of a Final Order, shall include any Avoidance Proceeds.

(b) Liens Junior to Certain Existing Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in all tangible and intangible prepetition and postpetition property of the Debtor or its estate (other than the property described in paragraph 9(c) below, as to which the DIP Liens will have the priority as described in such clause), whether now existing or hereafter acquired, other than the Avoidance Actions, but, but subject to the entry of a Final Order, shall include any Avoidance Proceeds, that is subject to any valid, perfected and unavoidable liens in existence immediately prior to the Petition Date that are permitted under the First Lien BFA or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case excluding the liens of the Prepetition Secured Parties and liens which already are junior to the liens of the Prepetition Secured Parties (collectively, the "**Non-Primed Liens**"), which security interests and liens in favor of the DIP Lender shall be junior to the Non-Primed Liens.

(c) Liens Priming the Liens of the Prepetition Secured Parties and All Liens Junior Thereto. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming lien on, and security interest in, all Prepetition Collateral. The DIP Liens on the Prepetition Collateral shall be senior in all respects to the security interests in, and liens on, the Prepetition

Collateral of each of the Prepetition Secured Parties (including the applicable Adequate Protection Liens granted to such Prepetition Secured Party) and to all liens which already are junior to the liens of the Prepetition Secured Parties, but shall be junior to any Non-Primed Liens on the Prepetition Collateral.

(d) Liens Senior to Certain Other Liens. No claim or lien having a priority senior to or *pari passu* with those granted by this Interim Order to the DIP Lender shall be granted or allowed while any portion of the DIP Obligations remains outstanding, and the DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 or any other section of the Bankruptcy Code or otherwise, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Debtor.

10. *Protection of DIP Lender's Rights*

(a) The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Lender to enforce and exercise (a) immediately upon the occurrence and during the continuance of an Event of Default, all rights and remedies under the applicable DIP Documents and applicable law, other than those rights and remedies against the applicable DIP Collateral as provided in clause (b) below, and (b) upon the occurrence and during the continuance of an Event of Default, and the giving of five (5) business days' prior written notice to the Debtor (with a copy to counsel to the Debtor, counsel to the Committee, if any, and the U.S. Trustee) (which

period shall run concurrently with any notice period provided under the DIP Documents), all rights and remedies against the DIP Collateral provided for in the applicable DIP Documents, applicable law and this Interim Order; provided that, during the foregoing five (5) business-day period the only issue that may be raised by the Debtor in opposition to the exercise of rights and remedies by the DIP Lender shall be whether an Event of Default has in fact occurred and is continuing, and other than as set forth in the prior clause of this proviso, the Debtor and the Prepetition Secured Parties hereby waive their right to seek any relief, whether under section 105 of the Bankruptcy Code or otherwise, that would in any way impair, limit or restrict, or delay the exercise or benefit of, the rights and remedies of the DIP Lender under the DIP Documents or this Interim Order. In no event shall the DIP Lender be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral. The DIP Lender's delay or failure to exercise rights and remedies under the DIP Documents or this Interim Order shall not constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the DIP Credit Agreement.

(b) No rights, protections or remedies of the DIP Lender granted by the provisions of this Interim Order or the DIP Documents shall be limited, modified or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Debtor's authority to continue to use Cash Collateral, (ii) any actual or purported termination of the Debtor's authority to continue to use Cash Collateral or (iii) the terms of any other order or stipulation related to the Debtor's continued use of Cash Collateral or the provision of adequate protection to any party.

(c) The DIP Lender shall not be subject to any obligations under the Subordination Agreement. None of the DIP Credit Agreement, the DIP Documents, or the DIP Obligations shall be subject to the terms of the Subordination Agreement.

11. *Limitation on Charging Expenses Against Collateral*. Upon entry of a Final Order, except to the extent of the Carve-Out, no expenses of administration of the Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or the Prepetition Collateral (or any collateral secured by the First Lien Adequate Protection Liens (as defined below) or Second Lien Adequate Protection Liens (as defined in below)), as the case may be, pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lender, and no such consent shall be implied from any other action or inaction by the DIP Lender.

12. *Limitations under Section 552(b) of the Bankruptcy Code and Marshaling*.

(a) Upon entry of a Final Order, the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code (provided, however, the "equities of the case" exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Secured Parties with respect to (i) proceeds, products, offspring or profits of any of the Prepetition Collateral or (ii) the extension of the Adequate Protection Liens (as defined below) to cover proceeds of the Prepetition Collateral in each case solely to the extent necessary to satisfy any Adequate Protection Obligations or 507(b) Claims (as defined below) (without waiving any parties' rights with respect to the applicability of the exception (except as provided above) or further request for a waiver thereof).

(b) Upon entry of a Final Order, in no event shall the Prepetition Collateral, the First Lien Adequate Protection Liens, the Second Lien Adequate Protection Liens, or any Prepetition Secured Party be subject to the equitable doctrine of "marshaling" or any other similar doctrine with respect to any of the Prepetition Collateral or the collateral secured by the First Lien Adequate Protection Liens or Second Lien Adequate Protection Liens.

13. *Adequate Protection for the First Lien Lenders.* The First Lien Lender is entitled, pursuant to sections 361, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, including Cash Collateral, in an amount equal to the aggregate diminution in value of its interests in the Prepetition Collateral, and including without limitation, claims on account of any diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of any Cash Collateral and any other Prepetition Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and further including claims on account of the priming of the First Lien Lender's liens on the Prepetition Collateral by the DIP Liens (such claims, collectively, the "**First Lien Adequate Protection Obligations**"). As adequate protection, the First Lien Lender is hereby granted the following:

(a) First Lien Adequate Protection Liens. As security for the payment of the First Lien Adequate Protection Obligations, the First Lien Lender is hereby granted (effective and perfected upon the date hereof and without the necessity of the execution by the Debtor of security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected security interest in and lien on all of the DIP Collateral (the **"First Lien Adequate Protection Liens**"), subject and subordinate only to (i) the DIP Liens, (ii) the Carve-Out, and (iii) the Non-Primed Liens.

(b) First Lien Section 507(b) Claims. The First Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "**First Lien 507(b) Claims**"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330, 331, 363, 503 and 507(a) of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out and (ii) the Superpriority Claims granted in respect of the DIP Obligations. Unless otherwise expressly agreed to in writing by the DIP Lender, the First Lien Lender shall not receive or retain any payments, property or other amounts in respect of the First Lien 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash in accordance with the DIP Documents and the Carve-Out amount is funded (only to the extent not previously paid).

14. *Use of Prepetition Collateral (Including Cash Collateral).*

(a) The Debtor is hereby authorized to use the Prepetition Collateral, including the Cash Collateral, during the period from the Petition Date through and including the Termination Date (as defined below) (the "**Specified Period**") for working capital and general corporate purposes (including costs related to the Case) in accordance with the terms and conditions of this Interim Order and the Budget (as defined below); provided that: (i) the Prepetition Secured Parties are granted adequate protection as set forth herein; (ii) the Debtor shall not be permitted to transfer any Cash Collateral (or any other Collateral) to fund any affiliate of the Debtor that has not filed a chapter 11 case; and (iii) except on the terms of this Interim Order, the Debtor is not authorized to use the Cash Collateral. By virtue of the First Lien Lender's consent to the Debtor's use of Cash Collateral as set forth in this Interim Order,

pursuant and subject to the Subordination Agreement and this Interim Order, the Second Lien Lenders are deemed to have consented to such use of the Cash Collateral. As used herein, "**Termination Date**" means the earlier to occur of (a) the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Credit Facility and (b) the acceleration of any DIP Loans and the termination of the DIP Credit Agreement.

(b) Except as otherwise expressly provided herein, the Debtor may use cash and borrow under the DIP Credit Agreement during the Specified Period solely up to the amounts (subject to the variances described below), at the times, and for the purposes identified in the budget attached hereto as Schedule 1 (the "**Budget**"), as such Budget may be amended and/or extended[2] with the prior written consent of the DIP Lender. Copies of any amendments to the DIP Credit Agreement or Budget agreed to between the Debtor and the DIP Lender will be provided to counsel for the Committee, if any, and the U.S. Trustee. The Debtor shall not, without the prior consent of the DIP Lender, except to the extent permitted in this paragraph, use cash during the Specified Period such that in any given week the Debtor's: (A) (i) Total Receipts (the "**Receipts**"), and (ii) Total Disbursements (the "**Disbursements**"), each on a cumulative basis commencing on the Petition Date and ending on October 14, 2016, is in an amount in excess of twenty-five percent (25%) (1) below the cumulative amount of Receipts or (2) above the cumulative amount of Disbursements for the relevant weekly period; and (B) (i) Total Receipts, and (ii) Total Disbursements, each on a cumulative basis commencing on October 15, 2016, is in an amount in excess of ten percent (10%) (1) below the cumulative amount of Receipts or (2) above the cumulative amount of Disbursements for the relevant weekly period.

[2] As used in this Order, the Budget means Schedule 1 as the same may be amended and/or extended in accordance with the approval provisions of this Order.

(c) On or before 5:00 p.m. (Prevailing Eastern Time) of Wednesday of each week, commencing September 26, 2016, the Debtor shall deliver to the DIP Lender, (i) a comparison of actual results for the weekly period ending one week before such date of all items contained in the Budget to the amounts originally contained in the Budget, and (ii) a cumulative comparison of the actual results for the period from the Petition Date through the end of the week for the weekly period ending one week before such date of results of all items contained in the Budget to the amounts originally contained in the Budget.

15. *Adequate Protection for the Second Lien Lenders*. The Second Lien Lenders are entitled, pursuant to sections 361, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral in an amount equal to the aggregate diminution in value of their interests in the Prepetition Collateral, including without limitation, claims on account of any diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of any Cash Collateral and any other Prepetition Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and further including claims on account of the priming of the Second Lien Lenders' liens on the Prepetition Collateral by the DIP Liens (such claims, collectively, the "**Second Lien Adequate Protection Obligations**" and collectively with the First Lien Adequate Protection Obligations, the "**Adequate Protection Obligations**"). As adequate protection, the Second Lien Lenders are hereby granted the following:

(a) Second Lien Adequate Protection Liens. As security for the payment of the Second Lien Adequate Protection Obligations, the Second Lien Lenders are hereby granted (effective and perfected upon the date hereof and without the necessity of the execution by the Debtor of security agreements, pledge agreements, mortgages, financing

statements or other agreements) a valid, perfected security interest in and lien on all of the DIP Collateral (the "**Second Lien Adequate Protection Liens**" and collectively with the First Lien Adequate Protection Liens, the "**Adequate Protection Liens**"), subject and subordinate only to (i) the DIP Liens, (ii) the Carve-Out, (iii) the First Lien Adequate Protection Liens, (iv) the Prepetition First Liens and (v) the Non-Primed Liens, and subject further to the terms of the Subordination Agreement.

