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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re

PARETEUM CORPORATION, et al.,

Debtors.¹

Chapter 11

Case No. 22-[____] (____)

(Joint Administration Requested)

**MOTION OF DEBTORS FOR ENTRY OF ORDERS
(I)(A) APPROVING BIDDING PROCEDURES FOR SALES OF DEBTORS’
ASSETS, (B) APPROVING STALKING HORSE BID PROTECTIONS,
(C) SCHEDULING AUCTION FOR AND HEARING TO APPROVE SALES
OF DEBTORS’ ASSETS, (D) APPROVING FORM AND MANNER OF
NOTICE OF SALE, AUCTION, AND SALE HEARING, (E) APPROVING
ASSUMPTION AND ASSIGNMENT PROCEDURES AND FORM AND MANNER
OF NOTICE OF ASSUMPTION AND ASSIGNMENT; AND
(II)(A) AUTHORIZING SALE OF DEBTORS’ ASSETS
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES,**

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.



(B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES; AND (III) GRANTING RELATED RELIEF

TO THE HONORABLE UNITED STATES BANKRUPTCY JUDGE:

Pareteum Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**” or “**Pareteum**”), respectfully represent the following in support of this motion (the “**Motion**”):

Preliminary Statement

1. To maximize value for the Debtors’ estates, preserve as many jobs of their employees as possible, and maintain service to customers who depend on the Debtors’ communications services, the Debtors must sell their assets. To this end, the Debtors have secured a stalking horse bid (the “**Stalking Horse Bid**”) from their two pre-petition secured lenders, one of which is also the Debtors’ proposed postpetition facility lender (the “**DIP Lender**”). Circles MVNE Pte. Ltd. (“**Circles**”) and Channel Ventures Group LLC (“**CVG**,” and with Circles, the “**Stalking Horse Bidders**”) will credit bid approximately \$60 million in secured debt; assume or pay of certain of the Debtors’ pre-petition and post-closing liabilities; and satisfy cure payments for assumed contracts. The asset purchase agreement with the Stalking Horse Bidders is annexed hereto as **Exhibit C** (the “**Stalking Horse Agreement**”).²

2. The Stalking Horse Agreement is the product of a year of prepetition marketing efforts by the Debtors and their advisors, who contacted 210 entities (112 strategic buyers, 98 financial buyers), obtained 56 non-disclosure agreements, and opened a data room for due diligence. Ten parties submitted term sheets or indications of interest, and the Debtors

² The Stalking Horse Agreement provides that the Stalking Horse Bidders will leave behind, inter alia, (a) a Wind Down Amount in the amount of \$600,000 for post-sale administration of the Debtors’ estates, plus (b) a Professional Fee Escrow Amount for estate professionals.

concluded that the Stalking Horse Bidders offered the safest, surest and highest value for the Debtors' assets.

3. In contemplation of a sale under Bankruptcy Code Section 363, the Debtors have developed bidding and auction procedures to govern the sale of the Assets (the "**Bidding Procedures**"), attached as **Exhibit 1** to the Bidding Procedures Order (as defined herein). The Bidding Procedures allow interested parties to submit bids for (a) all of the Assets in the Stalking Horse Bid (together with the Assumed Contracts, as defined herein, the "**Stalking Horse Package**"); or (b) certain individual Assets or combinations of Assets included in the Stalking Horse Package, in each case, subject to the terms and provisions of the Bidding Procedures.

4. The Bidding Procedures were designed to generate the greatest level of interest in and best value for the Assets while affording the Debtors maximum flexibility to execute asset sales as quickly and efficiently as possible. The Debtors are confident that the Bidding Procedures and the other relief requested herein will facilitate the sale of the Assets for the highest or otherwise best value, preserve as many jobs as possible for their dedicated employees, and maximize recoveries.

5. Timing in this case is critical. On July 12, 2022, the Debtors' liability insurance policy for its directors and officers will expire, and the Debtors do not have the \$1.6 million it will cost to extend the policy. If a sale to the Stalking Horse Bidder or another Successful Bidder does not close by that expiration date, the Debtors' management and directors cannot be expected to continue to serve, and the Debtors will be left without the ability to consummate a transaction. This would result in a meltdown in the value of the Assets to the detriment of the Debtors' creditors, millions of customers, thousands of employees and other stakeholders.

6. As a result, the Debtors and their pre-petition secured and DIP Lenders are working toward a process that can provide notice to affected parties and permit a sale order to be entered by the last week in June, so that the sale order will become final and non-appealable by July 11, one day before the sale must close.

Background

7. On the date hereof (the “**Petition Date**”), the affiliated Debtors each commenced a voluntary case under Bankruptcy Code chapter 11. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

8. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”).

9. Information regarding the Debtors’ business, capital structure, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the declaration of Glenn Tobias, a Senior Managing Director and the Chief Executive Officer of FTI Capital Advisors, LLC (“**FTI**”), pursuant to Rule 1007-2 of the Local Bankruptcy Rules for the Southern District of New York, sworn to on the date hereof (the “**First Day Declaration**”), as well as the stand-alone declaration of Mr. Tobias in support of the motion for DIP financing and this motion filed contemporaneously herewith (the “**Tobias Declaration**”).

Jurisdiction and Venue

10. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012.

This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Overview of Relief Requested

11. Pursuant to Bankruptcy Code sections 105(a), 363, and 365; Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014; Local Bankruptcy Rules 6004-1, 6005-1, and 6006-1; and this District's *Amended Sale Guidelines for the Conduct of Assets Sales Established and Adopted by the United States Bankruptcy Court for the Southern District of New York*, the Debtors request entry of:

- (a) the "**Bidding Procedures Order**," substantially in the form annexed hereto as **Exhibit A**,³
 - (i) authorizing and approving the Bidding Procedures attached to the Bidding Procedures Order as **Exhibit 1**, in connection with the sale of the Assets (a "**Sale Transaction**");
 - (ii) approving Stalking Horse Bid Protections (as defined below) for the Stalking Horse Bidder in accordance with the terms and conditions set forth in the Stalking Horse Agreement and the Bidding Procedures;
 - (iii) scheduling auctions of the Assets (the "**Auction**") (if any Qualified Bids are received by the Debtors before the applicable deadline);
 - (iv) scheduling a hearing to consider approval of the proposed Sale Transaction (the "**Sale Hearing**");
 - (v) authorizing and approving (1) notice of the sale of Assets, the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as **Exhibit 2** (the "**Sale Notice**"); and (2) notice to each relevant non-Debtor counterparty (each, a "**Counterparty**") to an executory contract or unexpired lease (collectively, the "**Contracts**" and **Leases**," respectively) regarding the Debtors' potential assumption and assignment of their Contracts or Leases and of the Debtors' calculation of the amount necessary to cure any defaults thereunder (the "**Cure Costs**"), substantially in the form attached to the Bidding Procedures Order as **Exhibit 3** (the "**Assumption and Assignment Notice**");

³ Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Order, the Bidding Procedures, and/or the First Day Declarations, as applicable.

- (vi) authorizing and approving procedures for the assumption and assignment of Contracts and Leases and determination of Cure Costs with respect thereto (collectively, the “**Assumption and Assignment Procedures**”); and
 - (vii) granting related relief; and
- (b) an order authorizing and approving the following:
- (i) the sale of Assets free and clear of all liens, claims, interests, and encumbrances, except certain permitted encumbrances as determined and agreed upon by the Debtors and any purchaser of the Assets, with liens to attach to the proceeds of the applicable Sale Transactions;
 - (ii) the assumption and assignment of virtually all of the Debtors’ executory contracts and unexpired leases (the “**Assumed Contracts**”) in connection with the Sale Transactions; and
 - (iii) granting related relief (a “**Sale Order**”),⁴

in each case subject to the Debtors’ debtor-in-possession financing facility and the interim and final orders with respect thereto (the “**DIP Orders**”).

Prepetition Marketing and Sale Process

12. As set forth in the Tobias Declaration, in April 2021 the Debtors initiated a comprehensive marketing process to sell their assets on a going-concern basis, or to consummate another strategic, value-maximizing transaction that would resolve the Debtors’ operational and financial challenges. To that end, the Debtors retained FTI to serve as its investment banker and to design and execute an “M&A” process for its different business lines. In total, FTI contacted 210 entities, including 112 potential strategic buyers and 98 financial buyers. Based on expressions of interests, FTI provided parties with teaser information regarding the Debtors’ businesses. Of those parties, 56 entities, including Circles, expressed serious interest in consummating a transaction with the Debtors and executed non-disclosure agreements (“**NDA**s”). Those who

⁴ A proposed form of Sale Order authorizing and approving, among other things, the sale of the Stalking Horse Package to the Stalking Horse Bidder, should the Stalking Horse Bidder be declared the Successful Bidder (as defined herein) for the Stalking Horse Package in accordance with the Bidding Procedures, is annexed hereto as **Exhibit B**.

executed NDAs were granted access to a data room containing additional confidential information regarding the Assets. FTI assisted in the due diligence process for multiple interested parties and sent out process letters to 8 parties who remained interested in Pareteum's assets as of December 2021. As a result of the marketing work of the Debtors and FTI, 8 parties submitted indications of interest or term sheets. *See* Tobias Declaration, at ¶ 14.

13. After extensive deliberations with their advisors, and several rounds of negotiations with interested parties, the Debtors elected to pursue the Stalking Horse Bid submitted by the Stalking Horse Bidders. In reaching the decision to proceed with the Stalking Horse Bid, the Company determined that, of all the bids received by the Debtors before it became necessary to execute a binding asset purchase agreement, the Stalking Horse Bid offered a combination of the best value for the Stalking Horse Package and the greatest level of deal certainty. The Stalking Horse Bidders have committed significant capital to the Debtors, including capital contributed by Circles in the form of a prepetition bridge loan and agreement to act as DIP Lender pending a sale. *See* Tobias Declaration, at ¶ 15.

Need for a Timely Sale Process

14. Appreciating their challenging financial condition, the execution risks associated with the looming expiration of the Debtors' director and officer liability insurance, and the tight timeline that likely would govern the postpetition sale process under the Debtors' DIP Financing, the Debtors accomplished as much as possible prior to the commencement of these cases. With the Stalking Horse Bid in place, the Debtors are prepared to execute the last leg of their sale process, which will include postpetition marketing consistent with the terms of the Stalking Horse Agreement and the Bidding Procedures.

15. Contemporaneously herewith, the Debtors have filed a motion seeking approval of a DIP Facility provided by the DIP Lender. Although the Debtors expect that access

to the DIP Financing, together with the use of cash collateral, will provide them with sufficient runway to consummate value-maximizing Sale Transaction, it cannot be overemphasized that time is of the essence. Given the significant costs associated with the ongoing operations of the Debtors’ businesses and the Debtors’ current financial condition, and the expiration of the Debtors’ directors and officers liability insurance on July 12, 2022 (which will cost \$1.6 million—money the Debtors do not have—to extend for a mere three months), the DIP Lender established strict timeline requirements (the “**Milestones**”)⁵ that will govern the Debtors’ sale process. Specifically, the Debtors and the DIP Lender have agreed to the following general Milestones:

No later than 15 days after Petition Date (May 30)	Debtors shall have obtained entry of Bidding Procedures Order
No later than 29 days after Petition Date (June 13)	Deadline for Qualified Bids
No later than 31 days after Petition Date (June 15)	Debtors shall complete Auction for substantially all assets in accordance with Bidding Procedures (other than Stalking Horse Package if no other Qualified Bids received)
No later than 38 days after Petition Date (June 22)	Sale Hearing
No later than 40 days after the Petition Date (June 24)	Bankruptcy Court shall have entered Sale Order approving winning bid resulting from Auction
July 12, 2022	Debtors shall have consummated sale of Stalking Horse Package to winning bidder at Auction

16. Access to the DIP Facility and cash collateral is critical to the Debtors’ ability to continue their operations and manage their bankruptcy estates through the conclusion of the sale process. Failure to adhere to the Milestones could jeopardize the Debtors’ access to cash

⁵ In the event of any inconsistencies between the provisions of the DIP Documents and the general description of the Milestones in this Motion, the DIP Documents shall control.

under the DIP Facility and, in turn, compromise the Debtors' chapter 11 strategy and ability to maximize recoveries for creditors. In light of the foregoing, the Debtors believe that the proposed timeline is both reasonable and necessary under the circumstances of these chapter 11 cases.

Stalking Horse Agreement

17. **Purchase of the Business Assets.** The Stalking Horse Bidders have agreed to acquire substantially all assets of the Debtors in connection with a joint bid submitted by Circles and CVG, who, if their bid is successful, will apportion the purchased Assets between themselves. The Stalking Horse Bid contemplates acquisition by Circles of certain assets related to the Debtors' mobile virtual network enabler business ("MVNE Business"), including telecommunications contracts, customer contracts, the Debtors' "Internet of Things" products, deposits, leases, cash (less certain amounts for wind-down and professional fee expenses), claims of the Debtors (including chapter 5 claims), and other assets that relate primarily to the Debtors' MVNE Business. The Stalking Horse Bid also contemplates the acquisition by CVG of the non-MVNE Business assets. These include assets related to the Debtors' Small and Medium Business Enterprise products and services, assets related to the Debtors' Mobile Virtual Network Operation business, assets related to the Debtors' operation of the messaging business conducted by Interactive Digital Media GmbH business, assets related to iPass. These non-MVNE Business assets include certain deposits related to the Non-MVNE Business, equipment, machinery, tangible personalty, permits, intellectual property agreements, and contracts used in the Debtors' Non-MVNE Business, certain equity interests, accounts receivable related to the other CVG-purchased assets, prepaid items, books and records relating to the Non-MVNE Business, claims (including certain chapter 5 avoidance claims).

18. The assets proposed to be purchased include the Assumed Contracts. In the event that the sale to the Stalking Horse Bidder is consummated, the Debtors will assume and

assign the Assumed Contracts to the Stalking Horse Bidders. The Stalking Horse Bidders are responsible for paying any Cure Costs.

19. **Purchase Price.** Consideration for the sale is (a) a credit bid against approximately \$60 million in secured claims under the Bridge Loan, First Lien Loan, Second Lien Loan, and DIP Loan held by the Stalking Horse Bidders, (b) the payment of costs to cure prepetition defaults under the Assumed Contracts, subject to certain adjustments and prorations under the Stalking Horse Agreement, and (c) the Stalking Horse Bidder's assumption of certain liabilities of the Debtors under the Stalking Horse Agreement.

20. **Stalking Horse Protections.** The Debtors request authority to provide the Stalking Horse Bidders with standard Stalking Horse Bid Protections. The Stalking Horse Agreement provides for (a) the payment of a break-up fee in an amount equal to 1.9 percent of the Purchase Price plus (b) Expense Reimbursement not to exceed \$1,500,000 (collectively, the "**Termination Payment**") as an administrative expense that will be included in the "Carve-Out" (as defined in the DIP Orders) in the event that the Stalking Horse Bid is not selected or the Debtors consummate one or more Sale Transactions for the Assets in the Stalking Horse Package with other bidders. The Bidding Procedures also establish bidding requirements and provide that if the Stalking Horse Bidders bid on the Stalking Horse Package at the Auction, the Stalking Horse Bidder will be entitled to a credit in the amount of its Termination Payment against the increased purchase price for the Stalking Horse Package (the Termination Payment and the other bid protections described in this paragraph collectively are referred to as the "**Stalking Horse Bid Protections**").

21. The Stalking Horse Agreement includes various customary representations, warranties, and covenants by and from the Debtors and the Stalking Horse Bidders (together, the

“Parties”), as well as certain conditions to closing the contemplated Sale Transaction and rights of termination related to the Debtors’ chapter 11 cases. The Sale Transactions are subject to approval by the Court and entry of the Bidding Procedures Order and the Sale Order.

22. The following chart describes certain and material terms in the Stalking Horse Agreement:

SUMMARY OF MATERIAL STALKING HORSE AGREEMENT TERMS⁶	
Purchased Assets; Excluded Assets; Assumed Contracts	<p>Purchased Assets are defined in <u>Section 2.1</u> of the Stalking Horse Agreement and includes, among other things, all assets primarily related to the MVNE Business (to be acquired by Circles) and the non-MVNE Business asset (to be acquired by CVG).</p> <p>Excluded Assets are defined in Section 2.2 of the Stalking Horse Agreement. Excluded Assets includes: the Wind Down Amount and Professional Fee Escrow Amount, prepaid professional fees and other prepaid expenses in connection with the Bankruptcy Cases, non-transferrable permits, Excluded Contracts, books and records the Debtors are prohibited from disclosing under applicable law, records of non-Transferred Employees, insurance policies, equity securities (except for Purchased Equity Interests), tax refund rights for periods prior to the Closing Date, post-petition accrued payables, assets not used in the Debtors’ business, any adequate assurance deposits under Bankruptcy Code section 366, and claims regarding fraudulent use by resellers.</p> <p>Assumed Contracts are set forth on Schedule 2.1(b)(vii). Buyer may add or remove Contracts from the schedule of Assumed Contracts at any time prior to 14 days after Closing.</p>
Assumed Liabilities	<p>Assumed Liabilities is defined in <u>Section 2.3</u> of the Stalking Horse Agreement. Circles shall assume post-closing obligations, liabilities relating to certain Purchased Equity Interests, cure payments for contacts assigned to Circles, and liabilities related to certain Permitted Liens. CVG shall assume post-closing liabilities, liabilities resulting from certain Purchased Equity Interests, cure payments for contracts assigned to CVG, and liabilities related to certain Permitted Liens. All other liabilities are excluded.</p>
Closing Deadline	<p>As set forth in <u>Section 2.4</u> of the Stalking Horse Agreement, the Closing shall take place as soon as reasonably practicable after the Sale Order becomes final and non-appealable, and in no event later than July 12, 2022 (the “Outside Date”).</p>
Termination	<p><u>Section 11.2</u> of the Stalking Horse Agreement provides that the Parties may terminate the Stalking Horse Agreement at any time prior to the Closing under the following conditions:</p>

⁶ In the event of any inconsistencies between the provisions of the Stalking Horse Agreement and any general description of such agreement in this Motion, the Stalking Horse Agreement shall control.

