

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Chapter 11

Achaogen, Inc.

Case No. 19-10844 (BLS)

Debtor.¹

Re: D.I. 30, 123

NOTICE OF FILING OF PROPOSED ORDER (I) APPROVING THE SALE OR LICENSING OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, ENCUMBRANCES, CLAIMS AND INTERESTS, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF

PLEASE TAKE NOTICE that on April 15, 2019, the Debtor filed its *Motion for an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtor; (B) Approving Procedures for the Assumption and Assignment, Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief (D.I. 30)* (the “Sale Motion”).

PLEASE TAKE FURTHER NOTICE that on May 1, 2019, the Court entered the *Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtor; (B) Approving Procedures for the Assumption and Assignment, Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief (D.I. 123)* (the “Bidding Procedures Order”).

PLEASE TAKE FURTHER NOTICE that on June 3, 2019, the Court entered the *Order Approving the Stipulation and Amending the Bidding Procedures Order and Interim DIP Orders (D.I. 245)* (the “Stipulation Order”), which, among other things, amended certain dates under the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bidding Procedures Order and the Stipulation Order above, attached hereto as **Exhibit A** is a proposed

¹ The last four digits of Debtor’s federal tax identification number are (3693). The Debtor’s mailing address for purposes of this chapter 11 case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.



Order (I) Approving the Sale or Licensing of Substantially All Assets of the Debtor Free and Clear of Liens, Encumbrances, Claims and Interests, (II) Approving the Assumption and Assignment of Designated Executory Contracts and Unexpired Leases, and (II) Granting Related Relief (the “Proposed Order”).

PLEASE TAKE FURTHER NOTICE that the Debtor reserves all rights to modify the Proposed Order at or before the Sale Hearing.²

Dated: June 11, 2019
Wilmington, Delaware

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² Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Bidding Procedures Order.

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EXHIBIT A

PROPOSED ORDER

THIS PROPOSED ORDER REMAINS SUBJECT TO REVIEW AND/OR NEGOTIATION WITH THE SUCCESSFUL BIDDERS AND OTHER KEY PARTIES IN INTEREST, AND THEREFORE, REMAINS SUBJECT TO MATERIAL REVISION.

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re

Achaogen, Inc.,

Debtor.¹

Chapter 11

Case No. 19-10844 (BLS)

Re: D.I. []

ORDER (I) APPROVING THE SALE OR LICENSING OF SUBSTANTIALLY ALL ASSETS OF THE DEBTOR FREE AND CLEAR OF LIENS, ENCUMBRANCES, CLAIMS AND INTERESTS, (II) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (III) GRANTING RELATED RELIEF

Upon the *Debtor's Motion for (I) an Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of the Debtor; (B) Approving Procedures for the Assumption and Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief; (II) an Order (A) Approving the Sale of the Debtor's Assets Free and Clear of Claims, Liens and Encumbrances; and (B) Approving the Assumption and Assignment or Rejection of Executory Contracts and Unexpired Leases; and (III) Certain Related Relief*, on April 15, 2019 [D.I. 30] (the "Sale Motion");² and the

¹ The last four digits of the Debtor's federal tax identification number are 3693. The Debtor's mailing address for purposes of this Chapter 11 Case is 1 Tower Place, Suite 400, South San Francisco, CA 94080.

² Unless otherwise indicated, capitalized terms used, but not defined, herein have the meaning ascribed to them in the Sale Motion, the Bidding Procedures or the respective Sale Agreements (as defined herein), as the context requires. No provisions, including defined terms, contained in a specific Sale Agreement, or any other agreement,

Bankruptcy Court having entered the *Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtor; (B) Approving Procedures for the Assumption and Assignment, Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief*, on May 1, 2019 [D.I. 123] (the “Bidding Procedures Order”), which, among other things, (i) approved the Bidding Procedures for the sale of all or substantially all of the Debtor’s assets, (ii) approved the form and manner of notice of the auction (the “Auction”) and Sale Hearing (as defined below); (iii) approved the manner in which the notice of the assumption and assignment of the designated executory contracts and unexpired leases would be given (the “Assignment and Rejection Procedures”); and the Debtor having solicited Bids in accordance with the Bidding Procedures; and the Debtor having conducted the Auction in accordance with the Bidding Procedures; and the Debtor having selected each of the following Qualified Bidders (collectively, the “Successful Bidders”) as having the highest or otherwise best Qualified Bid for those assets or rights, as applicable, of the Debtor set forth in the respective asset purchase Sale Agreement or license Sale Agreement entered into with each Successful Bidder (collectively, the “Purchased Assets”) at the conclusion of the Auction:

- (i) for the Purchased Assets set forth in the asset purchase Sale Agreement dated June

document, instrument or otherwise entered into or delivered in connection therewith, shall be binding on or applicable to any other Buyer, except as otherwise set forth in this Sale Order. This Sale Order shall be deemed to incorporate any findings of fact and conclusions of law made on the record at the hearing for consideration of the entry of the Bidding Procedures Order and the Sale Hearing (as defined herein) pursuant to Bankruptcy Rule 7052.

[x], 2019, and attached hereto as Exhibit A;

(ii) [X], for the Subject IP set forth in the license Sale Agreement dated June [x], 2019 (the "License Agreement"), and attached hereto as Exhibit B;

(iii) [X] for the Purchased Assets set forth in the asset purchase Sale Agreement dated June [x], 2019, and attached hereto as Exhibit C;

(iv) [X] for the Purchased Assets set forth in the asset purchase Sale Agreement dated June [x], 2019, and attached hereto as Exhibit D; and

(v) [____] ("___", and together with [X], the "Buyers") for the Purchased Assets set forth in the asset purchase Sale Agreement dated June [x], 2019, and attached hereto as Exhibit E (such asset purchase Sale Agreement, together with aforementioned asset purchase Sale Agreements and License Agreement, the "Sale Agreements"); and each Buyer, other than [X], having agreed to assume certain liabilities of the Debtor identified in their respective Sale Agreement (collectively, the "Assumed Liabilities"; for the avoidance of doubt, [X] is not assuming any Assumed Liabilities) pursuant to the terms and conditions set forth in each Sale Agreement, all in accordance with the Bidding Procedures and the Bidding Procedures Order; and the Bankruptcy Court having conducted and concluded a hearing on June 19, 2019 (the "Sale Hearing") to consider approval of (i) the sale, or in the case of [X], license, of the Purchased Assets and other contracts contemplated hereunder (each, a "Sale" and, collectively, the "Sales") free and clear of all Liens (as defined below), Claims (as defined in section 101(5) of title 11 of the United States Code (the "Bankruptcy Code")) and other interests; and (ii) the assumption and assignment of certain executory contracts and unexpired leases; and all parties in interest having been heard, or having had the opportunity to be heard, regarding the Sale and upon the record of the hearing to consider approval of the Bidding Procedures (the "Bidding Procedures Hearing"),

the Sale Hearing, the *Declaration of Blake Wise in Support of the First Day Relief* [D.I. 3], the *Declaration of Blake Wise in Support of Entry of the Sale Order* [D.I. []], the *Declaration of [X] in Support of Entry of the Sale Order* [D.I. []], and this Chapter 11 Case (as defined herein) and proceedings, and after due deliberation thereon, and good cause appearing therefor;

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. **Bankruptcy Petition.** On April 15, 2019 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code commencing this case (this “Chapter 11 Case”).

B. **Jurisdiction and Venue.** The Bankruptcy Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and 1334(a) 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 pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Final Order.** This order (“Sale Order”) constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Time is of the essence in closing each Sale referenced herein, the Debtor and each of the Buyers intend to close their respective Sale as soon as practicable, and there is no just reason for delay in the implementation of this Sale Order. Specifically, the Sales must be approved and consummated promptly in order to preserve the viability of the business in the hands of the Buyers as a going concern, and to maximize the

³ Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052.

value to the Debtor, its estate, its creditors, and all other parties in interest. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004(h) and 6006(d).