(b) Second Lien Section 507(b) Claims. The Second Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the "**Second Lien 507(b) Claims**" and collectively with the First Lien 507(b) Claims, the "**507(b) Claims**"), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330 and 331 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out, (ii) the Superpriority Claims granted in respect of the DIP Obligations and (iii) the First Lien 507(b) Claims, and subject further to the terms of the Subordination Agreement. Unless otherwise expressly agreed to in writing by the DIP Lender, the Second Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the Second Lien 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash in accordance with the DIP Documents, the Carve-Out amount is funded (only to the extent not previously paid), and the First Lien 507(b) Claims shall have been paid in full in cash.

16. *Reservation of Rights*. Notwithstanding any other provision hereof, but subject to the terms of the Subordination Agreement, the grant of adequate protection pursuant to the terms of this Interim Order is without prejudice to the right of any of the Prepetition Secured Parties to

seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection, and without prejudice to the right of the Debtor or any other party in interest (subject to the terms of the Subordination Agreement) to contest any such modification. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including, without limitation, section 506(b) thereof, the Court finds that the adequate protection provided herein, including, without limitation, in the form of the Adequate Protection Obligations and Adequate Protection Liens is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties may request further or different adequate protection, and the Debtor or any other party may, consistent with the terms of the Subordination Agreement (the terms of which, for the avoidance of any doubt, shall not be affected or modified in any way by this Interim Order), the First Lien BFA or any of the Second Lien NPAs, contest any such request; *provided further* that any such additional or modified adequate protection shall at all times be subordinate and junior to the DIP Liens and DIP Superpriority Claims and, with respect to any additional or modified adequate protection for the Second Lien Lenders, such adequate protection shall at all times be subordinate and junior to the First Lien Adequate Protection Liens, the First Lien Adequate Protection Obligations, and any claims of the First Lien Lender arising from the First Lien Documents. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Prepetition Secured Party or the DIP Lender.

17. *Automatic Effectiveness of Liens; Perfection of DIP Liens and Adequate Protection Liens*.

(a) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to effectuate all of the terms and provisions of the DIP Orders, including without limitation, to: (a) permit the Debtor to grant the adequate protection provided for in this Interim Order; (b) permit the Debtor to perform such acts as the Prepetition Secured Parties and the DIP Lender may request to assure the perfection and priority of the liens granted in this Interim Order; and (c) permit the Debtor to incur all liabilities and obligations to the Prepetition Secured Parties and the DIP Lender under this Interim Order.

(b) The DIP Lender, the First Lien Lender and the Second Lien Lenders, as applicable, are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the DIP Liens or the applicable Adequate Protection Liens granted to them hereunder, subject to the terms of the Subordination Agreement. Whether or not the DIP Lender, the First Lien Lender or the Second Lien Lender, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the DIP Liens and the applicable Adequate Protection Liens, such DIP Liens and such Adequate Protection Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or, other than as set forth in the Subordination Agreement, subordination as of the date of entry of this Interim Order.

(c) A certified copy of this Interim Order may, in the discretion of the DIP Lender, the First Lien Lender or the Second Lien Lenders, as the case may be, be filed with

or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording, subject to payment of any necessary filing fees.

(d) The Debtor shall execute and deliver to the DIP Lender, the First Lien Lender or Second Lien Lenders, as the case may be, all such agreements, financing statements, instruments and other documents as the DIP Lender, the First Lien Lender or the Second Lien Lenders, as the case may be, may reasonably request to evidence, confirm, validate or perfect the DIP Liens and the applicable Adequate Protection Liens.

18. *Preservation of Rights Granted Under the Interim Order*.

(a) Other than the DIP Liens and the Superpriority Claims, and subject to the terms of the Subordination Agreement, no claim or lien having a priority senior to or *pari passu* with those granted by this Interim Order to the Prepetition Agents shall be granted or allowed while any portion of the Adequate Protection Obligations remain outstanding, and the Adequate Protection Liens shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code or, except as set forth in the Subordination Agreement, subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full in cash (or as otherwise may be allowed under the DIP Credit Agreement), it shall constitute an Event of Default under the DIP Credit Agreement if the Debtor seeks, or if there is entered, any modification of this Interim Order without the prior written consent of the DIP Lender,

and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender or an order is entered converting or dismissing the Case. The Debtor's right to use Prepetition Collateral (including Cash Collateral) shall terminate if the Debtor seeks, or if there is entered, any modification of this Interim Order, whether directly or by entry of any other order having the same effect, that adversely affects any lien, claim, right, or other protection (including without limitation Adequate Protection) granted to or for the benefit of any Prepetition Secured Party without the prior written consent of such Prepetition Secured Party (consistent with the terms of the Subordination Agreement), and no such consent shall be implied by any other action, inaction, or acquiescence by any Prepetition Secured Party, or an order is entered converting or dismissing any of the Case.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection Obligations incurred prior to the effective date of such reversal, stay, modification or vacatur or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of any Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Debtor to the DIP Lender or to the Prepetition Secured Parties, as the case may be, prior to the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order, the DIP

Documents (with respect to all DIP Obligations), the Adequate Protection Obligations and uses of any Cash Collateral.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Liens, the 507(b) Claims and all other rights and remedies of the DIP Lender and the Prepetition Secured Parties granted by this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code or dismissing the Case, or (ii) the entry of an order confirming a plan of reorganization in any of the Case and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor has waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Case, in any successor cases, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Adequate Protection Liens, the DIP Obligations, the Adequate Protection Obligations, the Superpriority Claims, the 507(b) Claims, and the other administrative claims granted pursuant to this Interim Order, and all other rights and remedies of the DIP Lender and the Prepetition Secured Parties granted by this Interim Order and the DIP Documents shall continue in full force and effect until all DIP Obligations are indefeasibly paid in full in cash (or otherwise satisfied in accordance with the DIP Credit Agreement) and all Adequate Protection Obligations are indefeasibly paid in full in cash or otherwise satisfied in accordance with this Interim Order.

19. *Effect of Stipulations on Third Parties*.

(a) The stipulations and admissions contained in paragraph 4 of this Interim Order, shall be binding upon the Debtor under all circumstances. The stipulations and admissions contained in paragraph 4 of this Interim Order shall be binding upon all parties in interest unless: (a) any party-in-interest that successfully seeks and obtains standing to do so has timely filed an adversary proceeding or contested matter or the Committee has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including without limitation, in this paragraph 19(a)) by no later than with respect to any Committee appointed in the Case, the date that is 60 days after the formation or with respect to other parties in interest, no later than 75 days after the Petition Date; provided that any such deadline is subject to extension as may be specified by this Court for cause shown, or if the applicable Prepetition Secured Party agrees to such an extension with respect to any Claims and Defenses in respect of the First Lien Obligations or the Second Lien Obligations, as applicable, challenging the validity, enforceability, priority or extent of (A) the Prepetition First Lien Obligations or the liens on Prepetition Collateral securing the Prepetition First Lien Obligations or (B) the Prepetition Second Lien Obligations or the liens on the Prepetition Collateral securing the Prepetition Second Lien Obligations (collectively, the "**Claims and Defenses**"); and (b) an order is entered and becomes final in favor of the plaintiff sustaining any such challenge in any such timely filed adversary proceeding or contested matter; provided that, as to the Debtor, all such Claims and Defenses are hereby irrevocably waived, released and relinquished as of the Petition Date. If no such adversary proceeding or contested matter is timely filed in respect of the Prepetition First Lien Obligations or the Prepetition Second Lien Obligations, as the case may be, (x) the Prepetition First Lien Obligations and the Prepetition Second Lien Obligations, as the case

may be, shall constitute finally and irrevocably allowed claims, not subject to counterclaim, setoff, subordination (except as set forth in the Subordination Agreement), recharacterization of debt as equity, defense or avoidance, for all purposes in the Case and any subsequent chapter 7 case, (y) the liens on the Prepetition Collateral securing the Prepetition First Lien Obligations and the Prepetition Second Lien Obligations, as the case may be, shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraphs 4(b) and 4(e), as applicable, not subject to defense, counterclaim, recharacterization of debt as equity, subordination (except as set forth in the Subordination Agreement) or avoidance and (z) the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations, as the case may be, and the liens on the Prepetition Collateral granted to secure the Prepetition First Lien Obligations and the Prepetition Second Lien Obligations, as the case may be, shall not be subject to any other or further challenge by any party-in-interest (including the Committee), and such party-in-interest shall be enjoined from seeking to exercise the rights of the Debtor's estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or 11 trustee appointed or elected for the Debtor). If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 4 of this Interim Order shall nonetheless remain binding and preclusive (as provided in the third sentence of this paragraph) on all parties-in-interest (including the Committee), except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding or contested matter.

(b) For avoidance of doubt, any trustee appointed or elected in the Case shall, until the expiration of the period provided in paragraph 19(a) of this Interim Order for

asserting Claims and Defenses and thereafter for the duration of any adversary proceeding or contested matter timely commenced pursuant to paragraph 19(a) of this Interim Order (whether commenced by such trustee or commenced by another party in interest on behalf of the Debtor's estate) be deemed to be a party "other than the Debtor" and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgements, admissions, confirmations, stipulations and waivers of the Debtor in this Interim Order that are the subject of, or specifically raised in connection with, such adversary proceeding or contested matter.

20. *Limitation on Use of DIP Loans, DIP Collateral and Prepetition Collateral*. The Debtor shall use the DIP Loans, the DIP Collateral and the Prepetition Collateral (including any Cash Collateral) solely as provided in this Interim Order and the DIP Documents. Notwithstanding anything herein or in any other order of this Court to the contrary, no DIP Loans, no DIP Collateral, no Prepetition Collateral (including any Cash Collateral) and no portion of the Carve-Out may be used to (a) object, contest, challenge or raise any defense to, the amount, validity, perfection, priority, extent or enforceability, of any amount due under the DIP Documents, the First Lien Documents, the Second Lien Documents, or the liens or claims granted under this Interim Order, (b) assert any Claims and Defenses, (c) prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement or realization on the DIP Collateral in accordance with the DIP Documents or this Interim Order, (d) seek to modify any of the rights granted to the DIP Lender or the Prepetition Secured Parties hereunder or under the DIP Documents, the First Lien Documents, or the Second Lien Documents, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i)

approved by an order of this Court and (ii) permitted under the DIP Documents; provided that, notwithstanding anything to the contrary herein, no more than an aggregate of $25,000 of the Prepetition Collateral (including any Cash Collateral), the DIP Loans, the DIP Collateral or the Carve-Out may be used by the Committee to investigate the validity, enforceability or priority of the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations or the liens on the Prepetition Collateral securing the Prepetition First Lien Obligations or the Prepetition Second Lien Obligations, or investigate any Claims and Defenses.