	<p>(i) by the mutual written consent of the Parties;</p> <p>(ii) by any Party giving written notice to the other Parties if:</p> <ul style="list-style-type: none">(a) an opposing party is in breach of a covenant, representation, undertaking or warranty;(b) the Court authorizes another party to purchase the Assets;(c) lack of entry of a Sale Order within 40 days following the Petition Date; or(d) the Closing shall not have occurred prior to Outside Date of July 12, 2022. <p>If any Party validly terminates the Stalking Horse Agreement, subject to certain exceptions, all rights and obligations of the Parties shall terminate upon such termination and shall become null and void, and no Party shall have any Liability to the other Party thereunder, except as set forth in the Stalking Horse Agreement, and except for any breach occurring prior to any such termination.</p>
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23. Importantly, the Stalking Horse Bidder has agreed to interview and extend offers of employment to certain Transferred Employees (as defined in the Stalking Horse Agreement) employed by the Debtors. The Debtors anticipate that substantially all of their pre-petition workforce will become Transferred Employees under the Stalking Horse Bid. The Debtors shall not assume and assign employment contracts, bonus programs, severance programs, or other benefits or programs governed by Bankruptcy Code section 503(c).

Bidding Procedures

A. Overview

24. The Bidding Procedures are designed to promote a competitive and expedient sale process. The Bidding Procedures describe, among other things, procedures for parties to access due diligence, the manner in which bidders and bids become “qualified,” the receipt and negotiation of bids received, the conduct of the Auction (if any), the selection and approval of the ultimately successful bidder, and deadlines. The Bidding Procedures will allow the Debtors to solicit and identify bids from potential buyers that constitute the highest or best offer

for the Assets on a schedule consistent with the Milestones, the deadlines under the Stalking Horse Agreement, and the Debtors' chapter 11 strategy.

25. The Debtors will have the ability to alter the Bidding Procedures to adapt to the exigencies of a given situation if the Debtors determine, in their business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties (as defined in the Bidding Procedures Order, to include counsel for the DIP Lender and counsel for any official committee appointed by the Court), that it is reasonable to do so.

B. Key Dates and Deadlines

26. Consistent with the Milestones and the Debtors' need to consummate a sale of their Assets as quickly and efficiently as possible, the Debtors propose the following key dates and deadlines in the sale process:

May 27, 2022	Hearing to consider approval of Bidding Procedures and entry of Bidding Procedures Order
June 1, 2022 (3 business days from entry of bid procedures order)	Deadline to Serve Sale Notice and Initial Assumption and Assignment Notice
June 5, 2022 (5 business days from entry of bid procedures order)	Deadline for Newspaper Publication (<i>USA Today</i> and <i>New York Times</i>)
June 6, 2022	Deadline to object to assumption/assignment of any contract served by Assumption and Assignment Notice on or before May 20, 2022
June 13, 2022 at 4:00 p.m. (Eastern Time)	Global Bid Deadline
June 14, 2022 at 4:00 p.m. (Eastern Time)	Objection Deadline for (i) sale of Stalking Horse Package to Stalking Horse Bidder pursuant to Stalking Horse Agreement and (ii) assumption and assignment of Initial Assumed Contracts to Stalking Horse Bidder

June 15, 2022 at 8:00 a.m. (Eastern Time)	Auction for Stalking Horse Package (if other Qualified Bids received for Stalking Horse Package)
June 17, 2022 at 4:00 p.m. (Eastern Time)	Sale Objection Deadline for sale of Stalking Horse Package if Auction held (if Successful Bidder is not Stalking Horse Bidder)
June 22, 2022	Sale Hearing
June 24, 2022	Sale Order entered

27. The time periods set forth in the Bidding Procedures are reasonable. Under the proposed timeline, there will be 30 days between the filing of this Motion and the Sale Objection Deadline (with respect to the sale of the Stalking Horse Package to the Stalking Horse Bidder); and 29 days between the filing of this Motion and the deadline for the submission of any and all bids (the “**Global Bid Deadline**”). This period will provide parties with sufficient time to formulate bids to purchase the Assets. Because the Debtors’ businesses have been extensively marketed by FTI, and information regarding the Debtors’ business has been made available in an electronic data room during the process, many parties that may have an interest in bidding at the Auction likely have already conducted diligence and evaluated the Debtors’ businesses, so they will not be bidding in a vacuum. In addition, potential bidders who have not previously conducted diligence on the Debtors’ businesses will, subject to the execution of an appropriate confidentiality agreement, have immediate access to a substantial body of information regarding the Assets, including information gathered based upon specific due diligence requests of the Stalking Horse Bidder and other bidders.

C. Bid Mechanics

28. As set forth in Exhibit 1 to the proposed Bidding Procedures Order, the Bidding Procedures contemplate: (i) qualification of bidders (which requires qualifying bid, a proposed asset purchase agreement, an absence of contingencies, a cash or credit bid, adequate

assurance information, and certain representations and warranties; (ii) evidence of authority to enter into an asset purchase agreement; (iii) evidence of financial ability to close; (iv) a 10 percent deposit; (v) review of bids by the Debtors, in consultation with counsel for any official committee of unsecured creditors and counsel to the DIP Lender (the “**Consultation Parties**”); (vi) overbid minimums equal to the Termination Payment plus \$1 million; and (vii) designation of a Successful Bidder and Back-Up Bidder by the Debtors at the conclusion of the Auction. These provisions are conventional auction mechanics designed to ensure an efficient, orderly and fair process to all parties.

D. Noticing Procedures

29. The Bidding Procedures provide for the following **Noticing Procedures**:

- (a) Sale Notice. Within (3) business days after entry of the Bidding Procedures Order, the Debtors will file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website (www.kccllc.net/pareteum) the Sale Notice, which will set forth (i) a complete list and general description of the Assets for sale; (ii) the date, time, and place of (1) the Auctions and (2) the Sale Hearings; (iii) the Sale Objection Deadlines; and (iv) the procedures for filing Sale Objections (as defined herein).
- (b) Sale Notice Parties. The “**Sale Notice Parties**” shall include the following parties:
 - (i) Counsel to any official and informal committees of creditors, equity holders, or retirees (or the Debtors’ top 40 unsecured creditors as of the Petition Date, on a consolidated basis, if no committee is appointed);
 - (ii) The office of the United States Trustee;
 - (iii) Entities requesting notice under Bankruptcy Rule 2002;
 - (iv) Counsel to the DIP Lender;
 - (v) Counsel to the Stalking Horse Bidders;
 - (vi) All persons and entities, known by the Debtors and their advisors, to have expressed an interest in a transaction with respect to any of the Debtors’ Assets during the past twelve months;

- (vii) All persons and entities known by the Debtors to have asserted any lien, claim, encumbrance, or other interest in any Asset (for whom identifying information and addresses are available to the Debtors);
 - (viii) Any Governmental Authority known to have a claim in these chapter 11 cases;
 - (ix) The United States Attorney for the Southern District of New York;
 - (x) The Office of the Attorney General in each state which the Debtors operate;
 - (xi) The Office of the Secretary of State in each state in which the Debtors operate or are organized;
 - (xii) The Federal Trade Commission;
 - (xiii) The United States Attorney General/Antitrust Division of Department of Justice;
 - (xiv) The Securities and Exchange Commission; and
 - (xv) All other Persons directed by the Court (for whom identifying information and addresses are available to the Debtors).
- (c) Publication Notice. Within five business days after entry of the Bidding Procedures Order, the Debtors will cause the information contained in the Sale Notice to be published once in the national edition of *USA Today* and once in the *New York Times*.
- (d) Selection of Qualified Bids. The Debtors will determine which bids qualify as a Qualified Bid, and will notify Prospective Bidders whether they have been selected as Qualified Bidders prior to the Auction.
- (e) Notice of Hearing if Auction Not Held.

With respect to the Stalking Horse Package, if no Qualified Bid other than the Stalking Horse Bid is received by the Global Bid Deadline, the Debtors will not conduct the Auction, and will file with the Bankruptcy Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website a notice (1) indicating that the Auction has been canceled, (2) indicating that the Stalking Horse Bidder is the Successful Bidder, and (3) reiterating the date and time of the applicable Sale Hearing.

- (f) Notice of Auction Results. Within one business day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, the Debtors file with the Court, serve on the Sale Notice Parties (including each Counterparty to a Proposed Assumed Contract in a Successful Bid and a Back-Up Bid), and cause to be published on the KCC Website, a notice of the results of the Auction (the “**Notice**

of Auction Results”), which shall (1) identify the Successful Bidder(s) and Back-Up Bidder(s); (2) list all Proposed Assumed Contracts in the Successful Bids and Back-Up Bids; (3) identify any known proposed assignee(s) of Proposed Assumed Contracts (if different from the applicable Successful Bidder); and (4) set forth the deadline and procedures for filing Sale Objections in response to the Notice of Auction Results.

- (g) Objection Deadline for Sale Transactions. The Bidding Procedures Order establishes the deadline (the “**Sale Objection Deadline**”) to file and serve objections to the sale of Assets and the assumption and assignment of Contracts and Leases (including Cure Objections and Adequate Assurance Objections) to the Stalking Horse Bidders as **June 14, 2022 at 4:00 p.m. (Eastern Time)** (the “**Stalking Horse Objection Deadline**”). The Bidding Procedures Order establishes **June 17, 2022 at 4:00 p.m. (Eastern Time)** with respect to the sale of Assets to a Successful Bidder other than the Stalking Horse Bidders. (Procedures to object to assumption and assignment of contracts and leases that were not announced in the original Sale Notice are set forth separately below.).

30. The Bid Procedures provide adequate and reasonable notice of the key dates and deadlines for the sale process, including, among other things, the Sale Objection Deadlines, the Global Bid Deadline, and the time and location of the Auctions and the Sale Hearings. Accordingly, the Debtors request that the Court find that the Noticing Procedures are adequate and appropriate under the circumstances and comply with the requirements of Bankruptcy Rule 2002.

Assumption and Assignment Procedures

31. In connection with a Sale Transaction, the Debtors assuming and assigning to the Successful Bidders (or their designated assignee(s)) certain Contracts and Leases. The **Assumption and Assignment Procedures** set forth herein are designed to, among other things, govern the Debtors’ provision of Adequate Assurance Information (as defined herein) and notice of Cure Costs to relevant Counterparties. Specifically, the Assumption and Assignment Procedures are as follows:

- (a) Assumption and Assignment Notice. As soon as practicable, but not later than three business days after the entry of this Order, the Debtors shall file with the Court, serve on the each applicable Contract Counterparty, and cause to be published on the KCC Website, an initial Assumption and Assignment Notice which shall (a) identify the Assumed Contracts initially designated for assumption and assignment

to the Stalking Horse Bidders (the “**Initial Assumed Contracts**”); (b) list the Debtors’ good faith calculation of the Cure Costs with respect to each Initial Transferred Contract; (c) expressly state that assumption or assignment of any Transferred Contract is not guaranteed and is subject to Court approval; (d) direct the non-Debtor Counterparty to relevant publicly available financial information regarding the Stalking Horse Bidder for purposes of demonstrating adequate assurance of future performance by the Stalking Horse Bidder; (e) prominently display the deadline to file a Cure Objection and an Adequate Assurance Objection (each as hereinafter defined); and (f) prominently display the dates, times, and location of the Sale Hearings.

(b) Designation of Contracts and Leases.

(i) Stalking Horse Bidder Supplemental Designation Rights. Pursuant to the terms of the Stalking Horse Agreement, the Stalking Horse Bidders shall have the right, at any time prior to 14 calendar days after Sale Closing, to designate additional Assumed Contracts for proposed assumption and assignment to the Stalking Horse Bidders (each, a “**Supplemental Contract**”) or to remove Contracts from the list of Assumed Contracts from proposed assumption and assignment (each, a “**Removed Contract**”). The Debtors shall use commercially reasonable efforts to, as soon as reasonably practicable after the Buyer’s designation of any Supplemental Contracts or any Removed Contracts (1) file with the Court, serve by overnight delivery on all applicable Counterparties, and cause to be published on the KCC Website, a notice of proposed assumption and assignment of the Supplemental Contracts (a “**Supplemental Assumption and Assignment Notice**”) and/or removal of the Removed Contracts, which shall (A) expressly state that assumption or assignment of the Supplemental Contracts is not guaranteed and subject to Court approval and removal of the Removed Contracts does not constitute a rejection by the Debtors of such Contract, and (B) direct the non-Debtor Counterparty to a Supplemental Contract to relevant publicly available financial information regarding the Stalking Horse Bidders for purposes of demonstrating adequate assurance of future performance by the Stalking Horse Bidder; and (C) prominently display the deadline to file an Adequate Assurance Objection with respect to a Supplemental Contract.

(ii) Designation Rights of Non-Stalking Horse Successful Bidders. The Debtors will provide a notice of proposed assumption and assignment to Counterparties whose Contracts or Leases may be designated for assumption and assignment by any Successful Bidder (other than the Stalking Horse Bidders) in a manner consistent with these Assumption and Assignment Procedures, the Bidding Procedures Order, and all applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules. As with Supplemental Contracts designated by the Stalking Horse Bidder, no assumption and assignment of a Supplemental Contract shall be effective until the earlier of (i) the Supplemental Contract Objection Deadline, if no

objection is filed, or (ii) when a timely filed objection is resolved by agreement or Court order.

- (c) Auction Results. As indicated, the Debtors will use commercially reasonable efforts to, within one business day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, file with the Court, serve on the Sale Notice Parties (including each Counterparty to a Proposed Assumed Contract in a Successful Bid), a Notice of Auction Results, which shall list all Proposed Assumed Contracts in the Successful Bids and Back-Up Bids, identify any known proposed assignee(s) of Proposed Assumed Contracts (if different from the applicable Successful Bidder), and set forth the deadlines and procedures for filing Adequate Assurance Objections in response to the Notice of Auction Results.
- (d) Cure Objections.
- (i) Cure Objection Requirements. Any Counterparty who wishes to object to the proposed assumption, assignment, or potential designation of their Contract or Lease, the subject of which objection is the Debtors' proposed Cure Costs to cure any outstanding defaults then existing under such contract or lease (a "**Cure Objection**") shall file with the Court and serve on the Objection Notice Parties its Cure Objection, which must (1) be in writing; (2) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (3) state, with specificity, the legal and factual bases thereof, including the cure amount the Counterparty believes is required to cure defaults under the relevant Contract or Lease; and (4) include any appropriate documentation in support thereof.
- (ii) Deadlines for Cure Objections. The deadline for Cure Objections is (a) June 6 (if the applicable Notice of Assumption and Assignment was served on or before May 20), (b) June 14 (for notices served contemporaneously with the Sale Notice), or (c) 10 days after receiving a Supplemental Assumption and Assignment Notice (the "**Supplemental Contract Objection Deadline**").
- (iii) Resolution of Cure Objections by Court. If a timely Cure Objection cannot otherwise be resolved by the parties prior to the commencement of the applicable Sale Hearing, such objection shall be determined by the Court at the Sale Hearing or at a later hearing on a date to be scheduled by the Court. A Cure Objection may, at the Debtors' discretion (after consultation with the Stalking Horse Bidders or, if an Auction is held, with the Successful Bidder), be adjourned to a subsequent hearing.
- (iv) Provisional Assumption and Assignment Pending Resolution of Cure Objections. If, pending resolution of a Cure Objection, the Successful Bidder(s) maintain a cash reserve (a "**Cure Cost Reserve**") equal to the lesser of (1) the amount the objecting Counterparty has asserted to be required to cure the asserted defaults under the applicable Proposed Assumed Contract and (2) such other cash reserve amount as may be

ordered by the Court, then notwithstanding the existence of an Adjourned Cure Objection, then the Proposed Assumed Contract shall be deemed provisionally assumed and assigned to the Successful Bidder as of the applicable Closing Date, and remain provisionally assumed and assigned until the objection is resolved by agreement or order of the Court.