D. **Statutory Predicates.** The statutory predicates for the relief sought in the Sale Motion are sections 105, 363, 364, 365, and 541 of the Bankruptcy Code, Rules 2002, 6004, 6006 and 9007 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

E. **Notice.** As evidenced by the certifications of service previously filed with the Bankruptcy Court, and based on the representations of counsel at the Bidding Procedures Hearing and the Sale Hearing, proper, timely, adequate and sufficient notice of the Sale Motion, the Bidding Procedures Hearing, the Auction, the Sale Agreements, this Sale Order and the Sale Hearing, have been provided in accordance with the Bidding Procedures Order, sections 102(1), 363 and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006 and 9014 and the Bidding Procedures Order, and Local Rule 6004-1. Such notice was good and sufficient and appropriate under the particular circumstances and all creditors of the Debtor and other parties in interest in the Chapter 11 Case were offered a reasonable opportunity to object and be heard. No other or further notice of the Sale Motion, including, without limitation, the Sale Agreements, the Auction, the assumption and assignment of the Transferred Contracts (as defined below) (and proposed Cure Amounts related thereto), the Sale Hearing, or of the entry of this Sale Order was or is necessary or shall be required.

F. An Assignment and Rejection Notice has been provided to each of the counterparties (the “Contract Counterparties”) to the contracts identified on the schedule the Debtor filed with the Bankruptcy Court, dated May 17, 2019 [D.I. 194] (the “Transferred

Contracts and Cure Schedule” and, the contracts listed thereon, the “Transferred Contracts”; for the avoidance of doubt, [X] is not accepting an assignment of any Transferred Contract or providing any cure payments to any Transferred Contract counterparties) all in accordance with the Assignment and Rejection Procedures as provided by the Bidding Procedures Order.

G. The service of the Assignment and Rejection Notice was sufficient under the circumstances and no further notice need be given in respect of assumption and assignment of the Transferred Contracts or the proposed Cure Amounts related thereto, if any. The Contract Counterparties to the Transferred Contracts have had a reasonable opportunity to object to the assignment and assumption of the Transferred Contracts and the associated Cure Amounts.

H. The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

I. No trustee or examiner has been appointed in the Chapter 11 Case.

J. The disclosures made by the Debtor concerning the Sale Motion, the Sale Agreements, the Sale, the Buyers, and the Sale Hearing were good, complete and adequate.

K. **Opportunity to Object.** A reasonable opportunity to object or be heard regarding the requested relief has been afforded to all creditors of the Debtor and other parties in interest in the Chapter 11 Case, including, without limitation, the following: (i) the United States Trustee for Region 3; (ii) counsel to the Creditors’ Committee, the Prepetition Lender and DIP Lender (as such terms are defined below); (iii) all parties asserting a security interest in the Purchased Assets to the extent any such interest is reasonably known to the Debtor; (iv) various federal, state, county and city tax and regulatory authorities; (v) all entities known to have expressed an interest in a transaction with respect to the Purchased Assets or that have been identified by the Debtor or its advisors as a potential buyer of the Purchased Assets; (vi) local

and state environmental authorities and the Environmental Protection Agency; (vii) local, state and federal authorities and agencies that have issued licenses or permits to the Debtor with respect to the operation and use of the Assets; (viii) the contract counterparties whose contracts are identified as being assigned; (ix) all of the Debtor's known creditors; and (x) all parties requesting notice pursuant to Bankruptcy Rule 2002.

L. **Title in the Purchased Assets.** The Purchased Assets constitute property of the Debtor's estate and title thereto is vested in the Debtor's estate within the meaning of section 541(a) of the Bankruptcy Code. The Debtor is the sole and lawful owner of the Purchased Assets.

M. **Business Justification.** The Debtor has demonstrated a sufficient basis and compelling circumstances to assume and assign the Transferred Contracts and sell or license, as applicable, the Purchased Assets to each of the respective Buyers, as applicable, pursuant to the terms and conditions of the Sale Agreements. Such action is an appropriate exercise of the Debtor's business judgment and in the best interest of the Debtor, the estate and its creditors. Such business reasons include, but are not limited to, the facts that (i) there is substantial risk of deterioration of the value of the Purchased Assets if the Sale is not consummated quickly given, among other reasons, that (a) the Debtor's financing under the DIP Credit Agreement (as defined below) expires on September 30, 2019 (unless terminated sooner by the Sales closing or an acceleration of the DIP Obligations), (b) the Debtor will be in default of a DIP Credit Agreement Milestone (as such term is defined therein) if the Sale is not consummated by June 28, 2019 pursuant to section 6.14 thereof, and (c) the Debtor has suffered, and may continue to suffer, significant employee attrition; (ii) the Successful Bids set forth in the Sale Agreements constitute the highest and best offers for the Purchased Assets; (iii) the Sale Agreements and the Closings

will present the best opportunity to realize the value of the Debtor's business on a going concern basis and to avoid a decline and devaluation of the Debtor's business, and (iv) the Debtor simply does not have the funding to continue operations in the absence of the Sale of the Purchased Assets. Entry of this Sale Order (and all provisions hereof) is a condition precedent to each Buyer consummating their respective Sale Agreements.

N. **Opportunity to Bid.** The Debtor and its professionals marketed the Purchased Assets appropriately and conducted the marketing and sale process (including the Auction) as set forth in the Sale Motion in good faith without collusion and in accordance with the Bidding Procedures and the Bidding Procedures Order. The marketing process set forth in the Bidding Procedures and the Bidding Procedures Order was fair in substance and procedure and afforded a full and fair opportunity for any party to make a higher or otherwise better offer to purchase the Purchased Assets. Based upon the record of these proceedings, all creditors of the Debtor, other parties in interest in the Chapter 11 Case, and all prospective buyers have been afforded a reasonable and fair opportunity to bid for the Purchased Assets.

O. **Highest or Otherwise Best Offer.** The total consideration provided by the Buyers for the Purchased Assets is the highest and otherwise best offer for the Purchased Assets received by the Debtor. As of June 3, 2019 (and in the case of the C-Scape program assets, June 11, 2019, the "Auction"), the Debtor, in exercising its reasonable discretion following consultation with (i) the Official Committee of Unsecured Creditors appointed in this Chapter 11 Case (the "Creditors' Committee") and (ii) Silicon Valley Bank, N.A. ("SVB"), in its capacity as the Prepetition Lender and DIP Lender (hereinafter, the "Prepetition Lender" or the "DIP Lender") under the Debtor in Possession Credit and Security Agreement dated as of April 15, 2019 (the "DIP Credit Agreement"), determined that the Buyers submitted the highest or

otherwise best offers for the respective Purchased Assets identified in each Sale Agreement. Thus, the Debtor declared the Buyers the Successful Bidders for the Purchased Assets in accordance with the Bidding Procedures, the Bidding Procedures Order and the Sale Agreements, and such determination constitutes a valid and sound exercise of the Debtor's business judgment. The Debtor, Buyers and their respective agents and representatives, have complied in all respects with the Bidding Procedures and Bidding Procedures Order.

P. **Good Faith Purchaser.** The Sale Agreements and the Sales have been negotiated by the Debtor and each of the respective Buyers, and their respective agents and representatives, in good faith, at arms' length, and without collusion or fraud. The terms and conditions of each Sale Agreement, including the consideration to be paid by each Buyer to the Debtor pursuant to its respective Sale Agreement for the Purchased Assets identified in such Sale Agreement, are fair and reasonable, and the Sale, including each part thereof with respect to each Buyer, is in the best interest of the Debtor, its estate, and its creditors.

Q. The Buyers are each a "good faith purchaser" entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code and any other applicable bankruptcy or non-bankruptcy law with respect to the sale and assignment or license, as applicable, of the Purchased Assets and Transferred Contracts that each Buyer (other than [X] with respect to Transferred Contracts) is acquiring pursuant to their respective Sale Agreements.

R. The Sale Agreements were not controlled by a Sale Agreement between or among potential or actual bidders within the meaning of section 363(n) of the Bankruptcy Code. The Debtor and the Buyers have not engaged in any conduct that would cause or permit any of the Sale Agreements to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. The Buyers are entitled to all the protections and immunities of section

363(n) of the Bankruptcy Code. The Buyers are not, and were not immediately prior to or after the applicable Closing Dates, “affiliates” or “insiders” of the Debtor as defined in section 101 of the Bankruptcy Code, and no common identity of incorporation, director, or stockholder existed between any Buyer, on the one hand, and the Debtor, on the other hand, immediately prior to or after the Closing Date applicable to any such Buyer.

S. An injunction against creditors of the Debtor and third parties pursuing Liens, Claims and Excluded Liabilities against the Buyers is necessary to induce the Buyers to close the Sale; the issuance of such an injunction is therefore necessary to avoid irreparable injury to the Debtor’s estate, and will benefit all creditors of the Debtor.