21. *Interim Order Governs*. In the event of any inconsistency between the provisions of this Interim Order or the DIP Documents, the provisions of this Interim Order shall govern.

22. *Binding Effect; Successors and Assigns*. The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties-in-interest in the Case, including without limitation, the DIP Lender, the Prepetition Secured Parties, and the Debtor and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor, an examiner with expanded powers appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) and shall inure to the benefit of the DIP Lender, the Prepetition Secured Parties and the Debtor and their respective successors and assigns; provided that, except to the extent expressly set forth in this Interim Order, the DIP Documents, or the Subordination Agreement, the DIP Lender and the Prepetition Secured Parties shall have no obligation to permit the use of the DIP Loans or any Cash Collateral or extend any financing to any chapter 7 trustee or similar responsible person appointed for the estate of the Debtor.

23. *Limitation of Liability*. By entering into the DIP Agreement, making any loan under the DIP Agreement or permitting the use of any Cash Collateral, the DIP Lender and the Prepetition Secured Parties shall not solely by reason thereof be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor. Furthermore, nothing in this Interim Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or any Prepetition Secured Party of any liability for any claims arising from the pre-petition or post-petition activities of the Debtor.

24. *Subordination Agreement*. Nothing in this Interim Order shall amend or otherwise modify the terms or enforceability of the Subordination Agreement, including without limitation, the relative rights of all liens (including the liens that are granted or primed by this Interim Order), any rights as unsecured creditors of the Debtor as set forth therein, any approval provisions contained therein, and any turnover provisions contained therein, and the Subordination Agreement shall each remain in full force and effect. The rights of the Prepetition Secured Parties shall at all times remain subject to the Subordination Agreement.

25. *Credit Bidding*.

(a) The DIP Lender shall have the right to credit bid up to the full amount of the DIP Obligations in any sale of the DIP Collateral (including, without limitation, sales occurring under Section 363 of the Bankruptcy Code or included as part of any plan of reorganization subject to confirmation of such reorganization plan) as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

(b) Subject to entry of the Final Order and unless the Court orders otherwise, the full amount of the Prepetition First Lien Obligations and the Second Lien Obligations then outstanding may be used to "credit bid" for the assets and property of the Debtor (to the extent such assets are Prepetition Collateral or secured by First Lien Adequate Protection Liens (but with respect thereto, solely to the extent of the value of the First Lien Adequate Protection Liens) or Second Lien Adequate Protection Liens (but with respect thereto, solely to the extent of the value of the Second Lien Adequate Protection Liens), as applicable) as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

26. *Proofs of Claim.* The Prepetition Secured Parties will not be required to file proofs of claim in the Case or any converted case with respect to any obligations under the First Lien Documents, the Second Lien Documents, any other claims or liens granted hereunder or created hereby. The First Lien Lender and the Second Lien Lenders are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit, as may be permitted by the Bankruptcy Rules) proofs of claims in the Case in respect of the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations or the Adequate Protection Obligations. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Parties and/or in addition to the stipulated liens and claims set forth in this Interim Order. The Debtor shall request that any order entered by the Court in relation to the establishment of a bar date in the

Case will provide that the Prepetition Secured Parties shall have no obligation to comply with the bar date.

27. *Rules of Construction*. For the avoidance of doubt, the rules of construction contained in Bankruptcy Code section 102 shall be applicable to this Interim Order (except for the rule of construction contained in section 102(5)).

28. *Objections to Entry of Final Order*. Any responses or objections to the entry of the Final Order must: (a) be made in writing; (b) state with particularity the grounds therefor; (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the District of Delaware; (d) be filed with the United States Bankruptcy Court for the District of Delaware; and (e) be served upon (i) counsel to the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Mark Kenney (Mark.Kenney@usdoj.gov)); (ii) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller (dan.squiller@verengosolar.com)); (iii) proposed counsel to the Debtor, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (SCousins@bayardlaw.com) and Evan T. Miller (EMiller@bayardlaw.com)); and (iv) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)). The deadline by which objections to the Motion and entry of the Final Order must be filed and received by proposed counsel to the Debtor is [_____], 2016 at 4:00 p.m. (prevailing Eastern Time) (the "**Objection Deadline**").

29. *Final Hearing*. A final hearing, if required, on the Motion will be held on [_____] (prevailing Eastern Time). If no objections are filed and served to the entry of the Final Order on or before the Objection Deadline, the Court may enter the Final Order without further notice or hearing.

30. *Retention of Jurisdiction*. The Court has and will retain jurisdiction and power to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

31. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim Order.

Dated: _____ ___, 2016

Wilmington, Delaware

UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Budget

SELLER DISCLOSURE LETTER

ASSET PURCHASE AGREEMENT BY AND BETWEEN VERENGO, INC. AND CRIUS SOLAR FULFILLMENT, LLC

This Seller Disclosure Letter relates to certain matters concerning the disclosures made in the Asset Purchase Agreement by and between Verengo, Inc. and Crius Solar Fulfillment, LLC dated as of September 23, 2016 (the "Agreement"). Seller has made representations and warranties in the Agreement, and certain of such representations and warranties are subject to matters disclosed in the correspondingly numbered section of the Seller Disclosure Letter. The following materials constitute the Seller Disclosure Letter referred to in the Agreement. The parties to the Agreement acknowledge that certain sections of the Seller Disclosure Letter may be supplemented or modified in accordance with the terms of the Agreement, and that any other modification or amendment of this Seller Disclosure Letter is subject to agreement by Buyer and Seller. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

The Seller Disclosure Letter is qualified in its entirety by reference to specific provisions of the Agreement. Any references in a Disclosure to an item in another Disclosure shall include any attachments or other items incorporated therein.

Seller Disclosure Letter -- Section 1.1(a)

Bidding Procedures

The bidding procedures attached hereto as Exhibit 1 to this Section 1.1(a) of the Seller Disclosure Letter will be presented to the Bankruptcy Court for approval.

Exhibit 1 - Seller Disclosure Letter -- Section 1.1(a)

(Bidding Procedures)

BIDDING PROCEDURES

Set forth below are the bidding procedures (the "**Bidding Procedures**") to be employed in connection with the sale of all or substantially all assets (the "**Assets**") of the Debtor, in connection with the chapter 11 case pending in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), case number 16-12098 (____).

The Debtor entered into that certain asset purchase agreement, dated September 23, 2016 (together with the schedules and related documents thereto, the "**Stalking Horse Agreement**") between the Debtor and Crius Solar Fulfillment, LLC (the "**Stalking Horse Purchaser**"), pursuant to which the Stalking Horse Purchaser has agreed to acquire all or substantially all of the Assets (collectively, to the extent provided in the Stalking Horse Agreement, the "**Purchased Assets**") on the terms and conditions specified therein.

The sale transaction pursuant to the Stalking Horse Agreement is subject to competitive bidding as set forth herein. Capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Stalking Horse Agreement.

I. ASSETS TO BE SOLD

The Debtor seeks to complete a sale of the Purchased Assets (the "**Sale**") and the assumption of certain liabilities described in Sections 2.3 and 2.5 of the Stalking Horse Agreement. The Stalking Horse Agreement will serve as the "stalking-horse" bid for the Purchased Assets. Except as otherwise provided in the Stalking Horse Agreement or such other approved purchase agreement of the Successful Bidder, all of the Sellers' right, title and interest in and to each Purchased Asset to be acquired shall be sold free and clear of all liens, hypothecations, encumbrances, claims, liabilities, security interests, interests, mortgages, pledges, restrictions, options, easements, encroachments, or restrictions on transfer of any kind or nature thereon and there against (collectively, the "**Liens**"), such Liens to attach solely to the net proceeds of the sale of such Purchased Assets

II. THE BID PROCEDURES

In order to ensure that the Debtor receives the maximum value for the Purchased Assets, it intends to conduct a sale process for the Purchased Assets pursuant to the procedures and on the timeline proposed herein.

A. Provisions Governing Qualifications of Bidders

Unless otherwise ordered by the Court, in order to participate in the bidding process, prior to the Bid Deadline (defined below), each person, other than the Stalking Horse Purchaser, who wishes to participate in the bidding process (a "**Potential Bidder**") must deliver the following to the Notice Parties (as defined below):

(i) a written disclosure of the identity of each entity including all affiliates, equity sources or other parties that will be or is associated with bidding for the Purchased Assets or otherwise participating in connection with such bid and the complete terms of any such participation; and

(ii) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtor to a Potential Bidder) in form and substance satisfactory to the Debtor, which shall inure to the benefit of any purchaser of the Purchased Assets; without limiting the foregoing, each confidentiality agreement executed by a Potential Bidder shall contain standard non-solicitation provisions.

A Potential Bidder that delivers the documents and information described above and that the Debtor determines in its reasonable business judgment, after consultation with its advisors, is likely (based on availability of financing, experience and other considerations) to be able to consummate the sale, will be deemed a "**Qualified Bidder**." The Debtor will limit access to due diligence to those parties it believes, in the exercise of its reasonable judgment, are pursuing the transaction in good faith.

As promptly as practicable after a Potential Bidder delivers all of the materials required above (and in any event no later than two (2) business days thereafter), the Debtor will determine and will notify the Potential Bidder and the Notice Parties if such Potential Bidder is a Qualified Bidder.

B. Due Diligence

The Debtor will afford any Qualified Bidder such due diligence access or additional information as the Debtor, in consultation with its advisors, deems appropriate, in its reasonable discretion. The Sellers must promptly advise the Stalking Horse Purchaser in the event any other Qualified Bidder receives diligence the Stalking Horse Purchaser has not previously received and shall promptly be provided with access to such diligence materials.

The due diligence period shall end on the Bid Deadline. For the avoidance of doubt, neither the Debtor nor any of its respective representatives shall be obligated to furnish any due diligence information to any person other than a Qualified Bidder.