- (v) Failure to File Timely Cure Objection. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a Cure Objection by the applicable deadline, the Counterparty shall be forever barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract or Lease. The Cure Costs set forth in the relevant Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract or Lease under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in the Contract or Lease, or any other document, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Contract or Lease against the Debtors, the Successful Bidder, or the property of any of them.
- (e) Adequate Assurance Information. Each Bid (other than the Stalking Horse Bid) must contain such financial and other information that allows the Debtors, after consultation with the Consultation Parties, to make a reasonable determination as to the potential bidder's financial and other capabilities to consummate the applicable Sale Transaction, including, without limitation, such financial and other information setting forth adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to the Potential Bidder (the "**Adequate Assurance Information**").
 - (i) Other Successful Bidders. The Debtors shall, within one business day after the conclusion of each Auction (or as soon as reasonably practicable thereafter), serve or cause to be served upon Counterparties to the Proposed Assumed Contracts included in each Successful Bid (other than the Stalking Horse Bid) Adequate Assurance Information for such Successful Bidder.
 - (ii) Confidentiality. Adequate Assurance Information will be provided to affected Counterparties on a strictly confidential basis. Counterparties shall not use any Adequate Assurance Information for any purpose other than to (1) evaluate whether adequate assurance requirements under Bankruptcy Code section 365(f)(2) and, if applicable, Bankruptcy Code section 365(b)(3), have been satisfied; and (2) to support any Adequate Assurance Objection filed by the Counterparty; provided that any Adequate Assurance Objection that discloses confidential, non-public information included in the Adequate Assurance Information must be filed with the Court under seal unless disclosure of such confidential, non-public information is authorized by the Debtors, the Successful Bidder, and any known proposed assignee(s)

of the relevant Contract or Lease (if different from the Successful Bidder), or ordered by the Court.

- (f) Adequate Assurance Objections.
- (i) Adequate Assurance Objection Deadline. Any Counterparty that wishes to object to the proposed assumption, assignment, or potential designation of their Contract or Lease, based on adequate assurance of future performance with respect to such Contract or Lease (an “**Adequate Assurance Objection**”), shall file with the Court and serve on the Objection Notice Parties, including the applicable Successful Bidder and any known proposed assignee of such contract or lease (if different from the Successful Bidder), its Adequate Assurance Objection, which must (1) be in writing; (2) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (3) state, with specificity, the legal and factual bases thereof; (4) include any appropriate documentation in support thereof. The deadline for Adequate Assurance Objections is identical to the deadline for Cure Objections, *i.e.*, by no later than the Stalking Horse Objection Deadline, or the Supplemental Contract Objection Deadline, as applicable.
- (ii) Resolution of Adequate Assurance Objections. If a timely Adequate Assurance Objection cannot otherwise be resolved by the parties prior to the commencement of the applicable Sale Hearing, such objection and all issues of adequate assurance of future performance shall be determined by the Court at the Sale Hearing or at a later hearing on a date to be scheduled.
- (iii) Provisional Assumption and Assignment Pending Resolution. Contracts subject to an Adequate Assurance Objection shall be provisionally assumed and assigned to the Successful Bidder pending resolution of the objection by agreement or by order of the Court.
- (iv) Failure to File Timely Adequate Assurance Objection. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties, including the applicable Successful Bidder and any known proposed assignee of the Contract or Lease (if different from the Successful Bidder), a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the relevant Contract or Lease. The Successful Bidder and/or its known proposed assignee of the Contract or Lease shall be deemed to have provided adequate assurance of future performance with respect to the applicable Contract or Lease in accordance with Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), notwithstanding anything to the contrary in the Contract or Lease or any other document.
- (g) Reservation of Rights. The inclusion of a Contract or Lease or Cure Costs with respect thereto on an Assumption and Assignment Notice or the Notice of Auction Results shall not constitute or be deemed a determination or admission by the

Debtors, the Successful Bidders, or any other party in interest that such Contract or Lease is an executory contract or unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract and Lease listed on an Assumption and Assignment Notice and Notice of Auction Results. The Debtors' inclusion of any Contract or Lease on the Assumption and Assignment Notice or the Notice of Auction Results shall not be a guarantee that such Contract or Lease ultimately will be assumed or assumed and assigned.

Extraordinary Provisions Under Local Guidelines

32. Collectively, the Bidding Procedures and the Stalking Horse Bid contain the following provisions, which the Amended Guidelines for the Conduct of Asset Sales, adopted by General Order M-383, require to be separately disclosed:

- (a) No Sale to Insider. The Stalking Horse Bidders are not insiders of the Debtors.
- (b) Agreements With Management. The Stalking Horse Bidder has not entered into any agreements with management or key employees. The Stalking Horse Bidder may, pursuant to the Stalking Horse Agreement, designate management, key employees, or any other employees as Transferred Employees.
- (c) Private Sale/No Competitive Bidding. The Bidding Procedures and Sale Motion Order contemplate a competitive auction process.
- (d) Deadlines That Effectively Limit Notice. No deadlines in the Bidding Procedures effectively limit notice.
- (e) Good Faith Deposit. The Stalking Horse Bidder is excused from submitting a good faith deposit because it holds valid, perfected and enforceable secured claims against the Debtors totaling approximately \$60 million and it is credit bidding.
- (f) Interim Arrangement with the Proposed Buyer. Circles is also the Debtors' DIP Lender, as more fully described in this Motion and in the motion to approve the DIP facility.
- (g) Use of Proceeds. Other than payment of a Termination Payment from the proceeds of a Competing Transaction, the Stalking Horse Agreement does not contemplate an allocation of sale proceeds.
- (h) Tax Exemption. The Debtors are not seeking to have the sale declared exempt from taxes under Bankruptcy Code section 1146(a).
- (i) Records Retention. As noted above, the Stalking Horse Agreement provides that the Stalking Horse Bidders will acquire the books and records related to the Stalking Horse Package. The Stalking Horse Agreement grants the Debtors

reasonable access to such records, and the Debtors will be able to administer their bankruptcy cases, notwithstanding the sale of any books and records.

- (j) Requested Findings as to Successor Liability. The Stalking Horse Agreement requires that the Sale Order contain findings of fact and conclusions of law limiting the Stalking Horse Bidder's successor liability. The basis for requested findings as to successor liability is set forth in section D. of the next section of this Motion.
- (k) Requested Findings as to Fraudulent Conveyance or Transfers. The proposed Sale Order contains findings of fact and conclusions of law with respect to the consideration paid. As set forth in this Motion and in the Tobias Declaration, the marketing process since April 2021 and the Bid Procedures will ensure that the Successful Bid is appropriate and reasonable.
- (l) Sale Free and Clear of Unexpired Leases. The proposed Sale Order does not provide that the sales of the Assets will be free and clear of possessory leasehold interests, licenses or other rights. Therefore, there are no non-debtor parties whose possessory leasehold interests will be affected by the sale.
- (m) Relief from Bankruptcy Rules 6004(h) and 6006(d). The Debtors seek relief from the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) because the Debtors will lack experienced management after July 12, 2022 in the absence of an approved sale.

**Relief Requested Is Warranted
And In Best Interests of Debtors and Economic Stakeholders**

A. The Bidding Procedures are Fair and Reasonable.

33. The proposed Bidding Procedures promote the paramount goal of any proposed sale of property of a debtor's estate: maximizing the value of sale proceeds received by the estate. *See Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures and bid protections "are important tools to encourage bidding and to maximize the value of the debtor's assets"), *appeal dismissed* 3 F. 3d 49 (2d Cir. 1993); *see also In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009) ("[b]idder protections are granted when a bidder provides a floor for bidding by expending resources to conduct due diligence and allowing its bid to be shopped around for a higher offer"). Courts uniformly recognize that procedures established for the purpose of

enhancing competitive bidding are consistent with the fundamental goal of maximizing value of a debtor's estate. *See In re Integrated Res. Inc.*, 147 B.R. at 659 (observing that sale procedures “encourage bidding” and “maximize the value of the debtor's assets”).

34. The proposed Bidding Procedures also provide for an orderly, uniform, and competitive process through which interested parties may submit offers to purchase the Debtors' Assets. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to reach the highest or otherwise best offer reasonably available for the Debtors' Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction, if necessary, in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to timely consummate a Sale Transaction. The Bidding Procedures provide the Debtors with an adequate opportunity to consider competing bids and to select the highest or otherwise best offers for the potential completion of a Sale Transaction, while comparing such competing bids against the value of a Reorganization Transaction.

35. The timeline proposed in these chapter 11 cases, which includes a 17-day period between the anticipated entry of a Bidding Procedures Order and the bid deadline of June 13, 2022 is consistent with timelines approved by courts in this and other districts. *See, e.g., In re Northwest Co. LLC*, Case No. 20-10990 (MEW) (Bankr. S.D.N.Y. July 23, 2020) (scheduling bid deadline 11 days from entry of bidding procedures order); *In re Hooper Homes, Inc.*, Case No. 18-23302 (RDD) (Bankr. S.D.N.Y. Sept. 20, 2018) (scheduling bid deadline 15 days from entry of bidding procedures order); *In re ABC Carpet Co., Inc.*, Case No. 21-11591 (DWJ) (Bankr. S.D.N.Y. Oct. 1, 2021) (bid deadline 18 days from entry of bidding procedures order); *In re Cosmoledo LLC*, Case No. 20-12117 (MEW) (Bankr. S.D.N.Y. Oct. 2, 2020) (same). Given the

extensive prepetition marketing of the Debtors' assets, a 17-day time frame is similarly appropriate in this case.

36. Courts in this and other districts have approved procedures substantially similar to the proposed Bidding Procedures. *See, e.g., In re Fusion Connect, Inc.*, Case No. 19-11811 (SMB) (Bankr. S.D.N.Y. July 3, 2019) (ECF No. 164); *In re Ditech Holding Corp.*, Case No. 19-10412 (JLG) (Bankr. S.D.N.Y. Apr. 23, 2019) (ECF No. 456); *In re Waypoint Leasing Holdings Ltd.*, Case No. 18-13648 (SMB) (Bankr. S.D.N.Y. Dec. 21, 2018) (ECF No. 159); *In re Sears Holdings Corp.*, Case No. 18-23538 (RDD) (Bankr. S.D.N.Y. Nov. 19, 2018) (ECF No. 816); *In re Cent. Grocers, Inc.* Case No. 17-10993 (LSS) (Bankr. D. Del. June 2, 2017) (ECF No. 338); *In re Angelica Corp.*, Case No. 17-10870 (JLG) (Bankr. S.D.N.Y. Apr. 28, 2017) (ECF No. 137); and *In re Aéropostale, Inc.*, Case No. 16-11275 (SHL) (Bankr. S.D.N.Y. Jul. 29, 2016) (ECF No. 527); *In re The Great Atl. & Pac. Tea Co., Inc.*, Case No. 15-23007 (RDD) (Bankr. S.D.N.Y. Aug. 11, 2015) (ECF No. 495). Accordingly, the Bidding Procedures should be approved.

B. The Stalking Horse Bid Protections are Reasonable and Appropriate.

37. The Bidding Procedures allow the Debtors to provide certain Stalking Horse Bid Protections for the Stalking Horse Bidders, such as the Break-Up Fee and Expense Reimbursement for Circles, the initial minimum overbid requirement, and the Termination Payment. Bidding incentives such as these Stalking Horse Bid Protections have become commonplace in connection with sales under chapter 11. Moreover, approval of break-up fees as administrative expense claims as a form of bidder protections in connection with a sale has become a recognized practice in chapter 11 cases because it enables a debtor to ensure a sale to a

contractually committed buyer at a price the debtor believes is fair, while providing the debtor with the potential of obtaining an enhanced recovery through an auction process.⁷

38. Bankruptcy courts in this District analyze the appropriateness of bidding incentives such as the Stalking Horse Bid Protections under the “business judgment rule.” Specifically, courts in this District consider whether: (a) the relationship of the parties who negotiated the break-up fee was tainted by self-dealing or manipulation, (b) the fee encourages, rather than hampers, bidding, and (c) the amount of the fee is unreasonable relative to the proposed purchase price. *In re Genco Shipping & Trading Ltd.*, 509 B.R. 455, 465 (Bankr. S.D.N.Y. 2014) (citing *In re Metaldyne Corp.*, 409 B.R. at 670); *see also In re Integrated Res., Inc.*, 147 B.R. at 657–58 (holding that in evaluating bid protections, courts should employ the business judgment rule, which proscribes judicial second-guessing of the corporate debtor’s actions taken in good faith absent self-dealing and in the exercise of honest judgment).

39. The Bid Protections provided in the Bidding Procedures and the Stalking Horse Agreement meets the “business judgment rule” standard. First, the Stalking Horse Bid Protections were only offered after good faith, arms-length negotiations with the Debtors who were acting in the interest of their estates, consistent with their fiduciary duties. These protections, individually and collectively, were a material inducement for, and condition of, the Stalking Horse

⁷ *See, e.g., In re Barneys New York, Inc.*, Case No. 19-36300 (CGM) (Bankr. S.D.N.Y. Oct. 30, 2019) (ECF No. 491) (approving break-up fee and expense reimbursement); *In re Ditech Holding Corp.*, Case No. 19-10412 (JLG) (Bankr. S.D.N.Y. Apr. 23, 2019) (ECF No. 456) (same); *In re Nine West Holdings, Inc.*, Case No. 18-10947 (SCC) (Bankr. S.D.N.Y. May 7, 2018) (ECF No. 223) (same); *In re SunEdison, Inc.*, Case No. 16-10992 (SMB) (Bankr. S.D.N.Y. Aug. 19, 2016) (ECF No. 1033); *In re Lehman Bros. Holdings Inc., et al.*, Case No. 08-13555 (JMP) (Bankr. S.D.N.Y. Oct. 22, 2008) (same); *In re Steve & Barry's Manhattan LLC, et al.*, Case No. 08-12579 (ALG) (Bankr. S.D.N.Y. Aug. 5, 2008) (same); *In re Bally Total Fitness of Greater New York, Inc.*, Case No. 07-12395 (BRL) (Bankr. S.D.N.Y. Aug. 21, 2007) (same); *In re G+G Retail, Inc.*, Case No. 06-10152 (RDD) (Bankr. S.D.N.Y. Jan. 30, 2006) (same); *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc.*, (*In re Integrated Res., Inc.*), 147 B.R. 650 (S.D.N.Y. 1992), appeal dismissed, 3 F.3d 49 (2d Cir. 1993) (same); *In re Twinlab Corp., et al.*, Case No. 03-15564 (CB) (Bankr. S.D.N.Y. 2003) (same); *In re Adelpia Business Solutions, Inc., et al.*, Case No. 02-11389 (REG) (Bankr. S.D.N.Y. 2002) (same).

Bidder's entry into the Stalking Horse Agreement. Circles, which expended significant resources in connection with its legal, financial and operational due diligence, is unwilling to hold open its offer without assurance of payment of the Break-Up Fee and Expense Reimbursement under the conditions set forth in the Stalking Horse Agreement. *See* Tobias Declaration, at ¶¶ 19-20. Parties in interest will be given notice and an opportunity to object if they do not believe that the Stalking Horse Bid Protections are in the best interests of the Debtors' estates.

40. Second, the Stalking Horse Bid Protections will promote the interests of the Debtors' estates to maximize value. The Termination Payment will promote more competitive bidding for the Debtors' Assets by inducing the Stalking Horse Bidders to hold their offer open as a minimum bid on which other bidders and the Debtors can rely. In doing so, the Stalking Horse Bidders will help lay the foundation for the Debtors' sale process and will serve as a catalyst for other Qualified Bids. Executing the Stalking Horse Agreement has put the Debtors in a comfortable position to solicit competing bids that may be materially higher or of otherwise better value to the Debtors' estates than the Stalking Horse Bid. The Stalking Horse Bid also increases the likelihood that the price at which the Assets in the Stalking Horse Package are sold will reflect their true worth. Accordingly, the Termination Payment is appropriate and any Stalking Horse Bidder is entitled to be compensated for the risk it is assuming and the substantial value it is conferring on the Debtors' estates.

41. Third, the Stalking Horse Bid Protections are reasonable in view of the substantial benefits the Debtors would receive from having the Stalking Horse Bid serve as a floor for potential bidders, which would confirm that the Debtors receive the highest and best offer for their business. Moreover, the Stalking Horse Bid will provide the Debtors with an opportunity to move forward with a Sale Transaction that has a high likelihood of consummation with a

contractually committed party at a fair and reasonable purchase price. Accordingly, the Stalking Horse Bid Protections will not deter bidding and are reasonable, and their availability to the Debtors will enable the Debtors to maximize the value of their estates. *See* Tobias Declaration, at ¶¶ 19-20.

42. The Termination Payment is fair and reasonable in amount under the circumstances, particularly because the Termination Payment will be paid out of the proceeds of any Competing Transaction. Numerous courts in this District and in Delaware have approved break-up fees in excess of 1.9 percent. *See, e.g., In re Hostess Brands, Inc.*, Case No. 12-22052 (Bankr. S.D.N.Y. 2013) (break-up fee equal to 3.5%); *In re Global Crossing Ltd.*, Case No. 02-40187 (Bankr. S.D.N.Y. 2002) (break-up fee equal to 4%); *In re LTV Steel Company, Inc.*, Case No. 00-43866 (Bankr. N.D. Ohio 2000) (break-up fee equal to 7.5%); *In re Fruit of the Loom, Inc.*, Case No. 99-4497 (Bankr. D. Del. 1999) (break-up fee equal to 3.59%); *In re Graham-Field Health Products, Inc.*, Case No. 99-4457 (Bankr. D. Del. 1999) (break-up fee equal to 4.65%).

43. The foregoing bid protections will not deter or chill bidding, are reasonable, and their availability to the Debtors will enable the Debtors to maximize the value of their estates.