T. Each of the Buyers has acted in good faith in its negotiations with the Debtor, submitting a bid, and participating in the Auction.

U. **Corporate Power and Authority**. The Debtor has full corporate power and authority to execute and deliver the Sale Agreements and to perform all of its respective obligations thereunder, and the sale of the Purchased Assets and assignment of the Transferred Contracts have been duly and validly authorized by all corporate authority necessary to consummate the Sale. No consents or approvals, other than as expressly provided for in the Sale Agreements, and the entry of this Sale Order, are required by the Debtor to consummate the Sale.

V. **Transfer and Sale of Assumed Liabilities; Assumption and Assignment in Best Interest**. The transfer and sale of the Assumed Liabilities pursuant to the terms of the Sale Agreements and this Sale Order and the assumption of the Transferred Contracts by the Debtor and the assignment thereof to each Buyer, as applicable, pursuant to the terms of the Sale Agreements and this Sale Order are integral to the Sale Agreements and in the best interest of the Debtor, its estate and its creditors, and represent the reasonable exercise of sound and prudent

business judgment by the Debtor. Accordingly, such transfer and sale to the respective Buyers and the assumption and assignment are reasonable, enhance the value of the Debtor's estate, and do not constitute unfair discrimination. As among the Debtor and the Buyers, nothing in this Sale Order shall enlarge or restrict any obligations of the Debtor or the Buyers under each of their respective Sale Agreements with respect to the Assumed Liabilities or the Transferred Contracts. Pursuant to its Sale Agreement, [X] is not assuming any liabilities of the Debtor or taking an assignment of any Transferred Contract. No provision of any Transferred Contract that purports to prohibit, restrict, or condition the assignment of any such Transferred Contract in connection with the Sale shall have any force or effect.

W. **Cure/Adequate Assurance.** The Debtor has met all of the requirements of section 365(b) of the Bankruptcy Code for each of the Transferred Contracts. The Debtor has provided adequate assurance of cure of any default existing prior to the applicable Closing Date under any of the Transferred Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and provided adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from such default under any of the Transferred Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Pursuant to section 2.10 of each Sale Agreement, other than the License Agreement, each Buyer (excluding [X]), is obligated to pay any and all Cure Amounts with respect to the Assumed Contracts, in cash on the Assumption Effective Date in the amount specified on the final Contract & Cure Schedule (or as otherwise fixed by the Bankruptcy Court), or in such other manner as agreed to by each Buyer and the counterparty to an Assumed Contract. For the avoidance of doubt, and notwithstanding anything to the contrary in any Sale Agreement, the Debtor's estate shall not be responsible for the payment of any Cure Amounts and each Buyer's payment of any Cure Amounts shall not be

deemed a purchase price adjustment that reduces the overall consideration received by the Debtor's estate. The Buyers (excluding [X]) have provided adequate assurance of their future performance of and under the Transferred Contracts, within the meaning of section 365(b)(1)(C) and 365(b)(3) (to the extent applicable) of the Bankruptcy Code. The Contract Counterparties were each given adequate notice and the opportunity to object to the Assignment and Rejection Notice and are deemed to have consented pursuant to 11 U.S.C. § 363(f)(2) or any objection filed by a Contract Counterparty has been withdrawn or overruled. Except as expressly set forth in the Sale Agreements (other than the License Agreement), the Transferred Contracts will not subject any of the Buyers to any liability whatsoever prior to the Closing Date applicable to such Buyer, or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, on any theory of law or equity. For the avoidance of doubt, [X] is not accepting an assignment of any Transferred Contracts under the License Agreement.

X. **Free and Clear.** None of the Buyers would have entered into the Sale Agreements to acquire the Purchased Assets, and would exercise its right to terminate the Sale Agreements if the sale or license, as applicable, of the Purchased Assets were to be transferred to it other than free and clear of all Liens, Claims and Excluded Liabilities (other than the Assumed Liabilities, as applicable), or if any of the Buyers would, or in the future could, be liable for any such Liens, Claims or Excluded Liabilities (other than the Assumed Liabilities, as applicable). A sale or license, as applicable, of the Purchased Assets other than one free and clear of all Liens, Claims and Excluded Liabilities (other than the Assumed Liabilities, as applicable) would adversely impact the Debtor's estate, and would yield substantially less value for the Debtor's estate, with less certainty than the Sale. Therefore, the Sale contemplated in the Sale

Agreements is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest.

Y. **Satisfaction of 363(f) Standards.** The Debtor may sell and assign or license, as applicable, the Purchased Assets free and clear of all Liens, Claims and Excluded Liabilities, as applicable, because, with respect to each creditor asserting a Lien, Claim or Excluded Liability, one or more of the standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Liens, Claims or Excluded Liabilities who did not object or who withdrew their objections to the Assignment and Rejection Notice are deemed to have consented to the Sale Motion and the sale and assignment of the Purchased Assets to the Buyers pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens, Claims, or Excluded Liabilities who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, Claims or Excluded Liabilities, if any, attach to the proceeds of the Sale ultimately attributable to the Purchased Assets in which such holders allege a Lien, Claim or Excluded Liability in the same order of priority, with the same validity, force and effect that such holder had prior to the Sale, and subject to any claims and defenses the Debtor and its estate may possess with respect thereto.

Z. **No Successor Liability.** The transactions contemplated under the Sale Agreements do not amount to a consolidation, merger, or de facto merger of any of the Buyers with the Debtor and/or the Debtor's estate, there is not substantial continuity between the Debtor and the Buyers, there is no common identity between the Debtor and the Buyers, there is no continuity of enterprise between the Debtor and the Buyers, the Buyers are not a mere continuation of the Debtor or its estate, and the Buyers do not constitute a successor to the Debtor or its estate in any way. The Buyers would not have individually acquired their

respective Purchased Assets but for the foregoing protections against potential claims based upon “successor liability” or similar theories.

AA. **No Fraudulent Transfer.** The Sale is not for the purpose of hindering, delaying or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, or possession or the District of Columbia. Neither the Debtor nor any of the Buyers have entered into the Sale Agreements or is consummating the Sale with any fraudulent or otherwise improper purpose.

BB. **Fair Consideration.** The consideration provided for by each Buyer for the Purchased Assets indicated in its Sale Agreement constitutes reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, section 548 of the Bankruptcy Code or any similar state or federal law), and fair consideration under the Bankruptcy Code and under the laws of the United States, any state, territory, or possession or the District of Columbia.

CC. **Compliance with Bankruptcy Code.** The consummation of each Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including without limitation sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) of the Bankruptcy Code and all of the applicable requirements of such sections have been or will be complied with in respect of each Sale as of the applicable Closing Date.

DD. **Sale Transaction Not a Sub Rosa Plan.** The sale and assignment or license, as applicable, of the Purchased Assets and Assumed Liabilities as applicable, outside of a plan of reorganization pursuant to the Sale Agreements neither impermissibly restructures the rights of the Debtor’s creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Debtor. The Sale does not constitute a *sub rosa* chapter 11 plan.

EE. The Sale contemplated by the Sale Agreements is in the best interest of the Debtor, its estate, its creditors, interest holders and all other parties in interest in the Chapter 11 Case; and it is therefore,

ORDERED, ADJUDGED AND DECREED THAT:

1. **Relief Granted.** The relief requested in the Sale Motion is hereby granted in its entirety.

2. **Objections Overruled.** All objections and responses to the Sale Motion, Auction, this Sale Order or the relief granted herein (including all reservations of rights included therein) that have not been overruled, withdrawn, waived, settled, or otherwise resolved, are hereby overruled and denied on the merits with prejudice.

3. **Notice.** Notice of the Sale Motion, and the assumption and assignment of the Transferred Contracts (including proposed Cure Amounts related thereto), the Auction, the Sale Hearing and the Sale was fair and equitable under the circumstances and complied in all respects with the Bidding Procedures, sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, and 9007 and Local Rule 6004-1.

4. **Prior Findings of Fact and Conclusions of Law.** The Bankruptcy Court's findings of fact and conclusions of law in the Bidding Procedures Order, including the record of the Bidding Procedures Hearing, are incorporated herein by reference.