C. Provisions Governing Qualified Bids

A bid submitted will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and complies with all of the following (a "**Qualified Bid**"):

(i) it fully discloses the identity of the Qualified Bidder;

(ii) it states that the applicable Qualified Bidder offers to purchase the Purchased Assets upon terms and conditions that the Debtor reasonably determines are at least as favorable to the Debtor as those set forth in the Stalking Horse Agreement, and follows the form and structure of the Stalking Horse Agreement;

(iii) it includes a signed writing that the Qualified Bidder's offer is irrevocable until the selection of the Successful Bidder and the Back-Up Bidder (defined below), provided that if such bidder is selected as the Successful Bidder or the Back-Up Bidder, then the offer shall remain irrevocable until

the earlier of (i) the closing of the transaction with the Successful Bidder and (ii) the date that is fifteen (15) business days after entry of the Sale Order with respect to the Successful Bidder and sixteen (16) business days after entry of the Sale Order with respect to the Back-Up Bidder;

(iv) confirmation that there are no conditions precedent to the Qualified Bidder's ability to enter into a definitive agreement and that all necessary internal and shareholder approvals have been obtained prior to the bid;

(v) it sets forth each regulatory and third-party approval required for the Qualified Bidder to consummate the transaction and the time period within which the Qualified Bidder expects to receive such approvals;

(vi) it includes a duly authorized and executed copy of a purchase or agreement (a "**Purchase Agreement**"), including the purchase price for the Purchased Assets expressed in U.S. Dollars (the "**Purchase Price**"), together with all exhibits and schedules thereto, together with copies marked ("**Marked Agreement**") to show any amendments and modifications to the Stalking Horse Agreement and the proposed order to approve the sale by the Court Motion; provided however, that such Purchase Agreement shall not include any financing or diligence conditions;

(vii) it includes written evidence of sufficient cash on hand to fund the purchase price or sources of immediately available funds that are not conditioned on further third party approvals or commitments, that will allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Purchase Agreement; such written evidence shall include the most current audited and the most current unaudited financial statements, or such other financial information as may be acceptable to the Debtor in its reasonable discretion (collectively, the "**Financials**") of the Qualified Bidder, or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Purchased Assets, the Financials of the Qualified Bidder's equity holder(s) or other financial backer(s);

(viii) it provides for a cash purchase price at least $250,000 (the "**Minimum Overbid**") in excess of the aggregate consideration to be received by or for the benefit of the Debtor's estate upon consummation of the Stalking Horse Agreement ((a) $200,000 in cash, plus (b) cash in an amount sufficient to satisfy the Debtor's secured obligations being credit bid by the Stalking Horse Purchaser under the Stalking Horse Agreement (specifically, $11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan (as defined in the Stalking Horse Agreement totaling $2,272,000, plus (z) such amount of Senior Notes (as defined in the Stalking Horse Agreement) necessary to total, when combined with the

credit bid amounts from clauses (x) and (y), $11.7 million), and otherwise has a value to the Debtor, in the Debtor's exercise of its reasonable business judgment, after consultation with its advisors, that is greater or otherwise better than the value offered under the Stalking Horse Agreement including impact of the liabilities assumed in the Stalking Horse Agreement. The Minimum Overbid represents the sum of (A) the amount of the Breakup Fee (as defined below) of $475,000 and Expense Reimbursement of $175,000, plus (B) $250,000 plus (C) the Purchase Price of $11,900,000;

(ix) it identifies with particularity which executory contracts and unexpired leases the Qualified Bidder wishes to assume and provides for the Qualified Bidder to pay related cure costs;

(x) it contains sufficient information concerning the Qualified Bidder's ability to provide adequate assurance of performance with respect to executory contracts and unexpired leases;

(xi) it includes an acknowledgement and representation that the bidder: (A) has had an opportunity to conduct any and all required due diligence regarding the Purchased Assets prior to making its offer; (B) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Purchased Assets in making its bid; (C) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Purchased Assets or the completeness of any information provided in connection therewith or with the Auction (defined below), except as expressly stated in the Purchase Agreement; and (D) is not entitled to any expense reimbursement, break-up fee, or similar type of payment in connection with its bid;

(xii) it includes evidence, in form and substance reasonably satisfactory to the Debtor, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Purchase Agreement;

(xiii) it is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtor), certified check or such other form acceptable to the Debtor, payable to the order of the Debtor (or such other party as the Debtor may determine) in an amount equal to ten percent (10%) of the Purchase Price;

(xiv) it contains in writing that the Qualified Bidder will pay off, in full, the DIP loan and become the DIP lender, with such payoff to occur within three (3) days of the Sale Hearing;

(xv) it contains a detailed description of how the Qualified Bidder intends to treat current employees of the Debtor;

(xvi) it states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;

(xvii) it contains such other information reasonably requested by the Debtor; and

(xviii) it is received prior to the Bid Deadline.

Notwithstanding the foregoing, the Stalking Horse Purchaser is deemed a Qualified Bidder and the Stalking Horse Agreement is deemed a Qualified Bid, for all purposes in connection with the Bidding Procedures, the Auction, and the Sale. The Stalking Horse Purchaser shall not be required to take any further action in order to participate in the Auction (if any) or, if the Stalking Horse Purchaser is the Successful Bidder, to be named the Successful Bidder at the Sale Hearing (as defined below).

The Debtor shall notify the Stalking Horse Purchaser and all Qualified Bidders in writing as to whether or not any bids constitute Qualified Bids (and with respect to each Qualified Bidder that submitted a bid as to whether such Qualified Bidder's bid constitutes a Qualified Bid) no later than two (2) business days following the expiration of the Bid Deadline.

D. Bid Deadline

A Qualified Bidder that desires to make a bid will deliver written copies of its bid to the following parties (collectively, the "**Notice Parties**"): (i) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn: Dan Squiller); (ii) counsel to the Debtor: Bayard P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (scousins@bayardlaw.com) and Evan T. Miller (emiller@bayardlaw.com); (iii) financial advisor to the Debtor: SSG Capital Advisors, LLC, Five Tower Bridge, Suite 420, 300 Barr Harbor Drive, West Conshohocken, PA 19428 (Attn: J. Scott Victor (jsvictor@ssgca.com)); (iv) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)); and (v) counsel to the Office of the United States Trustee: US Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: Mark Kenney) (collectively, the Notice Parties), so as to be received by the Debtor not later than 50 days after the Petition Date (the "**Bid Deadline**").

E. Credit Bidding

The Stalking Horse Purchaser holds security interests in the Purchased Assets and has included within its Stalking Horse Agreement a credit bid for the Purchased Assets. It may submit additional credit bids for the Purchased Assets as it deems necessary and desirable.

F. Evaluation of Competing Bids

A Qualified Bid will be valued based upon several factors including, without limitation, (1) the amount of such bid, (2) the risks and timing associated with consummating such bid, (3) any proposed revisions to the Stalking Horse Agreement, and (4) any other factors deemed relevant by the Debtor in its reasonable discretion.

G. No Qualified Bids

If the Debtor does not receive any Qualified Bids other than the Stalking Horse Agreement, the Debtor will not hold an auction and the Stalking Horse Purchaser will be named the Successful Bidder for the Purchased Assets.

H. Auction Process

If the Debtor receives one or more Qualified Bids in addition to the Stalking Horse Agreement, the Debtor will conduct an auction of the Purchased Assets (the "**Auction**"), which shall be transcribed, on a date that is no later than 52 days after the Petition Date (the "**Auction Date**") at the offices of Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, Delaware 19801, or such other location as shall be timely communicated to all entities entitled to attend the Auction. The Auction shall run in accordance with the following procedures:

(a) the Auction will be conducted openly and all creditors will be permitted to attend;

(b) only the Stalking Horse Purchaser and the Qualified Bidders who have timely submitted a Qualified Bid will be entitled to make any subsequent bids at the Auction;

(c) each Qualified Bidder shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the sale;

(d) at least one (1) business day prior to the Auction, each Qualified Bidder who has timely submitted a Qualified Bid must inform the Debtor whether it intends to attend the Auction; provided that in the event a Qualified Bidder elects not to attend the Auction, such Qualified Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Qualified Bidder until the date of the selection of the Successful Bidder and the Back-Up Bidder (defined below) at the conclusion of the Auction. At least one (1) business day prior to the Auction, the Debtor will identify to the Stalking Horse Purchaser and all other Qualified Bidders which Qualified Bid the Debtor believes in its reasonable discretion is the highest or otherwise best offer (the "**Starting Bid**");

(e) all Qualified Bidders who have timely submitted Qualified Bids will be entitled to be present for all Subsequent Bids (as defined below) at the Auction and the actual identity of each Qualified Bidder will be disclosed on the record at the Auction; provided that all Qualified Bidders wishing to attend the

Auction must have at least one individual representative with authority to bind such Qualified Bidder attending the Auction in person;

(f) the Debtor, after consultation with its advisors and with the consent of the Stalking Horse Purchaser, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction, provided that such rules are (i) not inconsistent with these Bidding Procedures, the Bankruptcy Code, or any order of the Court entered in connection herewith, and (ii) disclosed to each Qualified Bidder at the Auction; and

(g) bidding at the Auction will begin with the Starting Bid and continue in bidding increments (each a "**Subsequent Bid**") providing a net value to the estate of at least an additional $100,000 above the prior bid. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid that it believes to be the highest or otherwise better offer (the "**Leading Bid**"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid. Qualified Bidders will not have the opportunity to pass. Except as specifically set forth herein, for the purpose of evaluating the value of the consideration provided by Subsequent Bids, the Debtor will give effect to the Breakup Fee and Expense Reimbursement payable to the Stalking Horse Purchaser as well as any additional liabilities to be assumed by a Qualified Bidder and any additional costs which may be imposed on the Debtor.

B. Selection of Successful Bid

Prior to the conclusion of the Auction, the Debtor, in consultation with its advisors, will review and evaluate each Qualified Bid in accordance with the procedures set forth herein and determine which offer is the highest or otherwise best offer from among the Qualified Bidders submitted at the Auction (one or more such bids, collectively the "**Successful Bid**" and the bidder(s) making such bid, collectively, the "**Successful Bidder**"), and communicate to the Qualified Bidders the identity of the Successful Bidder and the details of the Successful Bid. The determination of the Successful Bid by the Debtor at the conclusion of the Auction shall be final, subject only to approval by the Court.

Unless otherwise agreed to by the Debtor and the Successful Bidder, within two (2) business days after the conclusion of the Auction, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made. Within one (1) business day following the conclusion of the Auction, the Debtor shall file a notice identifying the Successful Bidder with the Court and, if the Stalking Horse Purchaser is not the Successful Bidder, shall serve such notice by fax, email or overnight mail to all counterparties whose contracts are to be assumed and assigned.

The Debtor will sell the Purchased Assets to the Successful Bidder pursuant to the terms of the Successful Bid upon the approval of such Successful Bid by the Court at the Sale Hearing.

C. Return of Deposits

All deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder or the Back-Up Bidder (as defined below) no later than five (5) business days following the conclusion of the Auction.

D. Back-Up Bidder

If an Auction is conducted, the Qualified Bidder with the next highest or otherwise best Qualified Bid to the Successful Bidder, as determined by the Debtor in the exercise of its business judgment, at the Auction shall be required to serve as a back-up bidder (the "**Back-Up Bidder**") and keep such bid open and irrevocable until sixteen (16) business days after entry of the Sale Order; provided that the Stalking Horse Purchaser shall not be required to be the Back-Up Bidder. Following the Sale Hearing, if the Successful Bidder fails to consummate the approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Back-Up Bidder will be deemed to be the new Successful Bidder, and the Debtor will be authorized, but not required, to consummate the sale with the Back-Up Bidder without further order of the Bankruptcy Court.