C. Proposed Sale Transaction

44. Ample authority exists for approval of the sale envisioned by this Motion. Section 363 of the Bankruptcy Code provides, in relevant part, “[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. § 363(b)(1). Courts in the Second Circuit and others, in applying this section, have required that the sale of a debtor’s assets be based upon the sound business judgment of the debtor. *See In re Chateaugay Corp.*, 973 F.2d 141 (2d Cir. 1992) (holding that a judge reviewing a section 363(b) application must find from the evidence presented a good business reason to grant such application); *Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.)*, 722

F.2d 1063, 1071 (2d Cir. 1983) (same); *In re Gen. Motors Corp.*, 407 B.R. 463, 493-94 (Bankr. S.D.N.Y. 2009).

45. Once a court is satisfied that there is a sound business justification for the proposed sale, the court must then determine whether (a) the debtor has provided the interested parties with adequate and reasonable notice, (b) the sale price is fair and reasonable, and (c) the purchaser is proceeding in good faith. *Gen. Motors*, 407 B.R. at 493–94; *In re Betty Owens Sch.*, 1997 U.S. Dist. Lexis 5877 (S.D.N.Y. 1997); accord *In re Delaware and Hudson Ry. Co.*, 124 B.R. at 166; *In re Decora Indus., Inc.*, Case No. 00-4459, 2002 WL 32332749 at *3 (Bankr. D. Del. May 20, 2002). Where a debtor demonstrates a valid business justification for a decision, it is presumed that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. at 656 (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

1. *The Debtors Have Demonstrated a Sound Business Justification for the Proposed Sale Transactions*

46. A sound business purpose for the sale of a debtor’s assets outside the ordinary course of business exists where such sale is necessary to preserve the value of the estate for the benefit of creditors and interest holders. *See, e.g., In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143 (3d Cir. 1986); *In re Lionel Corp.*, 722 F.2d at 1063; *see also In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (recognizing that paramount goal of any proposed sale of property of estate is to maximize value).

47. As set forth above and in described in the Tobias Declaration, a strong business justification exists for the sale of the Debtors’ Assets as described herein. An orderly but expeditious sale of the Purchased Assets is critical to preserving and realizing their going concern

value and, in turn, to maximizing recoveries for the Debtors' economic stakeholders and preserving jobs. *See* Tobias Declaration, at ¶¶ 6-8, 13-15. A prompt sale is also required by the express terms of the DIP Credit Agreement, the Milestones, the Stalking Horse Agreement and the expiry of the Debtors' liability insurance. And an expeditious timeline substantially reduces the execution risks associated with consummating the transaction. Pursuing entry into and performance under the Stalking Horse Agreement represents a reasonable exercise of the Debtors' business judgment and is in the best interests of all parties.

2. *The Noticing Procedures Are Reasonable and Appropriate*

48. The notice to third parties that the Debtors propose to provide, as set forth in the Bidding Procedures Order and Bidding Procedures, is more than adequate and reasonable. Such notice will ensure that actual notice of the Auction, Sale Hearing, and Sale Transaction will be provided to all known creditors of the Debtors, in addition to notice by publication. Such notice, together with the authority pursuant to sections 363 and 365 of the Bankruptcy Code, will enable the Court to make findings at the Sale Hearing and in the Sale Order that the ultimate purchaser of the Purchased Assets, whether it be the Stalking Horse Bidders or, if an Auction is held, the Successful Bidder(s), shall not be liable under theories of successor liability in connection with such Purchased Assets.

3. *The Proposed Sale Transaction Will Produce a Fair and Reasonable Purchase Price for the Assets*

49. The Purchase Price under the Stalking Horse Agreement is fair and reasonable for the Purchased Assets. The Stalking Horse Bid is an offer to purchase the Stalking Horse Package for a price that the Debtors, with the advice of their advisors, already have determined to be fair and reasonable. Given that the Stalking Horse Bid, together with the Stalking Horse Bid Protections, will serve as a floor for Qualified Bids for the Stalking Horse Package, the

Debtors are confident that the sale process will culminate in the Debtors' obtaining the highest or best value for the applicable Assets.

50. In addition, the Bidding Procedures were carefully designed to facilitate a robust and competitive bidding process. Competing bidders may bid on fewer than all assets comprising the Stalking Horse Package if they choose. The Debtors' compliance with the Bidding Procedures Order and the Bidding Procedures will provide the basis to find that any sale of the Purchased Assets does not constitute a fraudulent transfer because the purchase price represents reasonably equivalent value and is fair and reasonable.

4. *The Proposed Sale Is Permissible Under Bankruptcy Code Section 363(b)(1)(A).*

51. Where the proposed sale includes personally identifiable information as defined in Bankruptcy Code section 101(41A) ("PII"), Bankruptcy Code section 363(b)(1) requires the sale proponent to show that the sale is consistent with a policy "in effect on the date of the commencement of the case" respecting the transfer of PII.

52. From May 14, 2019 to the Petition Date, the Debtors communicated through their web site a privacy policy that provided, "We may share Personal Information in the following ways: ... In connection with, or during negotiations of, an acquisition, merger, asset sale, or other similar business transfer that involves substantially all of our assets or functions where Personal Information is transferred or shared as part of the business assets (provided that Pareteum will continue to take measures to protect the confidentiality of Personal Information and give affected users notice before transferring any personal information to a new entity)." This was the policy in effect on the Petition Date, and can be accessed at <https://www.pareteum.com/privacy-policy/#:~:text=Pareteum%20does%20not%20share%20your,used%20to%20identify%20an%20individual.>

53. The sale of PII to the Successful Bidder is consistent with the Debtors' policy in effect on the Petition Date because the disclosure of PII to the Successful Bidder will be "in connection with an asset sale...that involves substantially all of our assets." Additionally, the Stalking Horse Bidders have agreed in the Stalking Horse Bid to abide by the Debtors' policies regarding PII, so the sale will be consistent with the Debtors' policy in effect on the Petition Date respecting PII. Under the plain text of Bankruptcy Code section 363(b)(1), no consumer privacy ombudsman need be appointed in this case. *See, e.g., In re Lucky Brand Dungarees, LLC*, 2020 WL 4698654 (Bankr. D. Del. Aug. 12, 2020) ("The sale of the Acquired Assets is consistent with the Debtors' policy concerning the transfer of personally identifiable information and the Debtors have, to the extent necessary, satisfied section 363(b)(1) of the Bankruptcy Code. Accordingly, appointment of a consumer ombudsman pursuant to section 363(b)(1) or section 332 of the Bankruptcy Code is not required with respect to the relief requested in the Motion.").

54. Based on the foregoing, the Debtors have demonstrated that the proposed Sale Transaction is a sound exercise of the Debtors' business judgment and should be approved.

D. Sale Free and Clear of Liens, Claims, Encumbrances, and Interests

55. In the interest of attracting the best offers, the Assets should be sold free and clear of any and all liens, claims, interests, and other encumbrances, in accordance with section 363(f) of the Bankruptcy Code, with any such liens, claims, interests, and encumbrances to attach to the proceeds of the applicable sale. Section 363(f) of the Bankruptcy Code authorizes a debtor to sell assets free and clear of liens, claims, interests, and encumbrances if any one of the following conditions is satisfied:

- (a) applicable non-bankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;

- (c) such interest is a lien and the price at which property is to be sold is greater than the value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see also In re Kellstrom Indus., Inc.*, 282 B.R. 787, 793 (Bankr. D. Del. 2002) (“Section 363(f) is written in the disjunctive, not the conjunctive, and if any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.”); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (E.D. Pa. 1988) (same).

56. With respect to any party asserting a lien, claim, encumbrance or other interest against the Stores, the Debtors will be able to satisfy one or more of the conditions set forth in Bankruptcy Code section 363(f).

E. Protections as Good Faith Purchaser

57. Section 363(m) of the Bankruptcy Code protects a good faith purchaser’s interest in property purchased from a debtor notwithstanding that the sale conducted under section 363(b) is later reversed or modified on appeal. Specifically, section 363(m) states the following:

The reversal or modification on appeal of an authorization under [section 363(b)] ... does not affect the validity of a sale ... to an entity that purchased ... such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale ... were stayed pending appeal.

11 U.S.C. § 363(m). Section 363(m) fosters the “policy of not only affording finality to the judgment of the [B]ankruptcy [C]ourt, but particularly to give finality to those orders and judgments upon which third parties rely.” *Reloeb Co. v. LTV Corp (In re Chateaugay Corp.*, No. 92 Civ. 7054 (PKL), 1993 U.S. Dist. Lexis 6130, at *9 (S.D.N.Y. May 10, 1993) (quoting *In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 3d Cir. 1986); *see also Allstate Ins. Co. v. Hughes*, 174 B.R. 884, 888 (S.D.N.Y. 1994) (“Section 363(m) . . . provides that good faith transfers of

property will not be affected by the reversal or modification on appeal of an unstayed order, whether or not the transferee knew of the pendency of the appeal”). *In re Stein & Day, Inc.*, 113 B.R. 157, 162 (Bankr. S.D.N.Y. 1990) (“pursuant to 11 U.S.C. § 363(m), good faith purchasers are protected from the reversal of a sale on appeal unless there is a stay pending appeal”).

58. The Debtors and the Stalking Horse Bidders have entered into the Stalking Horse Agreement without collusion, in good faith, and through extensive arms-length negotiations. To that end, the Stalking Horse Bidders and the Debtors have engaged separate counsel and other professional advisors to represent their respective interests in the negotiation of the Stalking Horse Agreement and in the sale process generally. To the best of the Debtors’ knowledge, information, and belief, no party has engaged in any conduct that would cause or permit the Stalking Horse Agreement to be set aside under section 363(m) of the Bankruptcy Code.

59. Further, and as set forth above, the Bidding Procedures are designed to produce a fair and transparent competitive bidding process. Any asset purchase agreement with a Successful Bidder executed by the Debtors will be negotiated at arms-length and in good faith. Accordingly, the Debtors seek a finding that any Successful Bidder (including the Stalking Horse Bidders) is a good faith purchaser and is entitled to the full protections afforded by section 363(m) of the Bankruptcy Code.

F. Assumption and Assignment of Assumed Contracts Should Be Approved

60. Section 365(a) of the Bankruptcy Code provides that a debtor in possession “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). Upon finding that a debtor has exercised its sound business judgment in determining to assume an executory contract or unexpired lease, courts will approve the assumption under section 365(a) of the Bankruptcy Code. *See Nostas Assocs. v. Costich (In re*

Klein Sleep Prods., Inc.), 78 F.3d 18, 25 (2d Cir. 1996); *Orion Pictures Corp. v. Showtime Networks, Inc. (In re Orion Pictures Corp.)*, 4 F.3d 1095, 1099 (2d Cir. 1993).

61. The assumption of the Assumed Contracts in connection with a Sale Transaction is an exercise of the Debtors' sound business judgment because the Assumed Contracts are necessary to operate the Debtors' business and, as such, are essential to obtaining the highest or otherwise best offer for the Debtors' business. The assumption and assignment of additional Proposed Assumed Contracts may be required by Successful Bidders. Moreover, the Assumed Contracts will be assumed and assigned in accordance with the Assumption and Assignment Procedures approved by the Court pursuant to the Bidding Procedures Order, which will be reviewed by the Debtors' key stakeholders.

62. The consummation of a Sale Transaction, which will involve the assignment of the Assumed Contracts, will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assumed Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. As set forth above, the Debtors propose to file with the Court and serve on each Contract Counterparty, the Assumption and Assignment indicating the Debtors' calculation of the Cure Cost for each such Contract. The Contract Counterparties will have the opportunity to file objections to the proposed assumption and assignment of the Assumed Contracts to the Successful Bidder, including the proposed Cure Costs, in advance of the applicable Sale Hearing. The Debtors' assumption and assignment of Assumed Contracts and other Proposed Assumed Contracts will be contingent upon payment or reserve of Cure Costs and effective only upon the closing of an applicable Sale Transaction.

63. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease of nonresidential real property if “adequate assurance of future performance by the assignee of such contract or lease is provided.” 11 U.S.C. § 365(f)(2)(B). The meaning of “adequate assurance of future performance” depends on the facts and circumstances of each case, but should be given “practical, pragmatic construction.” *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (citation omitted); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) (“[a]lthough no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance.”). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605 06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease has financial resources and expressed willingness to devote sufficient funding to business to give it strong likelihood of succeeding).

64. As set forth in the Bidding Procedures, for a bid to qualify as a “Qualified Bid,” a Potential Bidder (other than the Stalking Horse Bidders) must include with its bid Adequate Assurance Information regarding its ability (and the ability of its designated assignee, if applicable) to perform under the applicable Proposed Assumed Contracts. The Debtors will provide Adequate Assurance Information to all Counterparties to any Proposed Assumed Contracts, or with respect to Assumed Contracts designated to assumption and assignment to the Stalking Horse Bidders, direct the non-Debtor Counterparty to relevant publicly available financial

information regarding the Stalking Horse Bidders for purposes of demonstrating adequate assurance of future performance by the Stalking Horse Bidders, and, upon reasonable request, the Debtors will furnish additional Adequate Assurance Information to Counterparties. Counterparties will have an opportunity to file with the Court and serve on the Objection Notice Parties Adequate Assurance Objections in advance of the applicable Sale Hearing. Based on the foregoing, the Debtors' assumption and assignment of the Assumed Contracts satisfy the requirements under section 365 of the Bankruptcy Code and should be approved.

65. In addition, to facilitate the assumption and assignment of the Assumed Contracts, the Debtors further request that the Court find that all anti-assignment provisions in the Assumed Contracts, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such contract or lease, are unenforceable under section 365(f) of the Bankruptcy Code.⁸

G. Request for Relief Pursuant to Bankruptcy Rules 6004(h) and 6006(d)

66. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property...is stayed until the expiration of fourteen (14) days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). Bankruptcy Rule 6006(d) further provides that an “order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of fourteen (14) days after the entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6006(d).

⁸ Section 365(f)(1) provides, in part, that “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease[.]” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that, “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

67. In light of the current circumstances and financial condition of the Debtors, the Debtors believe that in order to maximize value and preserve jobs, and maintain service for their customers who depend on the Debtors' services, the sale of the Purchased Assets pursuant to the Sale Transaction must be consummated as soon as practicable. Accordingly, the Debtors request that the Bidding Procedures Order and the Sale Order be effective immediately upon entry of each such order and that the 14-day stay periods under Bankruptcy Rules 6004(h) and 6006(d) be waived.

Notice

68. Notice of this Motion has been provided to (i) the Office of the United States Trustee for Region 2, 201 Varick Street, Suite 1006, New York, NY 10014 (Attn: Susan Arbeit); (ii) the holders of the 40 largest unsecured claims against the Debtors (on a consolidated basis); (iii) counsel to the DIP Lender, DLA Piper, LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10036 (Attn: Jamila Justine Willis, Nadia Saleem, and Shmuel Klahr); (iv) agents for all pre-petition secured lenders (to the extent different from the DIP Lenders); (v) the United States Attorney's Office for the Southern District of New York; and (vi) all entities known or reasonably believed to have asserted any lien, claim, encumbrance, or other interest in the Purchased Assets. The Debtors respectfully submit that no further notice is required.

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

WHEREFORE the Debtors respectfully request entry of a final order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: May 15, 2022
New York, New York

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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: :
PARETEUM CORPORATION, et al.,	: Chapter 11
	: Case No. 22-[_____] (___)
	: :
Debtors.¹	: (Jointly Administered)
-----X	

**[PROPOSED] ORDER (I) APPROVING (A) BIDDING PROCEDURES FOR SALES OF
DEBTORS' ASSETS, (B) STALKING HORSE BID PROTECTIONS, (C) FORM
AND MANNER OF NOTICE OF SALES, AUCTIONS, AND SALE HEARINGS,
AND (D) ASSUMPTION AND ASSIGNMENT PROCEDURES; (II) SCHEDULING
AUCTIONS AND SALE HEARINGS; AND (III) GRANTING RELATED RELIEF**

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors' corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

Upon the motion (the “**Motion**”)² of Pareteum Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), pursuant to sections 105, 363, 365, 503, and 507 of title 11 of the United States Code (the “**Bankruptcy Code**”); Bankruptcy Rules 2002, 6004, 6006, and 9014, and Local Bankruptcy Rules 6004-1, 6005-1 and 6006-1, for entry of orders (i)(a) approving the bidding procedures attached hereto as **Exhibit 1** (the “**Bidding Procedures**”), in connection with the sale of substantially all of the Debtors’ assets (the “**Assets**”), (b) approving the Stalking Horse Bid Protections proposed to be granted to the Stalking Horse Bidders (as hereafter defined) in accordance with the terms and conditions set forth in the Bidding Procedures and the Stalking Horse Agreement (as hereafter defined), (c) scheduling an auction for the Assets (the “**Auction**”) and a hearing for the approval of proposed Sale Transaction (as defined below) (a “**Sale Hearing**”), (d) approving form and manner of (A) notice of the Auction, sale of the Assets (the “**Sale Transaction**”), and Sale Hearing substantially in the form annexed hereto as **Exhibit 2** (the “**Sale Notice**”) and (B) notice to each non-Debtor counterparty (each, a “**Counterparty**”) to an executory contract or unexpired non-residential real property lease of the Debtors (each, a “**Proposed Assumed Contract**”) that the Debtors propose to assume and assign to a particular Successful Bidder (including the Stalking Horse Bidders) setting forth the Debtors’ calculation of the amount necessary to cure any monetary defaults under such Proposed Assumed Contract (the “**Cure Costs**”) and the applicable proposed assignee, substantially in the form attached hereto as **Exhibit 3** (the “**Assumption and Assignment Notice**”), (e) approving procedures for the assumption and assignment of Contracts and Leases as set forth herein (the “**Assumption and**

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Motion.