5. **Approval.** The Sale Agreements (and all ancillary documents related thereto) are hereby approved and authorized in all respects and shall be deemed in full force and effect, and the Debtor and each of the Buyers are hereby authorized, empowered and directed to fully perform under, consummate, and implement the terms of the Sale Agreements and to execute, deliver and perform under, any and all additional instruments and documents that may

be reasonably necessary or desirable to implement and effectuate the terms of the Sale Agreements and this Sale Order, including, without limitation, deeds, assignments, patents, stock powers, transfers of membership interests and other instruments of transfer, and to take all further actions as may reasonably be requested by the Debtor or any of the Buyers for the purpose of assigning, transferring, granting, conveying, and conferring to the Buyers or reducing to possession any or all of the Purchased Assets, as may be necessary or appropriate to the performance of the Debtor's obligations as contemplated by the Sale Agreements, without any further corporate action or orders of the Bankruptcy Court.

6. **Good Faith.** Each Buyer is a good faith purchaser or licensee, as applicable, of the Purchased Assets and is hereby granted and entitled to all of the protections provided to a good faith purchaser under section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Sale Order are hereafter reversed, modified, or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer, or assignment under the Sale Agreements or obligation or right granted pursuant to the terms of this Sale Order (unless stayed pending appeal prior to the applicable Closing Date), and notwithstanding any reversal, modification, or vacatur, any sale, transfer, or assignment shall be governed in all respects by the original provisions of this Sale Order and the Sale Agreements, as the case may be.

7. **Section 363(n) of the Bankruptcy Code.** The Sale approved by this Sale Order is not subject to avoidance or any recovery or damages pursuant to section 363(n) or any other section of the Bankruptcy Code.

8. **Documentation.** The Debtor is authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, Sale Agreements, or amendments necessary or appropriate to effectuate the Sale contemplated by the Sale Agreements, any related Sale Agreements and this Sale Order, including amended and restated certificates or articles of incorporation, by-laws, or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Debtor may determine are necessary or appropriate, and all such officials are hereby authorized to accept the foregoing. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

9. **Cooperation.** The Debtor is hereby authorized and directed to cooperate with each Buyer as reasonably requested by such Buyer and take all actions and execute all documents which such Buyer reasonably and in good faith determines is necessary or desirable to ensure that the Sale is consummated in accordance with its respective Sale Agreement, and the Debtor is authorized to make such modifications or supplements to any bill of sale or other document or instrument executed or to be executed in connection with the Closing applicable to such Buyer to facilitate such consummation as contemplated by such Sale Agreement.

10. **Duty to Close.** Neither the Debtor nor any Buyers shall have any obligation to proceed with the Closing applicable to such Buyer until all conditions precedent to their respective obligations to proceed have been met, satisfied or waived in accordance with the terms of such Buyer's applicable Sale Agreement; *provided, however,* the Debtor shall consult in

good faith with the DIP Lender and the Creditors' Committee prior to waiving any conditions precedent with respect thereto.

11. **Valid Transfer.** Effective as of the Closing of each Sale, (a) the sale and assignment or license, as applicable, of the Purchased Assets and the Transferred Contracts, as applicable, by the Debtor to each Buyer shall constitute a legal, valid and effective transfer of the Purchased Assets and the Transferred Contracts, as applicable, notwithstanding any requirement for approval or consent by any person, and shall vest the Buyers with all right, title, and interest of the Debtor in and to the Purchased Assets and Transferred Contracts, as applicable, free and clear of all Liens, Claims and Excluded Liabilities, as applicable (other than the Assumed Liabilities, as applicable) pursuant to section 363(f) of the Bankruptcy Code, and (b) the assumption of the Transferred Contracts and all Assumed Liabilities by the Buyers (excluding [X]) constitutes a legal, valid, and effective assignment and delegation of any and all obligations, liabilities, and claims in respect thereof to such Buyer (excluding [X]) and, other than to the extent expressly provided in this Sale Order and/or constituting Excluded Liabilities under such Sale Agreement, as applicable, divests the Debtor of all right, title and interest in, and all obligations and liability with respect to, the Transferred Contracts and such Assumed Liabilities. Upon the occurrence of the Closing, this Sale Order shall be considered and constitute, for any and all purposes, a full and complete general assignment, conveyance, and transfer or license, as applicable, of the Purchased Assets (including the Transferred Contracts, as applicable) to such Buyer pursuant to their Sale Agreement and/or a bill of sale or assignment transferring indefeasible title and interest in the Purchased Assets set forth in such Sale Agreement, or with respect to [X], perpetual, irrevocable, exclusive, royalty-and-milestone-payment-free license as set forth in the License Agreement, including the Transferred Contracts, as applicable, and all

other rights and interests associated with or appurtenant to such Purchased Assets, including, without limitation, warranty rights, intellectual property rights (including, without limitation, rights to all associated patents, regulatory approvals, permits, and registrations) and other non-executory contract rights, to such Buyer all to the extent set forth in such Buyer's Sale Agreement.

12. **Free and Clear.** Except to the extent specifically provided in the Sale Agreements or this Sale Order, upon the occurrence of a Closing, the Debtor shall be, and hereby is, authorized, empowered, and directed, pursuant to sections 105, 363(b) and 363(f) of the Bankruptcy Code, to sell, assign, convey, and transfer or license, as applicable, the Purchased Assets to the applicable Buyer and assign the Transferred Contracts to such Buyer, as applicable. Except to the extent specifically provided in the Sale Agreements or in paragraphs 40-42 of this Sale Order, the sale and assignment or licenses, as applicable, of the Purchased Assets and the assignment of the Transferred Contracts, as applicable, to the Buyers pursuant to their respective Sale Agreements, as applicable, vests such Buyer with all right, title and interest of the Debtor in and to their respective Purchased Assets, or, with respect to [X], grants [X] a perpetual, irrevocable, exclusive, royalty-and-milestone-payment-free license of the Subject IP, free and clear of any and all Liens, Claims, Excluded Liabilities, as applicable, and other liabilities of any kind or nature whatsoever (except for Assumed Liabilities, as applicable), whether known or unknown as of the applicable Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, whether imposed by Sale Agreement, understanding, law, equity, or otherwise, with all such Liens, Claims and Excluded Liabilities, as applicable, to attach only to the proceeds of the sale and assignment of such Purchased Assets with the same priority, validity, force, and effect as they

now have in or against such Purchased Assets. The Sale Motion shall be deemed to provide sufficient notice as to the sale and assignment of the Purchased Assets free and clear of all Liens, Claims and Excluded Liabilities in accordance with Local Rule 6004-1. Following a Closing, no holder of any Lien or Claim on the Purchased Assets subject to such Closing may interfere with the applicable Buyer's enjoyment of the Purchased Assets, as applicable, based on or related to such Lien or Claim, or any actions that the Debtor may take or fail to take in its Chapter 11 Case and no interested party may take any action to prevent, interfere with or otherwise enjoin consummation of such Sale.

13. The term "Lien" as used in this Sale Order shall include, without limitation, all liens, interests, rights, encumbrances, rights of offset (including any right to offset or recoupment of any party to a contract or lease that is not a Transferred Contract in respect to Receivables due from such entities or their affiliates which are included in the Purchased Assets under the Sale Agreements, as applicable), recoupment rights, reversionary rights, assignment rights, rights to specific performance, restrictions, leases, option rights or claims, obligations, liabilities, indentures, loan Sale Agreements, guaranties, demands, contractual commitments or interests in respect of the Debtor or any property of the Debtor, equity interests, licenses, instruments, conditional sale rights or other title retention Sale Agreements, rights of first refusal, consent rights, contract rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, regulatory violations, judgments, decrees of any court or foreign or domestic governmental or quasi-governmental entity, debts arising in any way in connection with any Sale Agreements, acts or failures to act and reclamations rights whether choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected including, without limitation, the following: (1) any "Lien" as such term is defined

in the Sale Agreements; (2) any employment or labor Sale Agreements; (3) all mortgages, deeds of trust, hypothecations, pledges, security interests or charges of any kind or nature; (4) any pension, welfare, compensation or other employee benefit plans, Sale Agreements, practices and programs, including, without limitations, any pension plan of the Debtor; (5) any other employee, workers' compensation, occupational disease or unemployment or temporary disability related claim, including, without limitations, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974), as amended, (b) the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as amended, (c) Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e §§ *et seq.*, as amended, (d) the Federal Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, as amended, (e) the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, as amended, (f) the Worker Adjustment and Retraining Act of 1988, 28 U.S.C. §§ 2101 *et seq.*, (g) the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.*, as amended, (h) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 §§ *et seq.*, as amended, (i) state discrimination laws, (j) state unemployment compensation laws or any other similar state laws, or (k) any other state or federal benefits or claims relating to any employment with the Debtor or any of its respective predecessors; (6) any bulk sales or similar law; (7) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (8) any theories of successor liability, including any theories on product liability grounds; and (9) any environmental or other liens, claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature arising from existing conditions on or prior to any Closing Date.