E. The Bid Protections

In recognition of this expenditure of time, energy, and resources, the Debtor has agreed that if the Stalking Horse Purchaser is not the Successful Bidder, the Debtor will pay the Stalking Horse Purchaser an amount in cash equal to (i) $475,000 as more fully described in the Stalking Horse Agreement (the "**Breakup Fee**") plus (ii) the aggregate amount of the reasonable, actual, and necessary, out-of-pocket expenses paid or incurred by the Stalking Horse Purchaser and its affiliates relating to or in connection with its bid (the "**Expense Reimbursement**"), subject to a cap of $175,000. The Breakup Fee and the Expense Reimbursement shall be payable as provided for pursuant to the terms of the Stalking Horse Agreement and nothing herein shall be deemed to limit or otherwise modify the terms thereof, including other circumstances pursuant to which the Breakup-Up Fee and Expense Reimbursement may be payable.

The Debtor has further agreed that its obligation to pay the Breakup Fee and Expense Reimbursement pursuant to the Stalking Horse Agreement shall survive termination of the Stalking Horse Agreement, shall, to the extent owed by the Debtor, constitute an administrative expense claim under section 503(b) of the Bankruptcy Code and shall be payable [within two (2) business days] under the terms and conditions of the Stalking Horse Agreement and the Bankruptcy Court's order approving these Bidding Procedures, notwithstanding section 507(a) of the Bankruptcy Code.

III. Sale Hearing

The Debtor will seek entry of an order from the Court at the Sale Hearing to be scheduled no later than 55 days following the Petition Date, to approve and authorize the sale transaction to the Successful Bidder on terms and conditions determined in accordance with the Bid Procedures.

Seller Disclosure Letter -- Section 1.1(b)

Individuals with Knowledge:

Dan Squiller, CEO

Chinmay Abhyankar, Director of Special Programs

James White, Director of Operations

Matt Lees, Director of Technology Operations

Rhonda Gornitsky, SVP, General Counsel and Corporate Secretary

Claudio Ingrassia, Director of Human Resources

Robert Angell, Director of Business Development

Tyler Carlbom, Manager of Financial Planning & Analysis

Seller Disclosure Letter -- Section 2.2(j)

Other Excluded Assets:

None

Seller Disclosure Letter – Section 2.3

Assumed Liabilities

Assumed Liabilities include:

- Equipment and service warranties pursuant to Assigned Contracts
- Cure Amounts owing under Assigned Contracts
- Purchases made for materials related to installations after the Closing Date, in each case pursuant to Assigned Contracts
- Paid Time Off for employees of the Business up to a maximum of $243,000

Seller Disclosure Letter-- Section 2.5(a)

Executory Contracts

Name of Contract	Date	Company Party	Counterparty	Estimated Cure Amount
Sales Representative Agreement	9/1/2016	Verengo, Inc.	Complete Solar, LLC	$ -
Sales Representative Agreement	8/24/2016	Verengo, Inc.	LB Wireless Inc. d.b.a. Solar Wholesale Group	$ -
Sales Representative Agreement	5/16/2016	Verengo, Inc.	Guaranteed Solar, LLC	$ -
Sales Representative Agreement	4/26/2016	Verengo, Inc.	Chad Joel	$ -
Sales Representative Agreement-Solar	4/19/2016	Verengo, Inc.	Swell Energy, LLC	$ -
Sales Representative Agreement- Battery	4/6/2016	Verengo, Inc.	Swell Energy, LLC	$ -
HERO Program Contractor Program	4/12/12	Verengo, Inc.	Renovate America, Inc.	$
Kilowatt Retail Installment Contract Solar Financing System Master Purchase and Sale Agreement	7/29/2015	Verengo, Inc.	Viewtech Financial Services, Inc.	$ -
Second Amendment to Mosaic Preferred Partner Agreement	4/27/15	Verengo, Inc.	Solar Mosaic, Inc.	$ -
First Amendment to Mosaic Preferred Partner Agreement	1/16/2015	Verengo, Inc.	Solar Mosaic, Inc.	$ -
Mosaic Home Solar Loan Preferred Partner Agreement	8/1/2014	Verengo, Inc.	Solar Mosaic, Inc.	$ -
Sales Representative Agreement	6/29/2016	Verengo, Inc.	Basem Bishay d.b.a. SunGuide Solutions	$ -

Name of Contract	Date	Company Party	Counterparty	Estimated Cure Amount
Amended and Restated Master Equity Lease Agreement	10/11/2010	Verengo, Inc.	Enterprise Fleet Services	$ -
Verengo Master Subcontractor	12/9/2015	Verengo, Inc.	Marcos Buenrostro Contracting	$
Solar Installation Agreement	12/10/2015	Verengo, Inc.	Sunstreet Energy Group LLC	$ -
Services Agreement	4/5/2016	Verengo, Inc.	Blitz Concepts and Designs	$ -
Pick My Solar Installer Participation Agreement	5/16/2016	Verengo, Inc.	Pick My Solar Corp	$ -
Sungevity Preferred Installer Network MAster Agreement	7/1/2016	Verengo, Inc.	Sungevity, Inc.	$ -
Solar Installation Agreement	7/12/2016	Verengo, Inc.	Sunstreet Energy Group LLC	$ -
Beam User Agreement	7/16/2016	Verengo, Inc.	Sungevity, Inc.	$ -
Master Subcontract Agreement – New Homes Installation Partner	9/19/2016	Verengo, Inc.	SunPower Corporation Systems	$ -
Sales Representative agreement	12-162015	Verengo, Inc.	Lex Regia Corp	$ -
Master Service Agreement	7/3/2015	Verengo, Inc.	Spoken Communications	$ 12,900
CenturyLink Total Advantage Agreement	3/28/2014	Verengo, Inc.	CenturyLink	$ 400,000
MindShift Work Order	7/3/2015	Verengo, Inc.	Mindshift Technologies	$2,750
Verizon Wireless Major Account Agreement	8/24/2015	Verengo, Inc.	Verizon Wireless	$ 32,000

Name of Contract	Date	Company Party	Counterparty	Estimated Cure Amount
Customer Relationship Agreement	1/1/16	Verengo, Inc	Aramark Refreshment Services, LLC	$0
Services Agreement	11/12/2015	Verengo, Inc	CertainTeed Corporation	$0
Verengo Master Subcontract	12/18/16	Verengo, Inc	DES Electrical	$0
Verengo Master Subcontract	12/18/15	Verengo, Inc	Electrize	$0
Verengo Master Subcontract	3/15/16	Verengo, Inc	Evans Energy	$0
Verengo Master Subcontract	3/15/16	Verengo, Inc	Hector's Roofing Service	$0
Verengo Master Subcontract	2/25/16	Verengo, Inc	Jackson Electric	$0
Verengo Master Subcontract	3/21/16	Verengo, Inc	Myers Electric Company	$50,000
Verengo Master Subcontract	1/20/16	Verengo, Inc	South Coast Electrical Contractors	
Verengo Master Subcontract	1/19/16	Verengo, Inc	Tier Drop Solar	$0
Master Service and GIG Agreement	1/7/16	Verengo, Inc	GreenLancer Energy, Inc.	$0
Origination Program Agreement	12/11/14	Verengo, Inc	Greenspire, LLC	$0
Service Agreement	11/20/12	Verengo, Inc	HireRight, Inc.	$0
Sales Representative Agreement	2/18/16	Verengo, Inc	Kontacto CC LLC	$0
Authorized Reseller Agreement	11/24/15	Verengo, Inc	Nest Labs, Inc	$0
Unilateral Pricing Policy	6/16/15	Verengo, Inc	Nest Labs, Inc	$0
Hosted Services Agreement	12/9/15	Verengo, Inc	Utility API, Inc	
Cloud Support Agreement	6/6/16	Verengo, Inc	Software One, Inc	$0
Fusion Customer Service Agreement	8/8/16	Verengo, Inc	Fusion	$0
Memorandum of Understanding	7/28/16	Verengo, Inc	GreenMind Energy, LLC	$0
Sales Representative Agreement	7/28/16	Verengo, Inc	GreenMind Energy, LLC	$0
Service Agreement and Service Order	7/30/16	Verengo, Inc	Time Warner Cable	
Sales Order Form Professional Edition	6/30/16	Verengo, Inc	Concur Technologies, Inc	$10,000
Master Services Agreement	4/13/15	Verengo, Inc	ADP, Inc	$0
Major Accounts Agreement	9/25/12	Verengo, Inc	ADP, Inc	$0
Addendum to Major Accounts Agreement between ADP, Inc and Verengo Solar	9/25/12	Verengo, Inc	ADP, Inc	$0
Service Order	10/30/15	Verengo, Inc	Domo, Inc	$65,000
Netsuite Subscription Services Agreement	8/31/15	Verengo, Inc	Netsuite, Inc	$105,000

Name of Contract	Date	Company Party	Counterparty	Estimated Cure Amount
Interim Services Agreement	4/29/16	Verengo, Inc	Buxbaum HCS, LLC	$0
Client Services Agreement Contract #236513	3/4/16	Verengo, Inc	Vaco Los Angeles, LLC	$0
Customer Software License Agreement	6/30/14	Verengo, Inc	AboutTime Technologies, LLC	
Customer Services Agreement	3/2/16	Verengo, Inc	Kelly Services, Inc.	

Name of Contract	Start Date	Company Party	Counter Party	Cure Amount	Equipment
Lease Agreement / Lease Number 1001796	5/07/2014	Verengo, Inc.	Macquarie Equipment Finance, Inc.	$7,000	Network Equipment
Lease Agreement / Lease Number 1001795	5/07/2014	Verengo, Inc.	Macquarie Equipment Finance, Inc.	$2,000	Network Equipment
Lease Agreement / Lease Number 1001746	5/07/2014	Verengo, Inc.	Macquarie Equipment Finance, Inc.	$20,000	Network Equipment
Lease Agreement 035-0001610-000	9/29/2011	Verengo, Inc.	Ervin Leasing	$2500	Copier
Lease Agreement 035-0001757-000	1/16/2012	Verengo, Inc.	Ervin Leasing	$2500	Copier
Lease Agreement 035-0001774-000	3/27/2012	Verengo, Inc.	Ervin Leasing	$2500	Copier
Lease Agreement 035-0001779-000	4/16/2012	Verengo, Inc.	Ervin Leasing	$2500	Copier
Lease Agreement 035-0001780-000	4/16/2012	Verengo, Inc.	Ervin Leasing	$2500	Copier
Lease Agreement 110-0856496-000	3/14/2013	Verengo, Inc.	ACP Leasing	$3000	Copier
Lease Agreement 110-0887908-000	7/22/2013	Verengo, Inc.	ACP Leasing	$9000	Copier
Lease Agreement 110-0932790-000	1/21/2014	Verengo, Inc.	ACP Leasing	$3000	Copier

Agreements with the following professionals:

Abelson, Herron, Halpern LLP - Counsel
Bayard PA – Counsel
Blank Rome LLP – Counsel
Fisher & Phillips LLP - Counsel
Jackson Lewis P.C. – Counsel
JMBM/ Jeff, Margels, Butler & Mitchell LLP - Counsel
Kaufman Dolowich & Voluck- Counsel
Levene, Neale, Bender, Yoo & Brill LLP- Counsel
Manatt, Phelps& Phillips, LLP- Counsel
Manning& Kass, Elrod, Ramirez, Trester LLP- Counsel
Stone, Grzegorek, Gonzalez LLP- Counsel
Sherwood Partners, Inc. – Financial Advisors
Upshot, Inc. – Claims Agent
SSG Advisors Inc. – Investment Banker

Various Installation contracts with homeowners [specifics to be updated pursuant to Section 2.5 of the Agreement].