Assignment Procedures”), including the procedures for determining Cure Costs; (f) granting related relief; and (ii)(a) authorizing the sale of the Assets (the “**Purchased Assets**”) in the Stalking Horse Package (as defined herein) free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, (b) authorizing the assumption and assignment of the Assumed Contracts (as defined in the Stalking Horse Agreement); and (c) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been adequate and appropriate under the circumstances, and it appearing that no other notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion (the “**Hearing**”); and upon review of the Tobias Declaration, filed contemporaneously with the Motion, and the record of the Hearing; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. This Court has jurisdiction to hear and determine the Motion and to grant the relief requested herein with respect to the Bidding and Auction Process (as defined in the

³ 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. To the extent that

Bidding Procedures) pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The statutory and legal predicates for the relief requested in the Motion are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, and 9014 and Local Rules 6004-1, 6006-1 and this District's Amended Guidelines for the Conduct of Asset Sales.

C. Good and sufficient notice of the Motion, the Bidding and Auction Process, and the relief sought in the Motion has been given under the circumstances, and no other or further notice is required except as set forth herein and in the Bidding Procedures. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

D. The Debtors and their advisors engaged in a robust and extensive marketing and sale process before and after the Commencement Date, over a period of more than a year, to solicit and develop the highest or best offer for substantially all of their business assets. In April 2021, the Debtors initiated a comprehensive marketing process to sell the Debtors' Assets as going concerns or to consummate another strategic, value-maximizing transaction that would resolve the Debtors' operational and financial challenges. To that end, the Debtors retained FTI Capital Advisors, LLC ("FTI") to serve as its investment banker and to design and execute an "M&A" process for its different business lines. In total, FTI contacted 210 entities, including 112 potential strategic buyers and 98 financial buyers. Based on expressions of interests, FTI provided parties with teaser information regarding the Debtors' businesses. Of those parties, 56 entities, including

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.

the Stalking Horse Bidder, expressed serious interest in consummating a transaction with the Debtors and executed non-disclosure agreements (“NDAs”). Those who executed NDAs were granted access to a data room containing additional confidential information regarding the Assets. FTI assisted in the due diligence process for multiple interested parties and sent out process letters to 8 parties who remained interested in Pareteum’s assets as of December 2021. As a result of the marketing work of the Debtors and FTI, 10 parties submitted indications of interest or term sheets

E. The Bidding Procedures are fair, reasonable, and appropriate, and are designed to maximize the value of the Assets.

F. The Assumption and Assignment Procedures are fair, reasonable, and appropriate, and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Stalking Horse Bid as reflected in the Stalking Horse Agreement represents the highest or best offer the Debtors have received to purchase the Purchased Assets included in the Stalking Horse Bid (the “**Stalking Horse Package**”).

H. Circles MVNE Pte. Ltd. (“**Circles**”) and Channel Ventures Group, LLC (“**CVG**,” and collectively with Circles, the “**Stalking Horse Bidders**”) have agreed to submit a joint bid (the “**Stalking Horse Bid**”) pursuant to that certain Asset Purchase Agreement, dated as of May 15 2022, by and between certain of the Debtors, as Sellers, and the Stalking Horse Bidders, as Buyers, substantially in the form attached to the Motion as **Exhibit C** (as may be amended, supplemented, or otherwise modified by the parties thereto, the “**Stalking Horse Agreement**”), and the Stalking Horse Bid shall be subject to higher or better offers in accordance with the Bidding Procedures.

I. Pursuit of the Stalking Horse Bidders as a “stalking-horse” and the Stalking Horse Agreement as a “stalking-horse” sale agreement is in the best interests of the Debtors and the Debtors’ estates and creditors, and it reflects a sound exercise of the Debtors’ business judgment. The Stalking Horse Agreement provides the Debtors with the opportunity to sell the Purchased Assets to preserve and realize their going concern value. The Stalking Horse Agreement will enable the Debtors to continue their operations, preserve jobs, minimize disruption to the Debtors’ business and their customers, and secure a fair and adequate baseline price for the Purchased Assets at the Auctions, if any, for the Stalking Horse Package and, accordingly, will provide a clear benefit to the Debtors’ estates, their creditors, and all other parties in interest.

J. The Stalking Horse Bid Protections, including, but not limited to, the Break Up Fee and the Expense Reimbursement, as defined in the Stalking Horse Agreement (collectively, the “**Termination Payment**”), (i) have been negotiated by Circles, as stalking horse bidder, and the Debtors and their respective advisors at arms-length and in good faith and (ii) are necessary to ensure that the Stalking Horse Bidders will continue to pursue the Stalking Horse Agreement and the Sale Transaction contemplated thereby. The Termination Payment, to the extent payable under the Stalking Horse Agreement, (a)(x) is an actual and necessary cost and expense of preserving the Debtors’ estates within the meaning of section 503(b) of the Bankruptcy Code, (y) shall be treated as an allowed administrative expense claim against the Debtors’ estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code, and (z) shall be included in the Carve-Out (as defined in the DIP Order); (b) is commensurate to the real and material benefits conferred upon the Debtors’ estates by the Stalking Horse Bidders; and (c) is fair, reasonable, and appropriate, including in light of the size and nature of the Sale Transaction, the necessity to announce a sale transaction for the Purchased Assets, and the efforts that have been and will be expended by the

Stalking Horse Bidders. The Stalking Horse Bid Protections are a material inducement for, and condition of, the Stalking Horse Bidders' execution of the Stalking Horse Agreement. Unless it is assured that the Bid Protections will be available, the Stalking Horse Bidders are unwilling to remain obligated to consummate the Sale Transaction or otherwise be bound under the Stalking Horse Agreement (including the obligations to maintain its committed offer while such offer is subject to higher or better offers as contemplated by the Bidding Procedures).

K. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the Assumption and Assignment Procedures, (iii) the Stalking Horse Bid Protections, and (iv) the form and manner of notice of the Auction and the Sale Hearing for the Sale Transaction.

L. The Stalking Horse Bidders are not "insiders" or "affiliates" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Stalking Horse Bidders and the Debtors. The Stalking Horse Bidders and their counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidders' negotiation of the Stalking Horse Bid Protections and the Bidding Procedures and entry into the Stalking Horse Agreement.

M. The Assumption and Assignment Procedures, including notice of proposed Cure Costs, are reasonable and appropriate and consistent with section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures have been tailored to provide adequate opportunity for all non-Debtor Counterparties to the Assumed Contracts and other Proposed Assumed Contracts to raise any objections to the proposed assumption and assignment or to the Cure Costs.

N. The Sale Notice is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Bidding Procedures, the Assumption and Assignment Procedures, the Auction, the Sale Hearing, and the Sale Transaction (including the sale of the Purchased Assets as set forth under the Stalking Horse Agreement) free and clear of any liens, claims, encumbrances, or interests pursuant to section 363(f) of the Bankruptcy Code (with such liens, claims, encumbrances, or interests attaching to the proceeds of any such sale), and any and all objection deadlines related thereto, and no other or further notice shall be required for the Motion, the Sale Transaction, or the assumption and assignment of the Assumed Contracts except as expressly required herein.

O. Nothing contained herein shall prejudice or impair the right to Credit Bid, as set forth in the Bidding Procedures (and subject to the terms of the Prepetition Credit Agreement (and any other “Loan Documents” (as such term is defined therein)), as such term is defined in the Bidding Procedures), of Circles, in any capacity under its Security Agreement dated as of June 8, 2020, its Securities Purchase Agreement dated as of April 25, 2022, or its Senior Secured, Priming and Superpriority Debtor-in-Possession Credit Agreement dated May 15, 2022, or (ii) CVG, in its capacity as administrative agent under that certain Security Agreement, dated as of February 22, 2021, on such assets that are subject to their respective liens in their respective priorities.

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is granted to the extent set forth herein.
2. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, hereby are overruled and denied on the merits with prejudice.

3. The Bidding Procedures are hereby approved in their entirety, are incorporated herein by reference, and shall govern the bids and proceedings related to the sale of the Assets and the Auction. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

Stalking Horse Bid Protections

4. The Debtors are authorized to enter into the Stalking Horse Agreement, and the Stalking Horse Bid shall be subject to higher or better Qualified Bids, in accordance with the terms and procedures of the Bidding Procedures.

5. The Stalking Horse Bid Protections are approved in their entirety, including, without limitation, the Termination Payment payable in accordance with, and subject to the terms of, the Stalking Horse Agreement and the Bidding Procedures. In accordance with the Stalking Horse Agreement, the Stalking Horse Bidders shall be collectively granted the right to a Termination Payment comprised of (a) a break-up fee in an aggregate amount equal to one and nine-tenths percent (1.9%) of the Purchase Price (as such term is defined in the Stalking Horse Agreement), plus (b) the Expense Reimbursement in an amount not to exceed one million five hundred thousand dollars (\$1,500,000.00). Except as expressly provided for herein, no other termination payments are authorized or permitted under this Order.

6. The Debtors are authorized to pay the Termination Payment, to the extent payable under the Stalking Horse Agreement, without further order of the Court.

7. The Termination Payment, to the extent payable under the Stalking Horse Agreement, shall (a) constitute an allowed administrative expense claim against the Debtors'

estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code, and (b) be included in the Carve-Out (as defined in the DIP Order). Subject to the foregoing, the Termination Payment shall be (i) paid in cash from the proceeds of any approved sale or alternative transaction, or (ii) credited against the purchase price if, after an Auction, the Stalking Horse Bid, as enhanced at the Auction, is the Successful Bid and the sale contemplated by the Stalking Horse Agreement (as enhanced at the Auction) is consummated.

8. Absent further order of the Court, no person or entity (other than the Stalking Horse Bidders) shall be entitled to any expense reimbursement or break-up, “topping,” termination, or other similar fee or payment by the Debtors for submitting a bid for the Assets, or in any way participating in an Auction or the Debtors’ sale process.

Bidding Procedures and Auction

9. The Bidding Procedures, attached hereto as **Exhibit 1**, are incorporated herein and approved, and shall apply with respect to any bids for, and the auction and sale of all of the Debtors’ assets, including the Purchased Assets in the Stalking Horse Package. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

10. The deadline for submitting Qualified Bids (the “**Global Bid Deadline**”) is **June 13, 2022 at 4:00 p.m. (Eastern Time)**; provided that the Debtors shall have the right, with the consent of counsel to the DIP Lender, Circles, CVG, and counsel to any official committee appointed by the Court (the “**Consultation Parties**”), to extend the Global Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain parties. The Debtors shall promptly provide copies of all bids to each of the Consultation Parties, but in no event later than the next calendar day after receipt of such bid. Any party that does not submit a Qualified Bid by the Global Bid Deadline in accordance with the Bidding Procedures will not be allowed to (a) submit any offer after the Global Bid Deadline, or (b) participate in the Auction.

11. The Stalking Horse Bidders shall be considered Qualified Bidders, and the Stalking Horse Bid shall be considered a Qualified Bid for all purposes and requirements pursuant to the Bidding Procedures. If the Stalking Horse Bid, as reflected in the Stalking Horse Agreement, is the only Qualified Bid in respect of the Stalking Horse Package that is received by the Debtors by the Global Bid Deadline, the Debtors shall not conduct an Auction for the Stalking Horse Package, and the Stalking Horse Bidders will be the Successful Bidder for the Stalking Horse Package.

12. If, in addition to the Stalking Horse Bid, the Debtors receive at least one Qualified Bid in respect of the Stalking Horse Package by the Global Bid Deadline, the Debtors shall conduct an Auction of the Assets in accordance with the Bidding Procedures.

13. The Auction, if any, will take place virtually via videoconference and live at the offices of King & Spalding LLP, 1185 Avenue of the Americas, 34th Floor, New York, New York 10036 on **June 15, 2022 at 8:00 a.m. (Eastern Time)**, or at such other time and location as the Debtors, after consulting with the Consultation Parties and providing notice to the Sale Notice Parties, may determine in their reasonable business judgment.

14. All proceedings of the Auction shall be conducted openly, and all creditors and other parties in interest shall be permitted to attend; provided that the Debtors may, in their reasonable business judgment, and in consultation with the Consultation Parties, establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany Qualified Bidders or other parties in interest at the Auctions. The proceedings of the Auctions shall be transcribed.

15. Except for the Stalking Horse Bidders, each Qualified Bidder must provide a bid conforming to the requirements of the Bidding Procedures, including (i) a 10 percent deposit,

(ii) financial and other information that allows the Debtors, after consultation with the Consultation Parties, to make a reasonable determination as to the bidder's financial and other capabilities to consummate the Sale Transaction, including, without limitation (and in each case after consultation with the Consulting Parties), such financial and other information setting forth adequate assurance of future performance under section 365(f)(2)(B) and the bidder's willingness to perform under any Contracts or Leases that are assumed and assigned to the bidder (the "**Adequate Assurance Information**"); and (iii) such other requirements of the Bidding Procedures.

16. Each Qualified Bidder participating in an Auction shall confirm in writing that (a) it has not engaged in any collusion with respect to the submission of any bid, the bidding, or the Auction, and (b) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as a Successful Bidder.

17. Subject to the rights of the Stalking Horse Bidders under the Stalking Horse Agreement, the Bidding Procedures (including the consultation rights of the Consultation Parties described therein) and this Order, the Debtors shall have the right, as they may reasonably determine to be in the best interests of their estates, to carry out the Bidding Procedures (in consultation with the Consultation Parties), including, without limitation, to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is a Baseline Bid (as such terms are defined in the Bidding Procedures); (d) determine which bids are the Successful Bid and Back-Up Bid (as such terms are defined in the Bidding Procedures), each as it relates to the Auction; (e) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtors and their

estates; (f) adjourn or cancel the Auction and/or the Sale Hearings in open court without further notice or as provided in the Bidding Procedures; (g) modify the Bidding Procedures consistent with their fiduciary duties and bankruptcy law; and (h) withdraw the Motion at any time with or without prejudice.

18. The Debtors shall have the right, in their reasonable business judgment, after consulting with the Consultation Parties, in a manner consistent with their fiduciary duties and applicable law, to modify the Bidding Procedures, including (a) waive terms and conditions with respect to any Prospective Bidder; (b) extend the deadlines set forth in the Bidding Procedures; (c) announce at the Auction modified or additional procedures for conducting the Auction; (d) provide reasonable accommodations to the Stalking Horse Bidders with respect to such terms, conditions, and deadlines of the Bidding and Auction process to promote further bids by such bidders on any Assets (including extending deadlines as may be required for the Stalking Horse Bidder to comply with any additional filing and review procedures with the Federal Trade Commission in connection with any previous filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976), in each case, to the extent not materially inconsistent with the Bidding Procedures and this Order. Except as provided in the Stalking Horse Agreement, nothing in this Order or the Bidding Procedures shall obligate the Debtors to consummate or pursue any transaction with respect to any Asset with a Qualified Bidder.

Sale Hearings and Sale Objection Deadlines

19. The Sale Hearing shall be held before the Court on _____, **2022**
at [_____] (**Eastern Time**).

20. Notwithstanding the foregoing paragraph, the Debtors may (after consultation with the Consultation Parties and the Successful Bidders) seek an adjournment of the

Sale Hearings as the Debtors deem appropriate in the exercise of their reasonable business judgment.

21. Objections to a proposed Sale Transaction, including any objection to the sale of any Assets free and clear of liens, claims, encumbrances, and interests pursuant to section 363(f) of the Bankruptcy Code and entry of a Sale Order (each, a “**Sale Objection**”) shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; and (d) be filed with the Court and served via email on (i) counsel to the Debtors, (a) King & Spalding LLP, 1180 Peachtree Street, 35th Floor, Atlanta, Georgia 30309 (Attn: Thaddeus D. Wilson, thadwilson@kslaw.com) and (b) Togut, Segal & Segal LLP, One Penn Plaza, Suite 3335, New York, NY 10119 (Attn: Frank A. Oswald, frankoswald@teamtogut.com); (ii) counsel to any statutory committee of unsecured creditors; (iii) counsel to Circles, DLA Piper, LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10036 (Attn: Jamila Justine Willis, Jamila.willis@dlapiper.com), (v) counsel to CVG, Becker, Glynn, Muffly, Chassin & Hosinski LLP, 299 Park Avenue, 16th Floor, New York, New York 10171 (Attn: Alec Ostrow, aostrow@beckerglynn.com); and (vi) counsel to the United States Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Susan Arbeit) (collectively, the “**Objection Notice Parties**”).

22. The deadline to file and serve any objection to a sale to the Stalking Horse Bidders is **June 14, 2022 at 4:00 p.m. (Eastern Time)**. The deadline to file and serve any objection to the sale of the Assets, if the Stalking Horse Bidders are not the Successful Bidder at the Auction, is **June 17, 2022 at 4:00 p.m. (Eastern Time)**. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing.

23. Any party who fails to file with the Court and serve on the Objection Notice Parties a Sale Objection by the applicable deadline shall be forever barred from asserting, at the applicable Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the Sale Transactions contemplated by the asset purchase agreement between the Debtors and the applicable Successful Bidder (including the Stalking Horse Bidders), including the transfer of the Assets in the Stalking Horse Package (as set forth under the Stalking Horse Agreement subject to the untimely Sale Objection) to the Stalking Horse Bidders or other Successful Bidder(s), free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code.