14. The provisions of this Sale Order authorizing the sale and assignment or license, as applicable, of the Purchased Assets free and clear of Liens, Claims and Excluded Liabilities (other than Assumed Liabilities), as applicable, shall be self-executing, and the Debtor and the Buyers shall not be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order.

15. **Authorization to Creditors.** On and after a Closing Date, each of the Debtor's applicable creditors is authorized to execute such documents and take all other actions as may be reasonably necessary to release its Liens, if any, in the Purchased Assets subject to such Sale, as such Liens may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanics liens, *lis pendens* or other documents, instruments, notices or Sale Agreements evidencing any Lien against or in the Purchased Assets shall not have delivered to the Debtor before such Closing, in proper form for filing and executed by the appropriate parties, termination statements, releases or instruments of satisfaction that the person or entity has with respect to the Purchased Assets subject to such Sale, then with regard to such Purchased Assets, (a) each of the Debtor and such Buyer are authorized and directed to execute and file such termination statements, releases, instruments of satisfaction or other documents on behalf of the person or entity with respect to such Purchased Assets and (b) each of the Debtor or the Buyer, as applicable, are authorized and directed to file, register or otherwise record a certified copy of this Sale Order which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens against such Purchased Assets. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, local, tribal, or foreign government agency, department, or office.

16. **Authorization to Government Agencies.** Each and every Governmental Authority, filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state, and local official, and any other persons and entity 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 in or to the Purchased Assets, is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale contemplated by the Sale Agreements or this Sale Order. All such entities described above in this paragraph are authorized to strike all recorded Liens against the Purchased Assets from their records, official and otherwise.

17. **Direction to Surrender Possession or Control.** All persons or entities, presently or on or after a Closing Date, in possession or control of some or all of the Purchased Assets subject to the Sale closed on such Closing Date, are directed to surrender possession or control of such Purchased Assets to such Buyer on the Closing Date or at such time thereafter as such Buyer may request.

18. **Licenses and Permits.** To the extent provided in the Sale Agreements and available under applicable law, each Buyer shall be authorized, as of the applicable Closing Date, to operate under any Governmental Authorization, rights granted in respect of IP Agreements, if any, Sale Agreements or other Intellectual Property, or the Subject IP with respect to [X], constituting part of the Purchased Assets, any other license, permit, registration, and any other governmental approval of the Debtor with respect to such Purchased Assets and the Transferred Contracts, as applicable, and all such licenses, permits, registrations, and Governmental Authorizations, Intellectual Property, or the Subject IP with respect to [X], and

any other approvals are deemed to have been, and hereby are, directed to be transferred to such Buyer as of such Closing Date. To the extent any license or permit necessary for the operation of the business of the Debtor is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, such Buyers shall apply for and obtain any necessary license or permit promptly after the applicable Closing Date and the Debtor is hereby authorized and directed to reasonably cooperate with such Buyer in connection with any such application as such Buyer deems reasonably necessary or desirable, subject to the provisions of its Sale Agreement.

19. To the extent provided by section 525 of the Bankruptcy Code, no Governmental Authority may revoke or suspend any Governmental Authorization or other approval, permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Buyers on account of the filing or pendency of this Chapter 11 Case or the consummation of the Sale.

20. **No Successor Liability**. Each Buyer and its affiliates, predecessors, successors, assigns, members, partners, directors, officers, principals and shareholders (or equivalent) are not and shall not be (a) deemed a “successor” in any respect to the Debtor or its estate as a result of the consummation of the Sale contemplated by its Sale Agreement or any other event occurring in the Chapter 11 Case under any theory of law or equity (other than with respect to Assumed Liabilities, as applicable), (b) deemed to have, de facto or otherwise, merged, or consolidated with or into the Debtor or its estate, (c) deemed to have a common identity with the Debtor, (d) deemed to have a continuity of enterprise with the Debtor, or (e) deemed to be a continuation or substantial continuation of the Debtor or any enterprise of the Debtor. Except for the Assumed Liabilities, as applicable, or as otherwise expressly provided in

this Sale Order and/or a Sale Agreement of a Buyer, the transfer of the Purchased Assets and the Transferred Contracts, as applicable, to such Buyer under its Sale Agreement shall not result in such Buyer or its affiliates, predecessors, successors, assigns, members, partners, directors, officers, or principals and shareholders (or equivalent) (i) having any liability or responsibility for any claim against the Debtor or against an insider of the Debtor (including, without limitation, for any Excluded Liabilities, as applicable), (ii) having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Lien or Excluded Liability, as applicable, or (iii) having any liability or responsibility to the Debtor except as is expressly set forth in its Sale Agreement or this Sale Order. Such Buyer shall not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation described in the foregoing sentence (other than with respect to Assumed Liabilities, as applicable), and the Sale Motion shall be deemed to provide sufficient notice as to the Sale and assignment of the Purchased Assets free and clear of all such liabilities and obligations in accordance with Local Rule 6004-1.

21. **Examples of No Successor Liability.** Without limiting the generality, effect or scope of the foregoing, as a result of and following the Closing of the Sale applicable to a Buyer, such Buyer and its affiliates, predecessors, successors, assigns, members, partners, directors, officers, principals and shareholders (or equivalent) shall have no successor or vicarious liabilities of any kind or character, including, without limitation, any theory of antitrust, environmental, transferee liability, continuity of enterprise, mere continuation, labor law, bulk sales law, employment or benefits law, alter ego, veil piercing, escheat, de facto merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether legal or equitable, matured or unmatured, contingent or

non-contingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity or otherwise with respect to the Debtor or any obligations of the Debtor arising on or prior to such Closing Date, including, without limitation, United States or foreign pension liabilities or liabilities on account of any federal, state or other taxes arising, accruing or payable under, out of, in connection with, or in any way relating to or calculated or determined with respect to or based in whole or in any part upon the operation of the applicable Purchased Assets or the Transferred Contracts, as applicable, on or prior to such Closing Date or any taxes in connection with, or in any way related to, the cancellation of debt of the Debtor or its Affiliates. The consideration given by such Buyer shall constitute valid and valuable consideration for the release of any potential claims of successor liability against such Buyer which releases shall be deemed to have been given in favor of such Buyer by all holders of Liens, Claims and Excluded Liabilities (other than Assumed Liabilities), as applicable, against the Debtor or the applicable Purchased Assets.

22. **Injunction.** Subject to paragraph 50, and except to the extent expressly included in the Assumed Liabilities, as applicable, all persons and entities, including, but not limited to, the Debtor, employees, former employees, all debt security holders, equity holders, licensors, administrative agencies, governmental units (as defined in section 101(27) of the Bankruptcy Code), tax and regulatory authorities, secretaries of state, federal, state, and local officials, lenders, contract parties, bidders, lessors, and other parties in possession of any of the Purchased Assets at any time, trade creditors and all other creditors, holding any Liens, Claims or Excluded Liabilities of any kind or nature whatsoever against or in the Debtor or in the Debtor's interests in the Purchased Assets (whether known or unknown as of an applicable Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured,

contingent or noncontingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtor, the Purchased Assets, the Transferred Contracts, as applicable, the operation of the Debtor's business on or prior to an applicable Closing Date, the Sale, or the transfer of the Purchased Assets or the Transferred Contracts, as applicable, to the respective Buyers shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting, commencing, continuing, or otherwise pursuing in any manner any action, claim or other proceeding of any kind, directly or indirectly, against any Buyers or any of their affiliates, predecessors, successors, or assigns or any of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, principals, affiliates, shareholders (or equivalent), financial advisors and representatives (each of the foregoing in its individual capacity), their property or the applicable Purchased Assets. In connection with the foregoing, actions that are barred hereby include, without limitation: (i) the commencement or continuation of any action or other proceeding, (ii) the enforcement, attachment, collection, or recovery of any judgment, award, decree or order, (iii) the creation, perfection, or enforcement of any Lien, Claim, interest, or encumbrance, (iv) the assertion of any right of setoff, subrogation, recoupment, reversion, assignment or specific performance of any kind, (v) the commencement or continuation of any action that does not comply with, or is inconsistent with, the provisions of this Sale Order, any actions contemplated or taken in respect hereof, or the Sale Agreements, and (vi) the revocation, termination or failure or refusal to renew any Governmental Authorization or other license, permit, registration, or governmental authorization or approval to operate any of the Purchased Assets or conduct the businesses associated with such Purchased Assets. Following the Closing Date, no holder of a

Lien on, in or against any of Purchased Assets shall interfere with the applicable Buyer's title to, license of, or use and enjoyment of the applicable Purchased Assets based on or related to such Lien, or any actions that the Debtor may take in the Debtor's case.