The Leases set forth in Section 4.6(a) and 4.6(c) of the Seller Disclosure Letter are incorporated herein by reference.

Seller Disclosure Letter Section 4.3

Consents and Approvals:

None

Seller Disclosure Letter--Section 4.4

Absence of Changes:

None. The parties to this Agreement acknowledge Seller's limited cash resources both immediately prior to and during the pendency of the Bankruptcy Case to (i) conduct the Business in the Ordinary Course of Business, and (ii) maintain existing relations with customers, suppliers, creditors, business partners, directors, officers, employees and others having business dealings with the Business, in each case in a manner that is customary for companies similarly situated with Seller facing a filings for relief under Chapter 11 of Title 11 of the Bankruptcy Code.

Seller Disclosure Letter Section 4.6(a)

Leased Real Property

Location	Lessor	Lessee	Termination Date
1899 Western Way Torrance CA 90501	Moog, Inc.	Verengo, Inc.	March 31, 2018
20285 S. Western Ave Torrance, CA 90501	Maritz Holdings, Inc.	Verengo, Inc.	March 31, 2018
1931 E. Wright Circle Anaheim, CA 92806	Finn Holdings, LLC	Verengo, Inc.	April 30, 2017
28005 N. Smyth Drive, Valencia, California 91355	Studio e Valencia, a division of e Suites, Inc.	Verengo, Inc.	February 28, 2017
3202 East Harbour Drive Phoenix, AZ 85034	Ninyo & Moore, Geotechnical Consultants Inc.	Verengo, Inc.	December 31, 2016
4811 East Thistle Landing Drive, Phoenix, AZ	Thistle Income Properties LLC	Verengo, Inc.	August 31, 2017

No cure amounts owed in connection with the above leases.

Seller Disclosure Letter Section 4.6(c)

Sub-Leased Real Property

Location	Lessor	Lessee	Termination Date
20285 S. Western Ave Torrance, CA 90501	Verengo, Inc.	Skyline Urology	March 31, 2018
4811 East Thistle Landing Drive, Phoenix, AZ	Verengo, Inc.	The Results Company LLC	June 30, 2017

Seller Disclosure Letter -- Section 4.7

Equipment and Machinery

Two fork lifts are not in good operating condition.

Seller Disclosure Letter -- Section 4.8(f)

Third Party Software

Name of Contract	Start Date	End Date	Company Party	Counter Party	Notes
SoftwareOne_Cloud_Support_Agreement_Revised_06616v2_Executed.pdf	6/11/2016	6/11/2017	Verengo, Inc.	Software One, Inc.	Office 365 licenses
Triad_Wireless_Agreement_Phoenix.pdf	6/18/2016	m to m	Verengo, Inc.	Triad Wireless, LLC	Internet for Phx
Telepacific_FixedWireless_Torrance_Signed.pdf	9/12/2016	9/12/2017	Verengo, Inc.	US Telepacific Corp.	Internet for Torr
Fusion_VoIP_Contract-signed.pdf	8/6/2016	8/6/2017	Verengo, Inc.	Network Billing Systems, LLC	Phone system
Zetta_data_backup_service-signed.pdf	6/13/2016	7/13/2017	Verengo, Inc.	Zetta, Inc.	Data backups

Name of Contract	Company Party	Counter Party	Start Date	End Date	Software	License Name/Description	License Type	Qty	Perpetual	Notes
Microsoft_Enterprise_Agreement_61651256	Verengo, Inc.	Microsoft	5/25/2013	5/31/2016	Dynamics AX 2012	AX Server	Device	2	Yes	Agreement has expired - own outright
						Functional User CAL	User	40	Yes	
						Enterprise User CAL	User	20	Yes	
					Dynamics CRM	CRM Server	Device	2	Yes	
						Professional CAL	User	200	Yes	
						Basic CAL	User	150	Yes	
						Device Basic CAL	Device	40	Yes	
					Project	Project Professional 2016	User	7	Yes	
					Visio	Visio	User	25	Yes	

Name of Contract	Company Party	Counter Party	Start Date	End Date	Software	License Name/Description	License Type	Qty	Perpetual	Notes
						Professional 2016				
					MapPoint	MapPoint 2013	User	15	Yes	
					Visual Studio	Visual Studio Enterprise with MSDN	User	1	Yes	
					SQL Server	SQL Server Enterprise Core	Core	2	Yes	
						SQL Server Standard Core	Core	22	Yes	
					Windows Server	Windows Server 2012 R2 - Standard	Device	2	Yes	
Autodesk_Annual_Subscription	Verengo, Inc.	Autodesk	May-16	May-17	Autodesk AutoCAD	AutoCAD Subscription	User	2	No	1 year subscription - autorenew
					Autodesk AutoCAD LT	AutoCAD LT Subscription	User	3	No	
AboutTime_Agreement	Verengo, Inc.	About Time Technologies			About Time Technologies	AboutTime Timekeeping app	User	400	Yes	
Aurora_Solar_Agreement	Verengo, Inc.	Aurora Solar			Aurora Solar	Aurora Solar Design	User	2	No	Month to month agreement
Microsoft_Dynamics_AX_Business_Value	Verengo, Inc.	Microsoft	April 2016	April 2017	Maintenance agreement	Annual maintenance agreement			No	Annual maint. Agreement for Dynamics AX

Seller Disclosure Letter Section 4.10

Litigation

The following is a list of pending litigation against Seller:

Plaintiff	Cause of Action
Western Alliance Bank	Breach of contract
FiveStrata	Breach of Contract, Fraud
Wingman Advertising	Breach of Contract
Michael Flaker	Class Action, WARN Act Violation
Hanwha-Qcells	Breach of Contract
GEXPRO	Breach of Contract, Fraud
Diego Seglin	Retaliation, wrongful termination, breach of contract, waiting time periods
Williams J Roosevelt	Civil- Discrimination suit-
Paula Pena	PAGA complaints; Misclassification- owed overtime
ReallyGreatRate	Breach of Contract
Robert Echaves	Serious and Willful Misconduct
Shahar Lushe	Telephone Consumer Protection Act
Employment Development Department, State of California	Petition for Reassessment – California Unemployment Insurance Code

Threatened Litigation

The following have each threatened litigation against Seller.

1. Salesforce.com
2. Blanchard and Johnson
3. Hyundai Corporation USA
4. Netsuite
5. iProspect.com Inc.
6. Bay Breakers, Inc.
7. Loanbright.com
8. ProCopy Office Solutions
9. Hilti
10. Preservation California, LLC
11. Alexander S. Madar
12. Reply! Inc.
13. Amplifinity
14. Trina Solar
15. NRG
16. Eric Stone (PAGA)

Workers' Compensation and Auto Claims

There are open workers' compensation claims and automobile accident claims. The details of these claims will be shared on a confidential basis.

Seller Disclosure Letter Section 4.11

Contracts

All Contracts set forth in Section 2.5(a) of the Seller Disclosure Letter (except for real property Leases and subleases) are incorporated herein by reference.

Seller Disclosure Letter – Section 4.13(a)

Employee Plans

Name of contract	Expiration Date	Company Party	Counterparty	Type
Verengo Inc. 401(k) Plan	12/31/16	Verengo Inc.	Transamerica	Retirement
Kaiser Permanente	12/31/16	Verengo Inc.	Kaiser Permanente	Health
United Health Care	12/31/16	Verengo Inc.	United Health Care	Health
UNUM	12/31/16	Verengo Inc.	UNUM	Life/STD/AD&D
CIGNA	12/31/16	Verengo Inc.	CIGNA	Dental
Eyemed	12/31/16	Verengo Inc.	Eyemed	Vision
Discovery Benefits	12/31/16	Verengo Inc.	Discovery Benefits	FSA/COBRA
Optum Bank	12/31/16	Verengo Inc.	Optum Bank	HSA

Seller Disclosure Letter -- Section 4.13(c)

WARN Act

Notification pursuant to the Federal and State of California Worker Adjustment and Retraining Notification Act was provided to all of Seller's current employees on September 12, 2016.

Seller Disclosure Letter -- Section 4.16

Sufficiency of Assets

Liens

Buyer, as lender to Seller (as borrower) under the DIP Credit Agreement, and as successor in interest to the Bridge Bank Loan, the Spruce Loan and the Investor Notes (as such terms are defined in the Motion for an Order Authorizing the Debtor to Obtain Postpetition Financing filed with the Bankruptcy Court).

Creditors identified on the Financing Statement history report, attached as Exhibit 1 to this Section 4.16 of the Seller Disclosure Letter, from the Secretary of State for the State of Delaware may have Liens against certain of the Purchased Assets (including by way of purchase money security interests and equipment provided to Seller on consignment).

Exhibit 1 - Seller Disclosure Letter -- Section 4.16

(Financing Statement history report)

Delaware

The First State

CERTIFICATE

SEARCHED SEPTEMBER 13, 2016 AT 4:13 P.M.
FOR DEBTOR, VERENGO, INC.

1 OF 39 *FINANCING STATEMENT* *20103232547*

EXPIRATION DATE: 09/16/2020

DEBTOR:	*VERENGO, INC.*	
	1211 BATAVIA STREET	*ADDED 09-16-10*
	ORANGE, CA 92867	*REMOVED 05-13-13*
DEBTOR:	*VERENGO, INC.*	
	20285 S. WESTERN AVENUE, SUITE 2	*ADDED 05-13-13*
	00	
	TORRANCE, CA 90501	
SECURED:	*BRIDGE BANK, NA*	
	55 ALMADEN BLVD	*ADDED 09-16-10*
	SAN JOSE, CA 95113	

F I L I N G H I S T O R Y

20103232547	*FILED 09-16-10*	*AT 2:28 P.M.*	*FINANCING STATEMENT*
20131828889	*FILED 05-13-13*	*AT 7:11 P.M.*	*AMENDMENT*

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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The First State

20150417559 FILED 01-30-15 AT 11:17 A.M. AMENDMENT

20151178929 FILED 03-20-15 AT 1:39 P.M. CONTINUATION

2 OF 39 FINANCING STATEMENT 20112893157

EXPIRATION DATE: 07/27/2021

DEBTOR: VERENGO, INC.