Noticing Procedures

24. The Sale Notice, substantially in the form annexed hereto as **Exhibit 2**, is approved, and no other or further notice of the sale of the Assets, the Auction, the Sale Hearing, or the deadlines for Sale Objections shall be required if the Debtors serve and publish such notice in the manner provided in the Bidding Procedures and this Order. The Sale Notice contains the type of information required under Bankruptcy Rule 2002 and Local Rule 2002-1, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules.

25. Within three business days after entry of this Order, the Debtors shall file with the Court, serve on the Sale Notice Parties, and cause to be published on the KCC Website the Sale Notice, which shall set forth (a) a description of the Assets for sale; (b) the date, time, and place of (i) the Auction and (ii) the Sale Hearing; (c) the deadlines for Sale Objections; and (d) the procedures for filing Sale Objections.

26. Within five business days after entry of this Order, the Debtors shall cause the contents of the Sale Notice to be published once in the national edition of *USA Today* and once in the *New York Times*.

27. Within one calendar day after the conclusion of an Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties (including each Counterparty to a Proposed Assumed Contract (as defined below) in a Successful Bid and Back-Up Bid), and cause to be published on the KCC Website, a notice containing the results of the Auction (the “**Notice of Auction Results**”), which shall (a) identify the Successful Bidder(s) and Back-Up Bidder(s); (b) list all Proposed Assumed Contracts in the Successful Bid(s) and Back-Up Bid(s), if known; (c) identify any known proposed assignees of Proposed Assumed Contracts (if different from the applicable Successful Bidder); and (d) set forth the deadlines and procedures for filing Sale Objections in response to the Notice of Auction Results.

Assumption and Assignment Procedures

28. The form of Assumption and Assignment Notice is reasonable, fair, and appropriate, and contains the type of information required under Bankruptcy Rule 2002, Local Rule 2002-1, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and no other or further notice to each Counterparty to all known Contracts and Leases of the Debtors’ proposed Cure Costs and, with respect to the Contracts proposed to be assumed and assigned under the Stalking Horse Bid or to any other Successful Bidder, the proposed assumption and assignment of Contracts and Leases (all such Contracts and Leases, collectively, the “**Proposed Assumed Contracts**”), shall be required if the Debtors file and serve such notice (and the Notice of Auction Results) in accordance with the Assumption and Assignment Procedures and this Order.

29. The following Assumption and Assignment Procedures are reasonable and appropriate under the circumstances, fair to all non-Debtor counterparties, comply in all respects with the Bankruptcy Code, and are approved.

30. **Initial Assumed Contracts.** As soon as practicable, but not later than three business days after the entry of this Order, the Debtors shall file with the Court, serve on each applicable Contract Counterparty, and cause to be published on the KCC Website, an initial Assumption and Assignment Notice (the “**Initial Assumption and Assignment Notice**”) which shall (a) identify the Assumed Contracts initially designated by the Stalking Horse Bidder for assumption and assignment to the Stalking Horse Bidder (the “**Initial Assumed Contracts**”); (b) list the Debtors’ good faith calculation of the Cure Costs with respect to each Initial Assumed Contract; (c) expressly state that assumption or assignment of any Transferred Contract is not guaranteed and is subject to Court approval; (d) prominently display the deadline to file a Cure Objection and an Adequate Assurance Objection (each as hereinafter defined); and (e) prominently display the dates, times, and location of the Sale Hearings.

31. **Supplemental Assumed Contracts.** Pursuant to the terms of the Stalking Horse Agreement, the Stalking Horse Bidders shall have the right, at any time prior to 14 days after the closing of the Sale Transaction, to designate additional Assumed Contracts or Leases for proposed assumption and assignment to the Stalking Horse Bidders or their designees (each, a “**Supplemental Contract**”) or to remove Contracts or Leases from the list of Assumed Contracts from proposed assumption and assignment (each, a “**Removed Contract**”). The Debtors shall use commercially reasonable efforts to, as soon as reasonably practicable after any Buyer’s designation of any Supplemental Contracts or any Removed Contracts, (a) file with the Court, serve by overnight delivery on all applicable Counterparties, and cause to be published on the KCC

Website, a notice of proposed assumption and assignment of the Supplemental Contract(s) (a “**Supplemental Assumption and Assignment Notice**”) and/or removal of the Removed Contract(s), which shall (i) expressly state that assumption or assignment of the Supplemental Contract(s) is not guaranteed and subject to Court approval and removal of the Removed Contract(s) does not constitute a rejection by the Debtors of such Contract, and (ii) prominently display the deadline to file an Adequate Assurance Objection with respect to a Supplemental Contract; and (b) provide or cause to be provided to Counterparties to any Supplemental Contract(s) the Stalking Horse Bidders’ Adequate Assurance Information (as hereinafter defined). In such case, no assumption and assignment of a Supplemental Contract shall be effective until the earlier of (i) ten business days from the date the Supplemental Assumption and Assignment Notice is served on the applicable Counterparty, if no objection is filed (the “**Supplemental Contract Objection Deadline**”), or (ii) when a timely filed objection is resolved by agreement or Court order.

32. Assumed Contracts, whether Initial Contracts, Supplemental Contracts, or contracts assumed pursuant to other notice, shall not include employment contracts, bonus programs, severance programs, or other benefits governed by Bankruptcy Code section 503(c).

33. **Cure Objection Deadlines.** The following deadlines shall govern objections to proposed Cure Costs:

a. *Assumption and Assignment Notice Served by May 20, 2022.* All objections to any proposed Cure Costs (a “**Cure Objection**”) served on or before May 20, 2022 shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof, including the cure amount the objecting Counterparty believes is required to cure defaults under the relevant Contract or Lease;

(d) include any appropriate documentation in support thereof; and (e) be filed with the Court and served on the Objection Notice Parties by **June 6, 2022 at 4:00 p.m.** (Eastern Time) (the “**First Week Cure Objection Deadline**”).

b. *Assumption and Assignment Notice Served Contemporaneously With Sale Notice.* All Cure Objections to any proposed Cure Costs indicated in or served contemporaneously with the Sale Notice shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof, including the cure amount the objecting Counterparty believes is required to cure defaults under the relevant Contract or Lease; (d) include any appropriate documentation in support thereof; and (e) be filed with the Court and served on the Objection Notice Parties by **June 14, 2022 at 4:00 p.m. Eastern Time** (the “**Sale Notice Cure Objection Deadline**”).

c. *Supplemental Designations.* All Cure Objections to any proposed Cure Costs for any Supplemental Contracts shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof, including the cure amount the objecting Counterparty believes is required to cure defaults under the relevant Contract or Lease; (d) include any appropriate documentation in support thereof; and (e) be filed with the Court and served on the Objection Notice Parties by the Supplemental Contract Objection Deadline.

34. If a timely Cure Objection is filed and served and such objection cannot otherwise be resolved by the parties, such objection shall be heard at the applicable Sale Hearing. A Cure Objection may, at the Debtors’ discretion (after consultation with the Stalking Horse Bidder, or, if an Auction is held, with the Successful Bidder), be adjourned to a subsequent hearing.

35. If, pending resolution of a Cure Objection, the Successful Bidder(s) maintain(s) a cash reserve (a “**Cure Cost Reserve**”) equal to the lesser of (a) the amount the objecting Counterparty has asserted to be required to cure the asserted defaults under the applicable Proposed Assumed Contract; or (b) such other cash reserve amount as may be ordered by the Court, then the Proposed Assumed Contract that was the subject of a Cure Objection shall be deemed provisionally assumed and assigned to the Successful Bidder(s) as of the applicable Closing Date until the objection is resolved by agreement or by order of the Court.

36. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties a timely Cure Objection by the applicable deadline, the Counterparty shall be forever barred from asserting any objection with regard to the cost to cure any defaults under the applicable Contract or Lease. The Cure Costs set forth in each Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the applicable Contract or Lease under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in the Contract or Lease, or any other document, and the Counterparty shall be forever barred from asserting any additional cure or other amounts with respect to such Contract or Lease against the Debtors, the Successful Bidder, or the property of any of them.

37. If the Stalking Horse Bidders are named Successful Bidders at the Auction, the Debtors shall, within one business day after the conclusion of the Auction, or after designation of a contract as a Supplemental Contract, whichever is later, serve upon Counterparties to any Supplemental Contracts added to the Stalking Horse Bid at the Auction Adequate Assurance Information for the Stalking Horse Bidders.

38. The Debtors shall, within one business day after the conclusion of the Auction, provide or cause to be provided to Counterparties to the Proposed Assumed Contracts

included in each Successful Bid Adequate Assurance Information for such Successful Bidder if the Successful Bidder is not the Stalking Horse Bidders.

39. The Debtors shall provide or cause to be provided to applicable Counterparties Adequate Assurance Information on a strictly confidential basis. Counterparties shall not use any Adequate Assurance Information for any purpose other than to (a) evaluate whether adequate assurance requirements under Bankruptcy Code section 365(f)(2) have been satisfied, and (b) to support any Adequate Assurance Objection filed by the Counterparty; provided that any Adequate Assurance Objection that discloses confidential, non-public information included in the Adequate Assurance Information, which shall be expressly identified as non-public and confidential therein, must be filed with the Court with such confidential, non-public information redacted, unless disclosure of such confidential, non-public information is authorized by the Debtors, the Successful Bidder, and any known proposed assignee(s) of the relevant Contract or Lease (if different from the Successful Bidder), or ordered by the Court.

40. Any objection to the assumption and assignment of a Proposed Assumed Contract, including the Assumed Contracts, the subject of which objection is a Successful Bidder's (including the Stalking Horse Bidders as Successful Bidders) and/or its known proposed assignee's (if different from the Successful Bidder) proposed form of adequate assurance of future performance with respect to such Proposed Assumed Contract (an "**Adequate Assurance Objection**"), shall (a) be in writing; (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules; (c) state, with specificity, the legal and factual bases thereof; (d) include any appropriate documentation in support thereof; and (e) be filed with the Court and served on the Objection Notice Parties, including the applicable Successful Bidder and any known proposed assignee of such Proposed Assumed Contract (if different from the Successful Bidder(s)) by the

Supplemental Contract Objection Deadline or the Sale Objection Deadline (if the relevant contract was identified in the Sale Notice or other contemporaneous notice).

41. If a timely Adequate Assurance Objection cannot otherwise be resolved by the parties prior to the commencement of the applicable Sale Hearing, such objection and all issues of adequate assurance of future performance with respect to the applicable Proposed Assumed Contract shall be determined by the Court at the Sale Hearing or at a later hearing on a date to be scheduled by the Debtors.

42. Contracts subject to an Adequate Assurance Objection shall be provisionally assumed and assigned to the Successful Bidder(s) pending resolution of the objection by agreement or by order of the Court.

43. If a Counterparty fails to file with the Court and serve on the Objection Notice Parties, including the applicable Successful Bidder and any known proposed assignee (if different from the Successful Bidder)) of the relevant Proposed Assumed Contract, a timely Adequate Assurance Objection, the Counterparty shall be forever barred from asserting any such objection with regard to the Proposed Assumed Contract. The Successful Bidder and/or its known proposed assignee of the Proposed Assumed Contract or Lease shall be deemed to have provided adequate assurance of future performance with respect to the Proposed Assumed Contract in accordance with Bankruptcy Code section 365(f)(2)(B) notwithstanding anything to the contrary in the contract or lease or any other document, and the Debtors shall be authorized to assume and assign the applicable Proposed Assumed Contract to the applicable Successful Bidder (or its known proposed assignee) without further notice to any Counterparty or any other party in interest, and without need for further order of the Court, with such assumption and assignment being subject to the terms of the applicable Sale Order.

44. The Debtors' assumption and assignment of a Proposed Assumed Contract to a Successful Bidder (or to a designee of the Successful Bidder) is subject to Court approval and consummation of the Sale Transaction with the applicable Successful Bidder. Accordingly, absent the closing of the Sale Transaction, the Proposed Assumed Contract shall not be deemed either assumed or assumed and assigned, or rejected, and shall in all respects be subject to further administration under the Bankruptcy Code.

45. The inclusion of a Contract, Lease, or Cure Costs with respect thereto on an Assumption and Assignment Notice or the Notice of Auction Results shall not constitute or be deemed a determination or admission by the Debtors, the Successful Bidders, or any other party in interest that such Contract or Lease is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code. The Debtors reserve all of their rights, claims, and causes of action with respect to each Contract and Lease listed on any Assumption and Assignment Notice and Notice of Auction Results. The Debtors' inclusion of any Contract or Lease on an Assumption and Assignment Notice or Notice of Auction Results shall not be a guarantee that such Contract or Lease ultimately will be assumed or assumed and assigned. The Initial Assumption and Assignment Notice and any Supplemental Assumption and Assignment Notice or Additional Stalking Horse Sale Notice shall be without prejudice to the Stalking Horse Bidder's rights under the Stalking Horse Agreement to subsequently (a) exclude a Contract from the list of Proposed Assumed Contracts previously included on such Notice, or (b) include additional Proposed Assumed Contracts for assumption and assignment in accordance with the applicable Stalking Horse Agreement.

46. For the avoidance of doubt, nothing herein shall modify, alter, impair, or otherwise affect any of the provisions of the DIP Order or the DIP Documents, or the rights or

remedies of the DIP Agent or the DIP Lender under the DIP Documents (each as defined in the DIP Order) except with respect to the Purchased Assets.

Related Relief

47. All persons and entities (whether or not selected as a Qualified Bidder) that submit a bid for any of the Debtors' Assets during the sale process, including at the Auctions, shall be deemed to have knowingly and voluntarily (a) submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auction, and the Sale Transaction; (b) consented to the entry of a final order by the Court in connection with the Motion or this Order (including any disputes relating to the Bidding and Auction Process, the Auctions, and/or any Sale Transaction) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution; and (c) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

48. The proposed sale contemplates the transfer of personally identifiable information ("PII") through or in connection with the Sale Transactions. The Debtors' privacy policy in effect on the Petition Date does not prohibit the transfer of PII through the proposed Sale Transaction. Any Successful Bidder (including the Stalking Horse Bidders) must comply with the Debtors' privacy policy in effect on the Petition Date. No consumer privacy ombudsman is required to be appointed by Bankruptcy Code section 363(b)(1)(B) and the proposed sale complies with Bankruptcy Code section 363(b)(1).

49. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or any applicable provisions of the Bankruptcy Rules or the Local Rules or otherwise stating the contrary, the terms and conditions of this Order shall be immediately effective

and enforceable upon its entry, and any applicable stay of the effectiveness and enforceability of this Order is hereby waived.

50. Prior to mailing and publishing the Sale Notice, the Debtors may fill in any missing dates and other information, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

51. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Order.

52. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Order.

Dated: _____, 2022
New York, New York

UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

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-and-

*Proposed Counsel to the Debtors and Debtors
 in Possession*

KING & SPALDING LLP

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 Leia Clement Shermohammed (*pro hac vice*
 pending)
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 (404) 572-4600

*Proposed Special Counsel to the Debtors and
 Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: :
PARETEUM CORPORATION, et al.,	: Chapter 11 : Case No. 22-[_____] (____)
Debtors.⁴	: (Jointly Administered)
-----X	

BIDDING PROCEDURES

Overview

On May 15, 2022, Pareteum Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”).

The Debtors are seeking to sell their mobile networking software solutions businesses and all related assets (collectively, the “**Assets**”) for the highest or best offers. On _____, 2022, the

⁴ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

United States Bankruptcy Court for the Southern District of New York entered an order (ECF No. []) (the “**Bidding Procedures Order**”),⁵ which, among other things, authorized the Debtors to solicit bids and approved these procedures (the “**Bidding Procedures**”) for the highest or otherwise best price for all of the Assets, on the terms and conditions set forth herein.

A stalking horse bid has been submitted for substantially all the Debtors’ Assets by Circles MVNE Pte. Ltd. (“**Circles**”) and Channel Ventures Group, LLC (“**CVG**,” and with Circles, the “**Stalking Horse Bidders**” and their bid, the “**Stalking Horse Bid**”). The Stalking Horse Bidders have executed an agreement (the “**Stalking Horse Agreement**”) for the purchase of Assets identified on **Schedule 1** (collectively, the “**Stalking Horse Package**”).

The Stalking Horse Bid is subject to higher or better offers submitted in accordance with the terms and conditions of these Bidding Procedures. These Bidding Procedures describe, among other things: (i) the procedures for interested bidders to submit bids for the Assets, including those in the Stalking Horse Package; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids (each as defined herein); (iii) the negotiation of bids received; (iv) the conduct of an auction (the “**Auction**”); and (v) the ultimate selection of the Successful Bidder(s) (as defined herein) and Court approval thereof (collectively, the “**Bidding and Auction Process**”).

The Debtors reserve the right to extend any of the bidding deadlines or other dates set forth in these Bidding Procedures, after consultation with the Consultation Parties (as defined in the Bidding Procedures Order) without further order of the Bankruptcy Court subject to providing notice as described below.