23. **No Bulk Sales; No Brokers.** No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale or the other transactions contemplated under the Sale Agreements. Other than Cassel Salpeter & Co., LLC ("Cassel"), no broker, finder, or financial advisor was involved in consummating the Sale or the other such transactions, and, other than Cassel, no commissions are due to any person or entity in connection with the Sale or the other such transactions. The Buyers are not and will not become obligated to pay any fee or commission or like payment to any broker, finder, or financial advisor as a result of the consummation of the Sale or the other Transactions based upon any arrangement made by or on behalf of the Debtor.

24. **Fees and Expenses; Indemnity.** Any amounts payable or otherwise reimbursable by the Debtor under the Sale Agreements or any of the documents delivered by the Debtor in connection with the Sale Agreements, including without limitation (i) any allowed claims for breach thereof, (ii) any amounts relating to the indemnity provided by the Debtor under the Sale Agreements, if any, and (iii) any purchase price or other adjustments, shall be paid under the terms of and in the manner provided in the Sale Agreements without further order of the Bankruptcy Court, as an allowed administrative claim in an amount equal to such payment in accordance with sections 503(b) and 507(a)(2) of the Bankruptcy Code, and shall not be discharged, modified, or otherwise affected by any reorganization plan for the Debtor, except by written Sale Agreement with the Buyers or their successors or assigns (such Sale Agreement to be provided in the Buyers' or their successors' or assigns' respective sole discretion).

25. **Assumption and Assignment of Transferred Contracts.** Under sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon each Closing, the Debtor's assumption of the Transferred Contracts and assignment thereof to the applicable Buyer, excluding [X], free and clear of all Liens, Claims and Excluded Liabilities (other than Assumed Liabilities) pursuant to the terms set forth in the applicable Sale Agreement is hereby approved, and the requirements of sections 365(b)(1) and 365(f)(2) (including section 365(b)(3) to the extent applicable) of the Bankruptcy Code with respect thereto are hereby deemed satisfied. Each of the Contract Counterparties is hereby forever barred, estopped and permanently enjoined from raising or asserting against the Debtor or the property of any of such parties, any assignment fee, default, breach, claim, pecuniary loss, liability, or obligation (whether known or unknown as of the applicable Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise) arising under or out of, in connection with, or in any way related to the Transferred Contracts existing as of the applicable Closing Date or arising by reason of the assumption, assignment and/or such Closing except to the extent constituting an Excluded Liability under the Sale Agreements (other than the Assumed Liabilities), excluding the License Agreement. Notwithstanding the foregoing, pursuant to the terms of the Sale Agreements, excluding the License Agreement, each Buyer, excluding [X], shall be liable for all obligations and liabilities arising after the applicable Closing Date under the Transferred Contracts, all of which shall be for (x) all obligations and liabilities arising after such Closing Date under the Transferred Contracts and (y) all obligations of the Debtor to Third Parties related to or in connection with any Customer Financial Incentives first arising or incurred after such Closing pertaining to sales of the Debtor prior to such Closing

but after the Petition Date, all of which shall be liabilities described in the foregoing clauses (x) and (y) shall constitute Assumed Liabilities, and the Debtor shall not be liable for any such obligations or liabilities.

26. Each of the Transferred Contracts shall be deemed to be valid and binding and in full force and effect and enforceable in accordance with their terms as of the date of this Sale Order, subject to any amendments or modifications agreed to between a Contract Counterparty and the Buyers, excluding [X]. Upon a Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the applicable Buyer, excluding [X], shall be fully and irrevocably vested with all right, title and interest of the Debtor under the Transferred Contracts, as applicable. The assignment of each of the Transferred Contracts is deemed to be made in good faith under, and is entitled to the protections of, section 363(m) of the Bankruptcy Code.

27. **Adequate Assurance**. Each Buyer, excluding [X] who is not accepting an assignment of any Transferred Contracts, has provided adequate assurance of its future performance under the relevant Transferred Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code (including section 365(b)(3) to the extent applicable). All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtor and assignment to the respective Buyers, excluding [X], of the Transferred Contracts have been satisfied.

28. **Anti-Assignment Provisions Unenforceable**. No sections or provisions of the Transferred Contracts that purport to (a) prohibit, restrict, or condition the Debtor's assignment of the Transferred Contracts, including, but not limited to, the conditioning of such assignment on the consent of the Contract Counterparties; (b) authorize the termination, cancellation, or modification of the Transferred Contracts based on the filing of a bankruptcy

case, the financial condition of the Debtor or similar circumstances; (c) declare a breach or default as a result of a change in control in respect of the Debtor; or (d) provide for additional payments, penalties, conditions, renewals, extensions, charges, other financial accommodations in favor of the non-Debtor third party to the Transferred Contracts, or modification of any term or condition upon the assignment of a Transferred Contract or the occurrence of the conditions set forth in subsection (b) above, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under 11 U.S.C. § 365(f) and/or are otherwise unenforceable under 11 U.S.C. § 365(e). The entry of this Sale Order constitutes the consent of the Contract Counterparties to the assumption and assignment of such Sale Agreements without the necessity of obtaining such party's consent, written or otherwise, to such assumption or assignment. All Transferred Contracts shall remain in full force and effect, without existing default(s), subject only to payment of the applicable Cure Amounts, and to any amendments or modifications agreed to between a Contract Counterparty and the respective Buyers, excluding [X], in accordance with their respective Sale Agreements.

29. **No Fees for Assumption and Assignment.** Other than Assumed Liabilities (other than with respect to [X]), there shall be no rent accelerations, assignment fees, increases or any other fees charged to the Buyers (excluding [X]), their successors or assigns, or the Debtor as a result of the assumption and assignment of the Transferred Contracts. For the avoidance of doubt, [X] is not assuming any Assumed Liabilities or accepting an assignment of any Transferred Contracts.

30. **Cure Amounts.** Payment of the Cure Amounts by the Buyers (excluding [X]), as applicable, set forth on Exhibit F (or such other amount or such other terms as may be agreed to by the Buyers (excluding [X]) and the Contract Counterparties, as applicable, to the

applicable Transferred Contract) in accordance with the Sale Agreements is hereby authorized and directed. All defaults or other obligations shall be deemed cured and shall no longer exist upon the payment or other satisfaction by the Debtor of the Cure Amounts set forth in Exhibit F against which no timely objections have been properly filed and served in accordance with the Assignment and Rejection Procedures (or such other amount or such other terms as may be agreed to by the Debtor and the Contract Counterparties to the applicable Transferred Contract or otherwise ordered by the Court) and, for the avoidance of doubt, no Contract Counterparty shall be entitled to a claim against the Debtor or the Debtor's estate for any such default. Except for the Cure Amounts set forth on Exhibit F filed and served in accordance with the Assignment and Rejection Procedures (or such other amount as may be agreed to by the Debtor and the Contract Counterparties to the applicable Transferred Contract or otherwise ordered by the Court), there are no defaults existing under the Transferred Contracts, nor shall there exist any event or condition existing on applicable Closing Date which, with the passage of time or giving of notice, or both, would constitute such a default. For the avoidance of doubt, and notwithstanding anything to the contrary in any Sale Agreement, the Debtor's estate shall not be responsible for the payment of any Cure Amounts and each Buyer's payment of any Cure Amounts shall not be deemed a purchase price adjustment that reduces the overall consideration received by the Debtor's estate.