1211 N. BATAVIA ST. ADDED 07-27-11

ORANGE, CA 92867

SECURED: DELL FINANCIAL SERVICES L.L.C.

MAIL STOP-PS2DF-23 ONE DELL WAY ADDED 07-27-11

ROUND ROCK, TX 78682

F I L I N G H I S T O R Y

20112893157 FILED 07-27-11 AT 11:42 A.M. FINANCING STATEMENT

20164124333 FILED 07-08-16 AT 3:56 P.M. CONTINUATION

3 OF 39 FINANCING STATEMENT 20114547827

EXPIRATION DATE: 11/01/2016

DEBTOR: VERENGO, INC.

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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1211 NORTH BATAVIA STREET ADDED 11-01-11

ORANGE, CA 92867

SECURED: WINTHROP RESOURCES CORPORATION

11100 WAYZATA BOULEVARD ADDED 11-01-11

SUITE 800

MINNETONKA, MN 55305

F I L I N G H I S T O R Y

20114547827 FILED 11-01-11 AT 10:00 A.M. FINANCING STATEMENT

4 OF 39 FINANCING STATEMENT 20122784272

EXPIRATION DATE: 07/19/2017

DEBTOR: VERENGO, INC.

1211 NORTH BATAVIA STREET ADDED 07-19-12

ORANGE, CA 92867

SECURED: WINTHROP RESOURCES CORPORATION

11100 WAYZATA BOULEVARD ADDED 07-19-12

SUITE 800

MINNETONKA, MN 55305

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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F I L I N G H I S T O R Y

20122784272 FILED 07-19-12 AT 4:19 P.M. FINANCING STATEMENT

5 OF 39 FINANCING STATEMENT 20132984616

EXPIRATION DATE: 07/31/2018

DEBTOR: VERENGO, INC.

20285 SOUTH WESTERN AVENUE ADDED 07-31-13

TORRANCE, CA 90501

SECURED: WINTHROP RESOURCES CORPORATION

11100 WAYZATA BOULEVARD ADDED 07-31-13

SUITE 800

MINNETONKA, MN 55305

F I L I N G H I S T O R Y

20132984616 FILED 07-31-13 AT 5:58 P.M. FINANCING STATEMENT

6 OF 39 FINANCING STATEMENT 20133238426

EXPIRATION DATE: 08/19/2018

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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DEBTOR: VERENGO, INC.
20285 S. WESTERN AVENUE STE 20 ADDED 08-19-13
TORRANCE, CA 90501

SECURED: PNC EQUIPMENT FINANCE
995 DALTON AVE. ADDED 08-19-13
CINCINNATI, OH 45203

F I L I N G H I S T O R Y

20133238426 FILED 08-19-13 AT 1:06 P.M. FINANCING STATEMENT

7 OF 39 FINANCING STATEMENT 20134399573

EXPIRATION DATE: 11/07/2018

DEBTOR: VERENGO, INC.
20285 SOUTH WESTERN AVENUE ADDED 11-07-13
TORRANCE, CA 90501

SECURED: WINTHROP RESOURCES CORPORATION
11100 WAYZATA BOULEVARD ADDED 11-07-13
SUITE 800
MINNETONKA, MN 55305

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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F I L I N G H I S T O R Y

20134399573 FILED 11-07-13 AT 6:27 P.M. FINANCING STATEMENT

8 OF 39 FINANCING STATEMENT 20141413574

EXPIRATION DATE: 04/10/2019

DEBTOR: VERENGO, INC.

20285 SOUTH WESTERN AVE., ADDED 04-10-14

SUITE 200

TORRANCE, CA 90501

SECURED: YINGLI GREEN ENERGY AMERICAS, INC.

601 CALIFORNIA STREET ADDED 04-10-14

SUITE 1150

SAN FRANCISCO, CA 94108

F I L I N G H I S T O R Y

20141413574 FILED 04-10-14 AT 11:46 A.M. FINANCING STATEMENT

9 OF 39 FINANCING STATEMENT 20141800960

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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EXPIRATION DATE: 05/07/2019

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, SUITE 2 ADDED 05-07-14

00

TORRANCE, CA 90501

SECURED: ANGELENO INVESTORS III, L.P., AS AGENT FOR THE LENDERS

2029 CENTURY PARK EAST, SUITE 29 ADDED 05-07-14

80

LOS ANGELES, CA 90067

F I L I N G H I S T O R Y

20141800960 FILED 05-07-14 AT 4:16 P.M. FINANCING STATEMENT

20150086412 FILED 01-08-15 AT 1:44 P.M. TERMINATION

10 OF 39 FINANCING STATEMENT 20141851658

EXPIRATION DATE: 05/12/2019

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVE ADDED 05-12-14

TORRANCE, CA 90501

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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SECURED: MACQUARIE EQUIPMENT FINANCE, INC.

2285 FRANKLIN ROAD ADDED 05-12-14

BLOOMFIELD HILLS, MI 48302

F I L I N G H I S T O R Y

20141851658 FILED 05-12-14 AT 8:27 A.M. FINANCING STATEMENT

11 OF 39 FINANCING STATEMENT 20141886142

EXPIRATION DATE: 05/13/2019

DEBTOR: VERENGO, INC.

20285 S WESTERN AVE., SUITE 200 ADDED 05-13-14

TORRANCE, CA 90501

SECURED: CENTURYLINK COMMUNICATIONS, LLC

1801 CALIFORNIA ST., SUITE 1000 ADDED 05-13-14

DENVER, CO 80202

F I L I N G H I S T O R Y

20141886142 FILED 05-13-14 AT 2:14 P.M. FINANCING STATEMENT

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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12 OF 39 FINANCING STATEMENT 20143355351

EXPIRATION DATE: 08/20/2019

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE ADDED 08-20-14

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 08-20-14

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20143355351 FILED 08-20-14 AT 9:06 P.M. FINANCING STATEMENT

13 OF 39 FINANCING STATEMENT 20143911757

EXPIRATION DATE: 09/30/2019

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 09-30-14

SUITE 200

TORRANCE, CA 90501

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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SECURED: CORINTHIAN ENERGY, LLC
201 MISSION STREET, ADDED 09-30-14
SUITE 1100
SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20143911757 FILED 09-30-14 AT 2:55 P.M. FINANCING STATEMENT

14 OF 39 FINANCING STATEMENT 20144344008

EXPIRATION DATE: 10/28/2019

DEBTOR: VERENGO, INC.
20285 S. WESTERN AVENUE, ADDED 10-28-14
SUITE 200
TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC
201 MISSION STREET, SUITE 1100 ADDED 10-28-14
SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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20144344008 FILED 10-28-14 AT 8:38 P.M. FINANCING STATEMENT

15 OF 39 FINANCING STATEMENT 20144981312

EXPIRATION DATE: 12/09/2019

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 12-09-14

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 12-09-14

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20144981312 FILED 12-09-14 AT 4:18 P.M. FINANCING STATEMENT

16 OF 39 FINANCING STATEMENT 20150007277

EXPIRATION DATE: 01/02/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 01-02-15

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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The First State

SUITE 200

TORRANCE, CA 90501

SECURED: ANGELENO INVESTORS III, L.P., AS AGENT FOR THE LENDERS

2029 CENTURY PARK EAST, SUITE 29 ADDED 01-02-15

80

LOS ANGELES, CA 90067

F I L I N G H I S T O R Y

20150007277 FILED 01-02-15 AT 2:55 P.M. FINANCING STATEMENT

20150086453 FILED 01-08-15 AT 1:45 P.M. TERMINATION

17 OF 39 FINANCING STATEMENT 20150207380

EXPIRATION DATE: 01/15/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 01-15-15

SUITE 200

TORRANCE, CA 90501

SECURED: ANGELENO INVESTORS III, L.P. AS AGENT FOR THE LENDERS

2029 CENTURY PARK EAST, ADDED 01-15-15

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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SUITE 2980

LOS ANGELES, CA 90067

F I L I N G H I S T O R Y

20150207380 FILED 01-15-15 AT 5:36 P.M. FINANCING STATEMENT

18 OF 39 FINANCING STATEMENT 20150674340

EXPIRATION DATE: 02/18/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 02-18-15

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 02-18-15

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20150674340 FILED 02-18-15 AT 10:16 A.M. FINANCING STATEMENT

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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19 OF 39 FINANCING STATEMENT 20151177202

EXPIRATION DATE: 03/20/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 03-20-15

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, ADDED 03-20-15

SUITE 1100

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20151177202 FILED 03-20-15 AT 12:53 P.M. FINANCING STATEMENT

20 OF 39 FINANCING STATEMENT 20152527330

EXPIRATION DATE: 06/12/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 06-12-15

SUITE 200

TORRANCE, CA 90501

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 06-12-15

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20152527330 FILED 06-12-15 AT 2:40 P.M. FINANCING STATEMENT

21 OF 39 FINANCING STATEMENT 20153721940

EXPIRATION DATE: 08/25/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, STE. 20 ADDED 08-25-15

0

TORRANCE, CA 90501

SECURED: ANGELENO INVESTORS III, L.P., AS AGENT FOR THE LENDERS

2029 CENTURY PARK EAST, SUITE 29 ADDED 08-25-15

80

LOS ANGELES, CA 90067

F I L I N G H I S T O R Y

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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20153721940 FILED 08-25-15 AT 4:15 P.M. FINANCING STATEMENT

22 OF 39 FINANCING STATEMENT 20153792768

EXPIRATION DATE: 08/28/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 08-28-15

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 08-28-15

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20153792768 FILED 08-28-15 AT 2:31 P.M. FINANCING STATEMENT

23 OF 39 FINANCING STATEMENT 20154135520

EXPIRATION DATE: 09/17/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 09-17-15

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 09-17-15

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20154135520 FILED 09-17-15 AT 11:50 A.M. FINANCING STATEMENT

24 OF 39 FINANCING STATEMENT 20154636543

EXPIRATION DATE: 10/12/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE SUITE 200 ADDED 10-12-15

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET SUITE 1100 ADDED 10-12-15

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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20154636543 FILED 10-12-15 AT 4:40 P.M. FINANCING STATEMENT

25 OF 39 FINANCING STATEMENT 20154686837

EXPIRATION DATE: 10/14/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 10-14-15

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 10-14-15

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20154686837 FILED 10-14-15 AT 6:20 P.M. FINANCING STATEMENT

26 OF 39 FINANCING STATEMENT 20155022644

EXPIRATION DATE: 10/29/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 10-29-15