Summary of Important Dates

Stalking Horse Package Sale Timeline	
June 6, 2022	Objection deadline for assumption and assignment of Proposed Assumed Contracts to Stalking Horse Bidders served by notice on or before May 20, 2022
June 13, 2022 at 4:00 p.m. (Eastern Time)	Global Bid Deadline (deadline to submit bids)
June 14, 2022 at 4:00 p.m. (Eastern Time)	Objection deadline for (i) sale of Stalking Horse Package to Stalking Horse Bidders pursuant to Stalking Horse Agreement and (ii) assumption and assignment of Proposed Assumed Contracts to Stalking Horse Bidders served contemporaneously with Sale Notice

⁵ Capitalized terms used but not otherwise shall have the respective meanings ascribed to such terms in the Bidding Procedures Order or the Motion requesting the relief granted therein, as applicable.

June 15, 2022 at 8:00 a.m. (Eastern Time)	Auction for Debtors’ Assets (if other Qualified Bids received for Stalking Horse Package by the Global Bid Deadline), to be held virtually via videoconference and live at offices of King & Spalding LLP, 1185 Avenue of the Americas, 34 th Floor, New York, NY 10036
June 17, 2022 at 4:00 p.m. (Eastern Time)	Objection deadline for sale of Assets if Auction held (if Successful Bidder is not Stalking Horse Bidder)
June _____, 2022	Hearing to Approve Sale to Successful Bidder
10 days after notice of proposed assumption and assignment	Objection deadline for assumption and assignment of Proposed Assumed Contracts served after date of service of Sale Notice

Marketing Process

Assets to be Sold

All of the Debtors’ Assets are available for sale. A party who is interested in purchasing any of the Assets may submit one or more bids to purchase the Debtors’ Assets.

Access to Diligence

To participate in the diligence process and receive access to due diligence information with respect to any of the Locations, a party must submit to the Debtors or their advisors:

- (A) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtors; and
- (B) sufficient information, as reasonably determined by the Debtors in consultation with the Consultation Parties, to allow the Debtors to reasonably determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal, or other authorizations to close a Sale Transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure reasonably acceptable to the Debtors in their discretion).

An interested party shall be a “**Potential Bidder**” if the Debtors determine in their reasonable discretion, after consultation with the Consultation Parties, that an interested party has satisfied the above requirements. As soon as practicable, the Debtors will deliver to such Potential Bidder (i) an information package containing information and financial data with respect to the Assets in which such Potential Bidder has expressed an interest and (ii) access to the Debtors’ confidential electronic data room concerning the Locations (the “**Data Room**”).

Once an interested party is deemed a Potential Bidder, its identity may be disclosed to the Consultation Parties.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated transaction.

Due Diligence

Until the Global Bid Deadline (as defined below), the Debtors will provide any Potential Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. The Debtors will work to accommodate all reasonable requests for additional information and due diligence access from Prospective Bidders. All due diligence requests shall be directed to Glenn Tobias (glenn.tobias@fticapitaladvisors.com) and Jerome Davis (Jerome.davis@fticonsulting.com) of the Debtors' advisors, FTI Capital Advisors, LLC. ("FTI").

Unless otherwise determined by the Debtors, the availability of additional due diligence to a Potential Bidder will cease if (i) the Potential Bidder does not become a Qualified Bidder or (ii) these Bidding Procedures are terminated.

Neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Locations to any person or entity who is not a Potential Bidder or a Consultation Party or who does not comply with the participation requirements set forth above.

Auction Qualification Procedures

Global Bid Deadline

A Potential Bidder that desires to make a bid on some or all of the Debtors' Assets shall deliver written and electronic copies of its bid in both PDF and MS-WORD format to the Bid Notice Parties (as defined herein) so as to be *received* by the Bid Notice Parties (defined below) no later than **June 13, 2022 at 4:00 p.m. (Eastern Time)** (the "**Global Bid Deadline**"); provided that the Debtors may with the consent of the Consultation Parties, extend the Global Bid Deadline for any reason whatsoever, in their reasonable business judgment, for all or certain Potential Bidders, without further order of the Bankruptcy Court, subject to providing notice to the Stalking Horse Bidder, all Potential Bidders, and the Consultation Parties.

Except as provided above, any party that does not submit a bid by the Global Bid Deadline will not be allowed to (i) submit any offer after the Global Bid Deadline or (ii) participate in any Auction; provided that the foregoing shall not preclude the Debtors from marketing to any person or auctioning, or any parties from bidding on, any Locations not included in an Auction after the Global Bid Deadline.

Communications with Potential Bidders

There must be no communications between and amongst Potential Bidders unless the Debtors have previously authorized such communication in writing. The Debtors reserve the right, in their reasonable business judgment, in consultation with the Consultation Parties, to disqualify any Potential Bidder(s) that have communications between and amongst themselves. For this

purpose, the Stalking Horse Bidders shall be considered a single bidder, and may communicate between themselves.

Form and Content of Qualified Bids

A “**Bid**” as used herein is a signed document from a Potential Bidder received by the Global Bid Deadline that identifies the purchaser by its legal name (including any equity holders or other financial backers, if the Potential Bidder is an entity formed for the purpose of submitting bids or consummating a Sale Transaction), and any other party that will be participating in connection with the bid or the Sale Transaction, and includes, at a minimum, the following information:

- (A) Proposed Purchased Assets and Liabilities; Bid. Each Bid must clearly identify and list the Assets and liabilities that the Potential Bidder seeks to acquire, whether individually or in combination. The Bid must identify the valuations, in U.S. dollars, that the Potential Bidder associates with the Assets and liabilities it bids for, and a description of any significant assumptions on which such valuations are based (including a separate identification of the cash and non-cash components of the valuation).
- (B) Proposed APA. Each Bid must include a copy of an asset purchase agreement reflecting the terms and conditions of the Bid, which agreement must be marked to show any proposed amendments and modifications to Stalking Horse Agreement posted by the Debtors in the Data Room (the “**Proposed APA**”).
- (C) Unconditional Offer; No Financial Contingency. A statement that the Bid is formal, binding, and unconditional, is not subject to any due diligence or financing contingency, and is irrevocable until the first business day following the closing of the proposed Sale Transaction, except as otherwise provided in these Bidding Procedures. To the extent that a Bid is not accompanied by evidence of the Potential Bidder’s capacity to consummate the Sale Transaction set forth in its Bid with cash on hand (or other immediately available cash), each Bid must include committed financing documented to the Debtors’ satisfaction, in consultation with the Consultation Parties, that demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder’s purchase price and other obligations under its Bid.
- (D) Form of Consideration.
 - (i) All-Cash Offer. Unless the Bid includes a Credit Bid (as described below), a statement confirming that the Bid is based on an all-cash offer, including, in the case of a bid for all or any part of the Assets, sufficient cash consideration to pay the Termination Payment (as such term is defined in the Stalking Horse Agreement) and to meet the Minimum Overbid Amount (as defined herein); provided that any bid that includes a Credit Bid shall also include a cash component sufficient to pay, and earmarked exclusively for the payment of, any applicable Termination Payment or Additional

Termination Payment and all obligations secured by senior liens on the applicable Assets and all required Cure Costs.

- (ii) Credit Bidding. In connection with the sale of the Assets, a person or entity seeking to credit bid all or a portion of their valid, perfected, unavoidable and enforceable secured claims for their respective collateral (each such bid, a “**Credit Bid**”) pursuant to section 363(k) of the Bankruptcy Code, must include in its Deposit (as defined herein) cash consideration sufficient to pay in full all claims for which there are valid, perfected, and unavoidable liens on any Assets included in such Bid that are senior in priority to those of the party seeking to Credit Bid (unless such senior lien holder consents to alternative treatment) and complies with any orders of the Bankruptcy Court approving debtor-in-possession financing or use of cash collateral, and includes an amount of cash sufficient to pay the Termination Payment and any required Cure Costs. A Credit Bid by the Stalking Horse shall not require a Deposit (as defined herein).
- (E) Purchase Price; Minimum Bid.
- (i) Stalking Horse Package. Except as otherwise provided herein, each Bid must (a) be a Bid for Assets contained in the Stalking Horse Package, (b) exceed the Purchase Price, the Termination Payment, and any Minimum Overbid Amount set by the Debtors, and (c) propose an alternative transaction that provides substantially similar or better terms than the Stalking Horse Bid (as determined by the Debtors in consultation with the Consultation Parties).
 - (ii) If a Bid includes Assets currently included in the Stalking Horse Package, but does not include all of the Assets included in such Stalking Horse Package, such Bid will not be considered to be a “Qualified Bid” unless the Debtors receive one or more Bids for the remaining Assets of the Stalking Horse Package that, in combination with one or more other Bids for other Purchased Assets in the Stalking Horse Package, constitute a higher or better bid than the applicable Stalking Horse Bid.
- (F) Required Approvals. A statement or evidence (i) that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable (“**HSR Filings**”), and any other Antitrust Law (as defined in the Stalking Horse Agreement), and pay the fees associated with such filings and (ii) of the Potential Bidder’s plan and ability to obtain all governmental and regulatory approvals to operate the business and the Locations included in its Bid from and after closing the applicable Sale Transaction and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with Debtor’s legal counsel to discuss and explain Potential Bidder’s regulatory analysis, strategy, and timeline for

securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Proposed APA.

- (G) No Entitlement to Expense Reimbursement or Other Amounts. Except as provided with respect to the Stalking Horse Bidders, a statement that the Bid does not entitle the Potential Bidder to any breakup fee, termination fee, expense reimbursement, or similar type of payment or reimbursement and a waiver of any substantial contribution administrative expense claim under section 503(b) of the Bankruptcy Code related to bidding for the Assets.
- (H) Adequate Assurance Information. Each Bid must contain such financial and other information that allows the Debtors, after consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the applicable Sale Transaction, including, without limitation, such financial and other information setting forth adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to the Potential Bidder (the "**Adequate Assurance Information**").
- (I) Designation of Contracts and Leases. Each Bid must identify with particularity each and every executory contract and unexpired lease, the assumption and, as applicable, assignment of which is a condition to closing the applicable Sale Transaction.
- (J) Representations and Warranties. Each Bid must include the following representations and warranties:
 - (i) a statement that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the applicable Assets prior to submitting its Bid;
 - (ii) a statement that the Potential Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the assets in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed APA ultimately accepted and executed by the Debtors;
 - (iii) a statement that the Potential Bidder agrees to serve as Back-Up Bidder (as defined herein), if its Bid is selected as the next highest or second best bid after the Successful Bid with respect to the applicable Assets, until the Back-Up Termination Date (as defined herein);

- (iv) a statement that the Potential Bidder has not engaged in any collusion with respect to the submission of its Bid;
- (v) a statement that all proof of financial ability to consummate a Sale Transaction in a timely manner and all information provided to support adequate assurance of future performance is true and correct; and
- (vi) A statement that the Potential Bidder agrees to be bound by the terms of these Bidding Procedures.

A Potential Bidder must also accompany its Bid with:

- (K) a Deposit (as defined herein);
- (L) the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Potential Bidder;
- (M) written evidence of available cash, a commitment for financing (not subject to any conditions), and such other evidence of ability to consummate the transaction contemplated by the applicable Proposed APA, as acceptable in the Debtors' business judgment and following consultation with the Consultation Parties, including a description of each investor and any additional party or parties investing in the transaction included in the applicable bid and such party's financial position;
- (N) a copy of a board resolution or similar document demonstrating the authority of the Potential Bidder to make a binding and irrevocable bid on the terms proposed and to consummate the transaction contemplated by the Proposed APA;
- (O) a covenant to cooperate with the Debtors to provide pertinent factual information regarding the Potential Bidder's operations reasonably required to analyze issues arising with respect to any applicable Antitrust Laws and other applicable regulatory requirements;
- (P) a covenant to adhere to the Debtors' privacy policy in effect on the Petition Date;
- (Q) if the value of the Bid relative to the applicable Stalking Horse Agreement includes additional non-cash components (such as fewer contingencies than are in the Stalking Horse Agreement), a detailed analysis of the value of any additional non-cash component of the Bid and back-up documentation to support such value; and
- (R) if the Bid includes an asset purchase agreement that is not executed, a signed statement that such Bid is irrevocable until the first business day following the closing or closings of the applicable Sale Transaction, and to serve as a Back-Up Bidder.

The submission of a Bid by the Global Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets reflected in such Bid.

Deposit

To qualify as a Qualified Bid (as defined herein), each Bid (other than a Stalking Horse Bid) must be accompanied by a good faith cash deposit in the amount of ten percent (10%) of the proposed purchase price (the “**Deposit**”), to be deposited, prior to the Global Bid Deadline, with an escrow agent selected by the Debtors (the “**Escrow Agent**”) pursuant to the escrow agreement to be provided by the Debtors to the Potential Bidders (the “**Escrow Agreement**”). A Credit Bid by a bidder other than the Stalking Horse Bidders must include in the Deposit sufficient cash to (a) pay the Termination Payment, and (b) 10 percent of the amount of the Stalking Horse Bid’s Credit Bid.

Review of Bids and Designation of Qualified Bidders

The Debtors will deliver, within one business day after receipt thereof, copies of all Bids to the Consultation Parties. A bid received for the Assets that is determined by the Debtors, in consultation with the Consultation Parties, to meet the requirements set forth in the preceding section will be considered a “**Qualified Bid**,” and the Stalking Horse Bidders, and any bidder that submits a Qualified Bid (including the Stalking Horse Bid) will be considered a “**Qualified Bidder**.”

The Debtors may, after consulting with the Consultation Parties, amend or waive the conditions precedent to being a Qualified Bidder at any time, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and may engage in negotiations with Potential Bidders who submitted Bids complying with the preceding section as the Debtors deem appropriate in the exercise of their business judgment, based upon the Debtors’ evaluation of the content of each Bid.

The Debtors will evaluate timely submitted bids, in consultation with the Consultation Parties, and may take into consideration the following non-binding factors:

- (A) the amount of the purchase price and Credit Bid, and/or other non-cash consideration, as applicable, set forth in the Bid;
- (B) the Assets included in or excluded from the Bid;
- (C) the value to be provided to the Debtors under the Bid for the Assets included therein (individually and in the aggregate), including the net economic effect upon the Debtors’ estates after the payment of any applicable Termination Payment;
- (D) any benefit to the Debtors’ bankruptcy estates from any assumption or waiver of liabilities, including through a Credit Bid;
- (E) the transaction structure and execution risk, including conditions to, timing of, and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, cost to the Debtors’ bankruptcy estates to pursue such transaction, and required governmental or other approvals;
- (F) the impact on employees;

- (G) the impact on trade creditors and landlords; and
- (H) any other factors the Debtors may reasonably deem relevant, in consultation with the Consultation Parties.

The Debtors, in consultation with the Consultation Parties, will make a determination regarding which bids qualify as Qualified Bids, and will notify Potential Bidders whether they have been selected as Qualified Bidders by no later than the commencement of the Auction.

The Debtors reserve the right to work with any Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid. The Debtors may accept a single Bid or multiple Bids for non-overlapping Assets such that, if taken together, would otherwise meet the standards for a single Qualified Bid as to the Stalking Horse Package. If a Bid is received and, in the Debtors' judgment, after consultation with the Consultation Parties, it is not clear whether the Bid is a Qualified Bid, the Debtors may consult with the Potential Bidder and seek additional information in an effort to establish whether or not the Bid is a Qualified Bid.

The Debtors, after consultation with the Consultation Parties, will have the right to determine that a Bid is not a Qualified Bid if any of the following conditions are satisfied:

- (A) A Potential Bidder has failed to comply with reasonable requests for additional information from the Debtors; or
- (B) The terms of the Bid are burdensome or conditional in view of the proposed purchase price or, in the case of a Bid or combination of Bids for the Stalking Horse Package, are materially more burdensome or conditional than the terms of the Stalking Horse Agreement, and are not offset by a material increase in purchase price, which determination (as made by the Debtors in consultation with the Consultation Parties) may take into consideration, among other things:
 - (i) whether the Bid does not provide sufficient cash consideration to pay transfer taxes, Cure Costs, or other cash costs of the transaction (including, if applicable, the applicable Termination Payment); and
 - (ii) whether the Bid includes a non-cash instrument or similar consideration that is not freely marketable.

The Stalking Horse Bidders are Qualified Bidders and the Stalking Horse Bid is a Qualified Bid as to the applicable Stalking Horse Package.

Pre-Auction Procedures

Determination and Announcement of Baseline Bids

In consultation with the Consultation Parties, the Debtors shall make a determination regarding:

- (A) the Assets to be auctioned by the Debtors, including the Stalking Horse Package the ("**Auction Package**");

- (B) the highest or best Qualified Bid (or collection of Qualified Bids) determined for each Auction Package (each, a “**Baseline Bid**,” and such bidder or group of bidders, a “**Baseline Bidder**”) to serve as the starting point at the Auction for such Auction Package;
- (C) which Bids have been determined to be Qualified Bids and the Auction Package applicable to such Qualified Bid; provided that the Debtors may permit a Qualified Bidder to bid on any other Auction Package; and
- (D) the time and place for the Auction.

Between the date the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate or seek clarification of any Qualified Bid from a Qualified Bidder. Without the written consent of the Debtors (in consultation with the Consultation Parties), a Qualified Bidder may not modify, amend or withdraw its Qualified Bid, except for proposed amendments to increase the purchase price or otherwise improve the terms of its Qualified Bid, during the period that such Qualified Bid remains binding as specified herein; provided that any Qualified Bid may be improved at the Auction as set forth herein.