31. **Notice of Assumption and Assignment.** In accordance with the Assignment and Rejection Procedures, the Debtor has served on all of the Contract Counterparties, identified on the schedule the Debtor has filed with the Bankruptcy Court, the Assignment and Rejection Notice that included (i) the title of the Transferred Contract, (ii) the name of the counterparty to the Transferred Contract, (iii) any applicable Cure Amounts, (iv) a

notice that each Transferred Contract may be assumed by the Debtor and assigned to the Successful Bidder submitting the highest or otherwise best bid for the Debtor's assets, and (v) the deadline by which any such Transferred Contract counterparty must file an objection to the proposed assumption and assignment. In addition, the identities of the Buyers (excluding [X] who is not accepting an assignment of any Transferred Contracts) have been disclosed to each of the Contract Counterparties. No other or further notice is required.

32. Any Contract Counterparties to a Transferred Contract designated to be assumed and assigned to the respective Buyer who have not timely filed and served an objection in accordance with the Assignment and Rejection Procedures shall be barred from objecting, or asserting monetary or non-monetary defaults, with respect to any such Transferred Contract, and such Transferred Contract shall be deemed assumed by the Debtor and assigned to the respective Buyer on the applicable Closing Date pursuant to this Sale Order.

33. From the date of the entry of the Sale Order, the Debtor may, in its sole discretion, settle objections to assumption and assignment of any Transferred Contract, including to proposed Cure Amounts, without any further notice to or action by any party or order of the Court (including by paying any agreed Cure Amount); *provided*, that notice to and consent of the respective Buyer shall be required to the extent such Buyer is liable for such Cure Amount pursuant to the applicable Sale Agreement as modified by this Sale Order. Unless the Bankruptcy Court orders otherwise, contemporaneously with the resolution of any such objection, the executory contract or unexpired lease underlying such objection shall be deemed a Transferred Contract to the respective Buyer without the necessity of obtaining any further order of the Bankruptcy Court.

34. No executory contract or unexpired lease as to which a Contract Counterparty has timely filed and served an objection in accordance with the Assignment and Rejection Procedures shall be considered a Transferred Contract under this Sale Order unless and until any timely objection to the assumption and assignment of such executory contract or unexpired lease has been resolved and, if the Court orders a Cure Amount exceeding the Cure Amount proposed by the Debtor, the respective Buyer consents to such assumption and assignment.

35. **Additional Contracts.** Prior to the applicable Closing Date, each of the Buyers (excluding [X]) may add or remove contracts from the Transferred Contracts and Cure Schedule at any time with the consent of the Debtor (in consultation with the DIP Lender and the Creditors' Committee), *provided* that if any of the Buyers (excluding [X]) seeks to include additional contracts or leases on the schedule of Transferred Contracts (the "Additional Contracts") in addition to those listed on Exhibit F, the Debtor shall, within two (2) calendar days of being informed of such a determination, send an amended or supplemental Transferred Contracts and Cure Schedule adding such contracts thereto to the applicable Contract Counterparties to such executory contracts or unexpired leases so added or removed; *provided, however*, after the Sale Hearing, the Successful Bidders and Back-Up Bidders may only remove (a) an individual Transferred Contract with a Cure Amount of \$250,000 or more, or (b) two or more Transferred Contracts with Cure Amounts in the aggregate of \$500,000 or more, from the Transferred Contracts and Cure Schedule with the consent of the Debtor, DIP Lender, and the Creditors' Committee. To the extent an executory contract or unexpired lease is not assumed and assigned to the Successful Bidders, the Debtor may, in its sole discretion, reject such an unassigned executory contract or unexpired lease to the extent permitted by law. In no event will

the Successful Bidders be responsible for any unassigned executory contracts or unexpired leases.

36. Contract Counterparties seeking to object to the assumption and assignment of the Additional Contract shall have ten (10) calendar days after the Debtor has sent notice to such Contract Counterparties of the amended Transferred Contracts and Cure Schedule to file and serve any objection to the assumption and assignment of the Additional Contracts and proposed Cure Amount, if any, in accordance with the Assignment and Rejection Procedures (as applicable, the “Additional Assignment Objection”).

37. If a timely objection is filed to the assumption and assignment of an Additional Contract, and cannot be resolved consensually, the Bankruptcy Court shall resolve such objection at a hearing to be held (i) on or before five (5) calendar days from the timely filing of the Additional Assignment Objection to the extent the Court’s calendar permits or (ii) such other date designated by the Bankruptcy Court. Unless the Bankruptcy Court orders otherwise (or, if the Court orders a Cure Amount exceeding the Cure Amount proposed by the Debtor and the respective Buyer does not consent), contemporaneously with the resolution of any such objection, the Additional Contract underlying such objection shall be deemed a Transferred Contract that has been assumed and assigned to the respective Buyer without the necessity of obtaining any further order of the Bankruptcy Court.

38. If no objection is timely filed and served to the assumption and assignment of an Additional Contract, such Additional Contract shall be deemed a Transferred Contract, the payment of the proposed Cure Amount (or such other amount or terms as agreed upon by the Debtor and the Contract Counterparties), if any, shall be authorized, and the assumption by the Debtor and assignment to the respective Buyer as applicable of such Transferred Contract shall

be hereby approved pursuant to this Sale Order. The Buyers (excluding [X] who is not accepting an assignment of any Transferred Contracts) are responsible for the payment of all Cure Amounts under the Transferred Contracts and Additional Contracts.

39. **Direction to Contract Counterparties.** All Contract Counterparties shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the respective Buyer, and shall not charge the Debtor or the respective Buyer for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale.

40. Nothing in this Sale Order, the Sale Motion, the Assignment and Rejection Notice (as amended from time to time), or any notice or any other document is or shall be deemed an admission by the Debtor that any contract is an executory contract or must be assumed and assigned pursuant to the Sale Agreements in order to consummate the Sale.

41. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the Sale Agreements or any related Sale Agreements in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court, the Debtor and the Buyers that the Sale Agreements and any related Sale Agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent.

42. **Failure to Enforce Transferred Contracts.** The failure of the Debtor or any Buyer (excluding [X]) at any time to enforce one or more terms or conditions of any Transferred Contract shall not constitute a waiver of any such terms or conditions, or of the

Debtor's or the Buyers' (excluding [X]) rights to enforce every term and condition of the Transferred Contracts.

43. **Lease.** Notwithstanding anything in this Sale Order or the Sale Agreements to the contrary, that certain lease dated as of August 12, 2016 (as amended, the "Lease") between AP3-SF2 CT South LLC (the "Landlord") and the Debtor for certain premises (the "Premises") in that certain building located at One Tower Place, South San Francisco, California, any leasehold estate created by the Lease, or any fixtures constituting a portion of the Premises within, on, or about the Premises is not, and shall not be deemed to be, assumed by the Debtor, assumed by the Debtor and assigned to any of the Buyers, or rejected by the Debtor, pursuant to this Sale Order, and the respective rights, remedies, defenses, powers, duties, and obligations of the Debtor and the Landlord arising under, or in connection with, the Lease and Premises are hereby preserved. For the avoidance of doubt, the Debtor shall retain all rights afforded to it under the Bankruptcy Code to assume, assume and assign, or reject the Lease and/or any subleases related thereto notwithstanding entry of this Sale Order.

44. **Rejection of Hovione Agreement; Release of Hovione Claims.** As agreed between the Debtor and Hovione Limited ("Hovione"), the Validation and Manufacturing Sale Agreement, dated March 6, 2017, between the Debtor and Hovione, and all Work Plans (as defined therein), and all other agreements, instruments, or documents entered into or delivered in connection therewith, as any of the foregoing may have been amended, modified, or supplemented (the "Hovione Agreement") is hereby rejected by the Debtor pursuant to section 365 of the Bankruptcy Code. As further agreed between the Debtor and Hovione, Hovione, its affiliates and subsidiaries, and all of their respective current and former officers, directors, principals, employees, members, managers, advisors, attorneys, financial advisors, investment

bankers, or agents, by way of this Sale Order, unconditionally release and waive the Debtor, its estate, affiliates and subsidiaries, and all of their respective current and former officers, directors, principals, employees, members, managers, advisors, attorneys, financial advisors, investment bankers, or agents, from any and all Claims, obligations, suits, judgments, damages, demands, debts, rights, causes of action, and liabilities whatsoever in connection with, or in any way relating to, the Debtor, the business or the Debtor's conduct thereof, or the Chapter 11 Case, including, without limitation, arising from or in connection with the Hovione Agreement and the rejection by the Debtor of the Hovione Agreement, whether liquidated or unliquidated, fixed or contingent, matured or unmatured, known or unknown, foreseen or unforeseen, then existing or thereafter arising, in law, equity, or otherwise, whether for tort, contract, violation of federal or state securities law or otherwise, that are based in whole or part on any act, omission, transaction, event, or other occurrence taking place on or prior to the date of entry of this Sale Order.