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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The First State

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 10-29-15

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20155022644 FILED 10-29-15 AT 5:51 P.M. FINANCING STATEMENT

27 OF 39 FINANCING STATEMENT 20155473649

EXPIRATION DATE: 11/19/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 11-19-15

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET SUITE 1100 ADDED 11-19-15

SAN FRANCISCO, CA 94105

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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F I L I N G H I S T O R Y

20155473649 FILED 11-19-15 AT 12:21 P.M. FINANCING STATEMENT

28 OF 39 FINANCING STATEMENT 20155750889

EXPIRATION DATE: 12/02/2020

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE ADDED 12-02-15

TORRANCE, CA 90501

SECURED: ANGELENO INVESTORS III, L.P., AS AGENT FOR ITSELF AND THE OTHER LENDERS

2029 CENTURY PARK EAST, SUITE 2980 ADDED 12-02-15

LOS ANGELES, CA 90067

F I L I N G H I S T O R Y

20155750889 FILED 12-02-15 AT 7:20 P.M. FINANCING STATEMENT

29 OF 39 FINANCING STATEMENT 20160034189

EXPIRATION DATE: 01/04/2021

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE, ADDED 01-04-16

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

Delaware

The First State

SUITE 200

TORRANCE, CA 90501

SECURED: CORINTHIAN ENERGY, LLC

201 MISSION STREET, SUITE 1100 ADDED 01-04-16

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20160034189 FILED 01-04-16 AT 1:59 P.M. FINANCING STATEMENT

30 OF 39 FINANCING STATEMENT 20160498848

EXPIRATION DATE: 01/26/2021

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVE, SUITE 200 ADDED 01-26-16

TORRANCE, CA 90501

SECURED: CPF ASSET MANAGEMENT, LLC

201 MISSION STREET SUITE 1100 ADDED 01-26-16

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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20160498848 FILED 01-26-16 AT 7:23 P.M. FINANCING STATEMENT

31 OF 39 FINANCING STATEMENT 20160571990

EXPIRATION DATE: 01/29/2021

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVE, SUITE 200 ADDED 01-29-16

TORRANCE, CA 90501

SECURED: CPF ASSET MANAGEMENT, LLC

201 MISSION STREET SUITE 1100 ADDED 01-29-16

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20160571990 FILED 01-29-16 AT 6:46 P.M. FINANCING STATEMENT

32 OF 39 FINANCING STATEMENT 20160852176

EXPIRATION DATE: 02/11/2021

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE SUITE 200 ADDED 02-11-16

TORRANCE, CA 90501

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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The First State

SECURED: CPF ASSET MANAGEMENT, LLC

201 MISSION STREET SUITE 1100 ADDED 02-11-16

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20160852176 FILED 02-11-16 AT 7:26 P.M. FINANCING STATEMENT

33 OF 39 FINANCING STATEMENT 20161148715

EXPIRATION DATE: 02/25/2021

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVENUE SUITE 200 ADDED 02-25-16

TORRANCE, CA 90501

SECURED: CPF ASSET MANAGEMENT, LLC

201 MISSION STREET SUITE 1100 ADDED 02-25-16

SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20161148715 FILED 02-25-16 AT 7:30 P.M. FINANCING STATEMENT

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

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The First State

34 OF 39 FINANCING STATEMENT 20161272283

EXPIRATION DATE: 03/02/2021

DEBTOR: VERENGO SOLAR PLUS
20285 S. WESTERN AVE., ADDED 03-02-16
SUITE #200
TORRANCE, CA 90501

DEBTOR: VERENGO, INC.
20285 S. WESTERN AVE., ADDED 03-02-16
SUITE #200
TORRANCE, CA 90501

DEBTOR: VERENGO SOLAR
20285 S. WESTERN AVE., ADDED 03-02-16
SUITE #200
TORRANCE, CA 90501

SECURED: HANWHA Q CELLS AMERICA INC.
300 SPECTRUM CENTER DRIVE ADDED 03-02-16
SUITE 1250
IRVINE, CA 92618

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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20161272283 FILED 03-02-16 AT 4:58 P.M. FINANCING STATEMENT

35 OF 39 FINANCING STATEMENT 20161277738

EXPIRATION DATE: 03/02/2021

DEBTOR:	VERENGO SOLAR	
	20285 S. WESTERN AVE., SUITE 200	ADDED 03-02-16
	TORRANCE, CA 90501	
DEBTOR:	VERENGO SOLAR PLUS	
	20285 S. WESTERN AVE., SUITE 200	ADDED 03-02-16
	TORRANCE, CA 90501	
DEBTOR:	VERENGO, INC.	
	20285 S. WESTERN AVE., SUITE 200	ADDED 03-02-16
	TORRANCE, CA 90501	
SECURED:	HANWHA Q CELLS AMERICA INC.	
	300 SPECTRUM CENTER DRIVE	ADDED 03-02-16
	SUITE 1250	
	IRVINE, CA 92618	

Jeffrey W. Bullock, Secretary of State

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20161277738 FILED 03-02-16 AT 7:46 P.M. FINANCING STATEMENT

36 OF 39 FINANCING STATEMENT 20161277886

EXPIRATION DATE: 03/02/2021

DEBTOR:	VERENGO SOLAR PLUS		
	20285 S. WESTERN AVE.,	ADDED	03-02-16
	SUITE 200		
	TORANCE, CA 90501		
DEBTOR:	VERENGO, INC.		
	20285 S. WESTERN AVE.,	ADDED	03-02-16
	SUITE 200		
	TORANCE, CA 90501		
DEBTOR:	VERENGO SOLAR		
	20285 S. WESTERN AVE.,	ADDED	03-02-16
	SUITE 200		
	TORANCE, CA 90501		
SECURED:	HANWHA Q CELLS USA CORP.		
	300 SPECTRUM CENTER DRIVE	ADDED	03-02-16

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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SUITE 1250

IRVINE, CA 92618

F I L I N G H I S T O R Y

20161277886 FILED 03-02-16 AT 9:03 P.M. FINANCING STATEMENT

37 OF 39 FINANCING STATEMENT 20161277894

EXPIRATION DATE: 03/02/2021

DEBTOR: VERENGO SOLAR PLUS

20285 S. WESTERN AVE. ADDED 03-02-16

SUITE 200

TORRANCE, CA 90501

DEBTOR: VERENGO, INC.

20285 S. WESTERN AVE. ADDED 03-02-16

SUITE 200

TORRANCE, CA 90501

DEBTOR: VERENGO SOLAR

20285 S. WESTERN AVE. ADDED 03-02-16

SUITE 200

TORRANCE, CA 90501

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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SECURED: HANWHA Q CELLS USA CORP.
300 SPECTRUM CENTER DRIVE ADDED 03-02-16
SUITE 1250
IRVINE, CA 92618

F I L I N G H I S T O R Y

20161277894 FILED 03-02-16 AT 9:10 P.M. FINANCING STATEMENT

38 OF 39 FINANCING STATEMENT 20161561248

EXPIRATION DATE: 03/15/2021

DEBTOR: VERENGO, INC.
20285 S. WESTERN AVENUE ADDED 03-15-16
SUITE 200
TORRANCE, CA 90501

SECURED: CPF ASSET MANAGEMENT, LLC
201 MISSION STREET SUITE 1100 ADDED 03-15-16
SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

Jeffrey W. Bullock, Secretary of State

20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

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20161561248 FILED 03-15-16 AT 7:11 P.M. FINANCING STATEMENT

39 OF 39 CONSIGNMENT 20165169956

EXPIRATION DATE: 08/24/2021

DEBTOR: VERENGO, INC.

20285 SOUTH WESTERN AVE STE 200 ADDED 08-24-16

TORRANCE, CA 90501

SECURED: CPF ASSET MANAGEMENT, LLC

201 MISSION STREET, ADDED 08-24-16

SUITE 1100

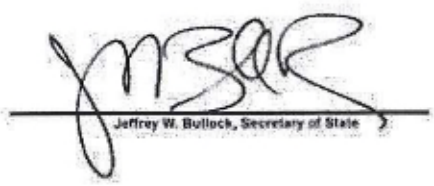
SAN FRANCISCO, CA 94105

F I L I N G H I S T O R Y

20165169956 FILED 08-24-16 AT 5:57 P.M. CONSIGNMENT

E N D O F F I L I N G H I S T O R Y

THE UNDERSIGNED FILING OFFICER HEREBY CERTIFIES THAT THE ABOVE LISTING IS A RECORD OF ALL PRESENTLY EFFECTIVE FINANCING STATEMENTS, FEDERAL TAX LIENS AND UTILITY SECURITY INSTRUMENTS FILED IN THIS OFFICE WHICH NAME THE ABOVE DEBTOR, VERENGO, INC. AS OF SEPTEMBER 8, 2016 AT 11:59 P.M.



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20167034041-UCC11
SR# 20165765451

Authentication: 202984231
Date: 09-13-16

You may verify this certificate online at corp.delaware.gov/authver.shtml

Seller Disclosure Letter -- Section 6.1

Conduct Pending Closing

None

BUYER DISCLOSURE LETTER

ASSET PURCHASE AGREEMENT BY AND BETWEEN VERENGO, INC. AND CRIUS SOLAR FULFILLMENT, LLC

This Buyer Disclosure Letter relates to certain matters concerning the disclosures made in the Asset Purchase Agreement by and between Verengo, Inc. and Crius Solar Fulfillment, LLC dated as of September 23, 2016 (the "Agreement"). Buyer has made representations and warranties in the Agreement, and certain of such representations and warranties are subject to matters disclosed in the correspondingly numbered section of the Buyer Disclosure Letter. The following materials constitute the Buyer Disclosure Letter referred to in the Agreement. The parties to the Agreement acknowledge that certain sections of the Buyer Disclosure Letter may be supplemented or modified in accordance with the terms of the Agreement, and that any other modification or amendment of this Buyer Disclosure Letter is subject to agreement by Buyer and Seller. Capitalized terms used herein but not otherwise defined herein shall have the meanings ascribed thereto in the Agreement.

The Buyer Disclosure Letter is qualified in its entirety by reference to specific provisions of the Agreement. Any references in a disclosure to an item in another disclosure shall include any attachments or other items incorporated therein.

Buyer Disclosure Letter - Section 1.1(a)

Key Employees

[CONFIDENTIAL]

Buyer Disclosure Letter - Section 2.5(c)

Assigned Contracts

Forthcoming.

18215132.3

Buyer Disclosure Letter - Section 2.6

Modification of Excluded Assets and Purchased Assets

Forthcoming.

Buyer Disclosure Letter - Section 5.2(b)(ii)

Authorization; Noncontravention

None

18215132.3

Buyer Disclosure Letter - Section 5.3

Consents and Approvals

None