45. **Cardinal Health**. Notwithstanding the foregoing, or any other provision of this Sale Order, the Sale Agreements, or any order confirming a plan or dismissing this Case to the contrary, (a) the *Final Order Pursuant to 11 U.S.C. §§ 105(a), 363, 1107, and 1108 and Fed. R. Bankr. P. 6003 and 6004 Authorizing Debtor to (I) Honor Certain Prepetition Obligations to Customers and to Continue Customer Programs and (II) Pay Medicaid, Medicare and Other Obligations* [D.I. 144] shall remain in full force and effect in all respects; (b) the transfer of the Purchased Assets to each of the Buyers, as applicable shall not be free and clear of, and shall not impair in any respect, any setoff or recoupment rights or other affirmative defenses to payment held by Cardinal Health 108 LLC ("**Cardinal Health**"), as an obligor of the Debtor's accounts receivables, pursuant to the terms of the contracts giving rise to such accounts receivable and applicable law, whether or not such contracts are being assumed and assigned by

the Debtor to any of the Buyers, including, without limitation, all return, refund, rebate, chargeback, and credit rights under such contracts; and (c) and the rights of the Debtor to assert all available defenses thereto, including, without limitation, that any or all such rights are barred under applicable law, are hereby preserved.

46. **No Waiver of Rights Under the DIP Loan Documents and Prepetition Loan Documents.** Nothing in this Sale Order shall be deemed to waive, release, extinguish, or estop the Debtor, its estate or its creditors from asserting, or impairing or diminishing such rights to assert, any right (including any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any Excluded Asset. All proceeds from the consummation of the Sale shall be treated in accordance with the provisions of the DIP Credit Agreement and the final DIP order entered by this Court on [], 2019 [D.I.] (the "Final DIP Order"), including, but not limited to, the provisions in the Final DIP Order governing the use of Cash Collateral (as defined therein). Nothing in this Sale Order shall (a) be deemed a waiver of the rights and remedies of the DIP Lender under the DIP Credit Agreement, any documents relating thereto, or the Final DIP Order; (b) affect in any way the validity, perfection, priority or enforcement of the liens and claims granted to the DIP Lender under or pursuant to the DIP Credit Agreement and Final DIP Order; (c) affect or limit in any way the validity, perfection, priority or enforcement of the Prepetition Loan Liens, the Prepetition Loan Obligations, the Prepetition Loan Collateral (each as defined in the Final DIP Order), or the Adequate Protection Liens, Adequate Protection Obligations, Adequate Protection Claims, (each as defined in the Final DIP Order) or any other rights and protections granted to the Prepetition Lender under the Prepetition Loan Sale Agreement (as defined in the Final DIP Order) and the Final DIP Order; or (d) affect in any way the validity or priority of the KEIP/KERP Plan Amount (as defined in the Final DIP Order), all

of which shall attach to the proceeds of the Sale. For the avoidance of doubt, nothing herein shall affect the Creditors' Committee's rights to commence a Challenge or other rights as set forth in the Final DIP Order.

47. **Binding Order**. This Sale Order shall be binding upon and govern the acts of all persons and entities, including, without limitation, the Debtor, the Buyers, and their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Debtor's estate or any trustee appointed in a chapter 7 case if this case is converted from chapter 11, all creditors of any Debtor (whether known or unknown), all non-Debtor parties to any Transferred Contracts, all Governmental Authorities, filing agents, filing officers, title agents, recording 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 in or to the Purchased Assets. The Sale Agreements and the Sale shall not be subject to rejection or avoidance under any circumstances. This Sale Order and the Sale Agreements shall inure to the benefit of the Debtor, its estates, its creditors, each of the Buyers and their respective successors and assigns.

48. **No Stay of Order**. The provisions of Bankruptcy Rules 6004 and 6006, and to the extent applicable under Bankruptcy Rules, Rules 54(b) and 62(a) of the Federal Rules of Civil Procedure, staying the effectiveness of this Sale Order for fourteen (14) days are hereby waived, and this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Any party objecting to this Sale Order must exercise due

diligence in filing an appeal, pursuing a stay and obtaining a stay prior to the applicable Closing, or risk its appeal being foreclosed as moot.

49. **Lift of Automatic Stay.** The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Debtor to the extent necessary, without further order of the Bankruptcy Court, to allow the Buyers to deliver any notice provided for in the Sale Agreements and allow the Buyers to take any and all actions permitted under the Sale Agreements, as applicable.

50. **Retention of Jurisdiction.** The Bankruptcy Court shall retain exclusive jurisdiction to (a) interpret, implement and enforce the terms and provisions of this Sale Order, the Bidding Procedures Order, and the Sale Agreements, including all amendments thereto and any waivers and consents thereunder and each of the Sale Agreements executed in connection therewith, in all respects, (b) decide any disputes concerning this Sale Order, the Sale Agreements or the rights and duties of the parties hereunder or thereunder or any issues relating to the Sale Agreements and this Sale Order including, but not limited to, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Purchased Assets and any Transferred Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens, and (c) enforce the injunctions set forth herein.

51. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtor's case or any order confirming any such plan or any other order in the Debtor's case (including any order entered after any conversion of this case into a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of

the Sale Agreements or this Sale Order and, to the extent of any such conflict, the terms of this Sale Order and the Sale Agreements shall control.

52. **Further Assurances.** From time to time, as and when requested by the other, the Debtor and each Buyer, as the case may be, shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in such Buyer its right, title and interest in and to the Purchased Assets and the Transferred Contracts, as applicable, subject to the provisions of the applicable Sale Agreement.

53. **Provisions Related to Governmental Authorities.** Notwithstanding any provision to the contrary in the Sale Motion, this Sale Order, and any implementing Sale documents, nothing shall: (1) authorize the assumption, sale, assignment or other transfer to the Buyers of any grants, grant funds, licenses, permits, authorizations, contracts, leases, Sale Agreements, including, but not limited to, the Sale Agreements with the federal government listed on the *Notice of Proposed Assumption and Assignment of Executory Contracts and Unexpired Leases* [D.I. 194], or other interests of the federal government (collectively, “Federal Interests”), without compliance by the Debtor and/or the applicable Buyer with all terms of the Federal Interests and with all applicable non-bankruptcy law; (2) require the government to novate, approve or otherwise consent to the assumption, sale, assignment or other transfer of any Federal Interests; (3) affect the government’s rights to offset or recoup any amounts due under, or relating to, the Federal Interests or the rights of the Debtor to assert all available defenses thereto, including, without limitation, that any or all such rights are barred under applicable law,

are hereby preserved; or (4) confer exclusive jurisdiction to the Bankruptcy Court with respect to the Federal Interests, except to the extent set forth in 28 U.S.C. Section 1334 (as limited by any other provisions of the United States Code). In addition, nothing in this Sale Order or the Sale Agreements releases, nullifies, precludes or enjoins the enforcement of any police or regulatory liability to a governmental unit that any entity would be subject to as the post-sale owner or operator of property after the date of entry of this Sale Order. Nothing in this Sale Order divests any tribunal of any jurisdiction it may have under police or regulatory law to interpret this Sale Order or to adjudicate any defense asserted under this Sale Order.

54. **Governing Terms.** Unless otherwise provided herein, to the extent this Sale Order is inconsistent with the Bidding Procedures Order or any other prior order or pleading in this Chapter 11 Case, or the terms of the Sale Agreements (including all ancillary documents executed in connection with such Sale Agreements), this Sale Order shall govern.

55. **Headings.** The headings in this Sale Order are for purposes of reference only and shall not limit or otherwise affect the meaning of the Sale Order.

Wilmington, Delaware

Dated: _____, 2019

THE HONORABLE BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE

Exhibits A – F

Intentionally Omitted