Except as provided in the Stalking Horse Agreement, the Debtors are under no obligation to (i) select any Baseline Bid or (ii) conduct separate Auctions for any Assets, whether before or after selecting a Baseline Bid. Notwithstanding anything to the contrary contained herein, the Debtors may elect, in their reasonable discretion, and after consultation with the Consultation Parties, to adjourn the Auction.

Failure to Receive Two or More Qualified Bids

If no Qualified Bid for the Stalking Horse Package other than the Stalking Horse Bid is received by the applicable bid deadline, the Debtors will not conduct the Auction and shall file and serve a notice indicating that the Auction has been cancelled, that the Stalking Horse Bidders are the Successful Bidders, and setting forth the date and time of the Sale Hearing.

Except as provided in the Stalking Horse Agreement, nothing herein shall obligate the Debtors to consummate or pursue any transaction with a Qualified Bidder.

Auction Procedures

If there are two or more Qualified Bids for an Auction Package, the Debtors may conduct the Auction on **June 15, 2022 at 8:00 a.m. Eastern Time** virtually via videoconference and live at the offices of King & Spalding LLP, 1185 Avenue of the Americas, 34th Floor, New York, NY 10036, or such other time and place as the Debtors, after consultation with the Baseline Bidder and the Consultation Parties, may notify Qualified Bidders who have submitted Qualified Bids. Only a Qualified Bidder will be eligible to participate at an Auction, subject to such limitations as the Debtors may impose in good faith. Professionals and/or other representatives of the Consultation Parties will be permitted to attend and observe an Auction.

At the Auction, Qualified Bidders (including the Stalking Horse Bidders) will be permitted to increase their bids. For each Baseline Bid, bidding will start at the purchase price and terms proposed in the applicable Baseline Bid, and will proceed thereafter in increments to be announced (a “**Minimum Overbid Amount**”). The Minimum Overbid Amount for the Stalking Horse Package, whether in one or a combination of Qualified Bids, shall be the amount of the

Termination Payment plus \$1 million. The Stalking Horse Bidders are authorized to increase their bid at the Auction. If the Stalking Horse Bidders bid at an Auction for the applicable Stalking Horse Package that is the subject of the Stalking Horse Bid, as applicable, such Stalking Horse Bidders will also be entitled to a “credit” in the amount of the applicable Termination Payment to be counted towards its bid such that the cash and other consideration proposed by the Stalking Horse Bidders plus the applicable Termination Payment “credit” must exceed the most recent bid by at least the Minimum Overbid Amount.

The Debtors may adopt rules, after consultation with the Consultation Parties, for an Auction at any time that the Debtors reasonably determine to be appropriate to promote the goals of the Bidding and Auction Process and are not inconsistent with these Bidding Procedures. At the start of an Auction, the Debtors shall describe the terms of the applicable Baseline Bid. Any rules adopted by the Debtors will not unilaterally modify any of the terms of the Stalking Horse Agreement (as may be consensually modified at any Auction) without the consent of the Stalking Horse Bidders. Any rules developed by the Debtors will provide that all bids in the Auction will be made and received in one room, on an open basis, and all other bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each bidder will be fully disclosed to all other bidders participating in the Auction and that all material terms of each Qualified Bid submitted in response to the Baseline Bid or to any successive bids made at the Auction will be fully disclosed to all other bidders throughout the entire Auction. Each Qualified Bidder will be permitted what the Debtors reasonably determine, in consultation with the Consultation Parties, to be an appropriate amount of time to respond to the previous bid at the Auction.

The Debtors reserve the right to and may, after consultation with the Consultation Parties, reject at any time before entry of the relevant Sale Order any bid that, in the Debtors’ judgment, is (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of the applicable Sale Transaction; or (iii) contrary to the best interests of the Debtors and their estates, except that if the Stalking Horse Bid is the only Qualified Bid for the Stalking Horse Package, the foregoing provisions of this sentence will be inoperative. In doing so, the Debtors may take into account the factors set forth above regarding the form and content of Qualified Bids and the Debtors’ review of bids. No attempt by the Debtors to reject a bid under this paragraph will modify any rights of the Debtors or the Stalking Horse Bidders under applicable Stalking Horse Agreement (as may be consensually modified at any Auction).

Prior to the conclusion of the Auction, the Debtors, after consultation with the Consultation Parties, will (i) review and evaluate each bid made at the Auction on the basis of financial and contractual terms and other factors relevant to the sale process, including those factors affecting the speed and certainty of consummating a Sale Transaction; (ii) determine the highest or best offer or collection of offers for an Auction Package (as applicable to each Auction Package, a “**Successful Bid**”); (iii) except as provided in the Stalking Horse Agreement, determine which Qualified Bid is the next highest or best bid for such Auction Package (as applicable to each Auction Package, the “**Back-Up Bid**”); and (iv) notify all Qualified Bidders participating in an Auction, prior to its conclusion, the successful bidder for such Auction Package (the “**Successful Bidder**”), the amount and other material terms of the Successful Bid, and the identity of the party that submitted the Back-Up Bid for such Auction Package (the “**Back-Up Bidder**”). For the avoidance of doubt, the Stalking Horse Bid shall not be designated as the Back-Up Bid without

the prior consent of the Stalking Horse Bidders and the Stalking Horse Bidders shall have no obligation to act as Back-Up Bidder.

Each Qualified Bidder shall be required to confirm, both before and after the Auction, that it has not engaged in any collusion with respect to the submission of any bid, the bidding, or the Auction.

Post-Auction Process

A Successful Bidder shall, within one business day after the close of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid, which shall be in form and substance acceptable to the Debtors, in consultation with the Consultation Parties. Promptly following the submission of such documentation, the Debtors shall file with the Bankruptcy Court notice of the Successful Bid, the Successful Bidder, and, if applicable, the Back-Up Bid and the Back-Up Bidder. The Successful Bid may not be assigned to any party without the consent of the Debtors after consultation with the Consultation Parties.

Except to the extent otherwise provided in the Stalking Horse Agreement, the Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) forty-five (45) days after the completion of the Auction, or such other date as may be provided for in the Stalking Horse Agreement, (ii) the consummation of the transaction with the Successful Bidder, and (iii) the release of such bid by the Debtors (such date, the “**Back-Up Termination Date**”). If the transaction with a Successful Bidder is terminated prior to the Back-Up Termination Date, the Back-Up Bidder shall be deemed the Successful Bidder and shall be obligated to consummate the Back-Up Bid as if it were the Successful Bid.

Notices Regarding Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases in connection with the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

Treatment and Return of Deposits

Potential Bidders

Within 3 business days after the Auction, the Escrow Agent shall return to each Potential Bidder that was determined not to be a Qualified Bidder, as confirmed by the Debtors, such Potential Bidder’s Deposit, plus any interest accrued thereon. Upon the authorized return of such Potential Bidder’s Deposit, the bid of such Potential Bidder shall be deemed revoked and no longer enforceable.

Qualified Bidders

The Deposit of a Qualified Bidder will be forfeited to the Debtors if (i) the applicable Qualified Bidder attempts to modify, amend, or withdraw its Qualified Bid, except as permitted by these Bidding Procedures, during the time the Qualified Bid remains binding and irrevocable under these Bidding Procedures, or (ii) the Qualified Bidder is selected as the Successful Bidder and fails to enter into the required definitive documentation or to consummate the transaction according to these Bidding Procedures and the terms of the applicable transaction documents with respect to the Successful Bid. The Escrow Agent shall release the Deposit by wire transfer of

immediately available funds to an account designated by the Debtors 2 business days after the receipt by the Escrow Agent of a joint written notice by an authorized officer of the Debtors stating that the Qualified Bidder has breached or failed to satisfy its obligations or undertakings.

With the exception of the Deposit of a Successful Bidder and a Back-Up Bidder, the Escrow Agent shall return to any other Qualified Bidder any Deposit, plus any interest accrued thereon, 3 business days after the execution by the Successful Bidder and the Debtors of the documentation memorializing the Successful Bid, but in no event later than 7 business days after the conclusion of a Sale Hearing.

Back-Up Bidder

The Escrow Agent shall return a Back-Up Bidder's Deposit, plus any interest accrued thereon, within 3 business days after the occurrence of the applicable Back-Up Bid Expiration Date.

The Successful Bidder

The Deposit of a Successful Bidder shall be applied against the cash portion of the Purchase Price of such Successful Bidder upon the consummation of the transaction proposed in the applicable Successful Bid; provided, however that if the Stalking Horse Bidders are the Successful Bidder, no Deposit shall be required.

Joint Notice to Escrow Agent

The Debtors and, as applicable, the Potential Bidder, Qualified Bidder, and/or Back-Up Bidder agree to execute an appropriate joint notice to the Escrow Agent for the return of any Deposit to the extent such return is required by these Bidding Procedures. If either party fails to execute such written notice, the Deposit may be released by an order of the Bankruptcy Court.

Notice and Consultation Parties

Bid Notice Parties

Information that must be provided to the "**Bid Notice Parties**" or "**Objection Notice Parties**" under these Bidding Procedures must be provided to the following parties:

- (i) counsel to the Debtors, (a) King & Spalding LLP, 1180 Peachtree Street, 35th Floor, Atlanta, Georgia 30309 (Attn: Thaddeus D. Wilson) and (b) Togut, Segal & Segal, LLP, One Penn Plaza, Suite 3335, New York, NY 10119 (Attn: Frank A. Oswald);
- (ii) counsel to any statutory committee of unsecured creditors;
- (iii) counsel to Circles, DLA Piper, LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10036 (Attn: Jamila Justin Willis);
- (iv) counsel to CVG, Becker, Glynn, Muffly, Chassin & Hosinski LLP, 299 Park Avenue, 16th Floor, New York, New York 10171 (Attn: Alec Ostrow);

- (v) counsel to the United States Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Susan Arbeit); and
- (vi) FTI, 1345 6th Avenue, New York, NY 10105 (Attn: Glenn Tobias).

Consent to Jurisdiction and Authority to Condition to Bidding

All Potential Bidders (including the Stalking Horse Bidders) shall be deemed to have (i) consented to the core jurisdiction of the Bankruptcy Court to enter any order or orders, which shall be binding in all respects, in any way related to the Bidding Procedures, an Auction, or the construction and enforcement of any agreement or any other document relating to the applicable Sale Transaction, (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction, and (iii) consented to the entry of a final order or judgment in any way related to the Bidding Procedures, the Auction, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Reservation of Rights

The Debtors reserve the right, in their reasonable discretion and subject to the exercise of their business judgment, after consultation with the Consultation Parties, to alter or terminate these Bidding Procedures, to waive terms and conditions set forth herein with respect to all potential bidders, extend the deadlines set forth herein, alter the assumptions set forth herein, provide reasonable accommodations to the Stalking Horse Bidders with respect to such terms, conditions, and deadlines of the Bidding and Auction Process to promote further bids by such bidders on any additional Assets not included in the Stalking Horse Package (including, without limitation, extending time deadlines as may be required for such Stalking Horse Bidder to comply with any additional filing and review procedures with the Federal Trade Commission in connection with their previous respective HSR Filings or any other Antitrust Law) and/or to terminate discussions with any and all prospective acquirers and investors (except for the Successful Bidder) at any time and without specifying the reasons therefor, in each case to the extent not materially inconsistent with these Bidding Procedures and/or the Bidding Procedures Order; provided that the Debtors' exercise of their discretion in evaluating bids and administering the Bidding and Auction Process does not permit, and shall not be construed as permitting, the Debtors to materially deviate from the procedures, terms, conditions, and protections set forth in these Bidding Procedures and/or the Bidding Procedures Order.

Schedule 1

Assets To Be Sold

Exhibit 2

Form of Sale Notice

TOGUT, SEGAL & SEGAL LLP

Frank A. Oswald
Brian F. Moore
Amy M. Oden
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New York, New York 10119
(212) 594-5000

KING & SPALDING LLP

Michael R. Handler
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(212) 556-2100

-and-

*Proposed Counsel to the Debtors and Debtors
in Possession*

KING & SPALDING LLP

Thaddeus D. Wilson (*pro hac vice* pending)
Leia Clement Shermohammed (*pro hac vice*
pending)
1180 Peachtree Street N.E.
Atlanta, GA 30309-3521
(404) 572-4600

*Proposed Special Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	:
	:
PARETEUM CORPORATION, et al.,	:
	:
Debtors.¹	:
-----X	

**Chapter 11
Case No. 22-[_____] (____)
(Jointly Administered)**

**NOTICE OF SALE, BIDDING
PROCEDURES, AUCTIONS, AND SALE HEARINGS**

PLEASE TAKE NOTICE:

Pareteum Corporation and its chapter 11 affiliate debtors, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) a motion (ECF No. []) (the “**Motion**”) for the entry of orders (i) an order (the “**Bidding**”

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

Procedures Order)² (a) approving bidding procedures in connection with the sale or disposition of substantially all of the Debtors' assets (the "**Assets**"); (b) approving Stalking Horse Bid Protections for the Stalking Horse Bidder (as hereinafter defined); (c) scheduling auctions (the "**Auctions**") of the Assets and hearings (each, a "**Sale Hearing**") to consider approval of proposed sale transactions; (d) approving the form and manner of notice of sales of the Assets, the Auctions, and the Sale Hearings; (e) approving the form and manner of notice to each non-Debtor counterparty (each, a "**Counterparty**") to executory contracts and unexpired leases (collectively, the "**Contracts and Leases**") regarding the Debtors' potential assumption and assignment of their Contracts and Leases and of the Debtors' calculation of the amount necessary to cure all monetary defaults thereunder (collectively, the "**Cure Costs**"); (f) approving procedures for the assumption and assignment of Contracts (the "**Assumption and Assignment Procedures**"); and (g) granting related relief; and (ii) one or more orders (each, a "**Sale Order**") (a) authorizing the sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (b) authorizing the assumption and assignment of proposed assumed Contracts and Leases (collectively, the "**Proposed Assumed Contracts**"); and (c) granting related relief.

On [], 2022, the Bankruptcy Court entered the Bidding Procedures Order (ECF No. []), approving the relief requested in the Motion.

Stalking Horse Bid

A binding stalking horse bid (the "**Stalking Horse Bid**") has been submitted by Circles MVNE Pte. Ltd. and Channel Ventures Group, LLC (collectively, the "**Stalking Horse Bidders**"). The Stalking Horse Bidder has executed an asset purchase agreement (the "**Stalking Horse Agreement**")³ for the purchase of the Debtors' assets identified in the Stalking Horse Agreement hereto (the "**Stalking Horse Package**"). The Stalking Horse Bid is subject to higher or otherwise better offers submitted in accordance with the terms and provisions of the Bidding Procedures.

The Debtors are seeking to sell substantially all of their assets (the "**Assets**") including, but not limited to, inventory, intellectual property, prepaid expenses, and furniture, fixtures, and equipment.

IMPORTANT DATES AND DEADLINES

- **Auctions.** If there are two or more Qualified Bids, then Auctions for the Assets have been scheduled for (i) **June 15, 2022 at 8:00 a.m. (Eastern Time)**], virtually via videoconference and live, at the offices of King & Spalding LLP, 1185 Avenue of the Americas, 34th Floor, New York, New York 10036. The Debtors reserve the right to adjourn or continue the Auction to a later date.
- **Sale Objection Deadlines.** Objections to a proposed Sale Transaction to the Stalking Horse Bidder, including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and/or entry of a Sale Order, must be (i) filed in accordance with the Bidding Procedures Order, (ii) filed

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Order.

³ The Stalking Horse Agreement is attached as **Exhibit C** to the Motion.

with the Bankruptcy Court, and (iii) served on the Objection Notice Parties (as identified and defined in the Bidding Procedures) by no later than (i) **June 14, 2022 at 4:00 p.m. (Eastern Time)**], with respect to the proposed sale of the Stalking Horse Package to the Stalking Horse Bidders pursuant to the Stalking Horse Agreement, or (ii) **June 17, 2022 at 4:00 p.m. (Eastern Time)**], with respect to the sale of any Assets to a Successful Bidder (other than the Stalking Horse Bidders pursuant to the Stalking Horse Agreement), following an Auction.

Objections must be served on the following parties so as to be *received* by the above deadline:

- (i) counsel to the Debtors, (a) King & Spalding LLP, 1180 Peachtree Street, 35th Floor, Atlanta, Georgia 30309 (Attn: Thaddeus D. Wilson, thadwilson@kslaw.com) and (b) Togut, Segal & Segal, LLP, One Penn Plaza, Suite 3335, New York, NY 10119 (Attn: Frank A. Oswald, frankoswald@teamtogut.com);
 - (ii) counsel to any statutory committee of unsecured creditors;
 - (iii) counsel to Circles, DLA Piper, LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10036 (Attn: Jamila Justin Willis, jamila.willis@us.dlapiper.com);
 - (iv) counsel to CVG, Becker, Glynn, Muffly, Chassin & Hosinski LLP, 299 Park Avenue, 16th Floor, New York, New York 10171 (Attn: Alec Ostrow aostrow@beckerglynn.com);
 - (v) counsel to the United States Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Susan Arbeit); and
 - (vi) FTI, 1345 6th Avenue, New York, NY 10105 (Attn: Glenn Tobias, glenn.tobias@fticapitaladvisors.com).
- **Sale Hearing.** The Sale Hearing shall be held before the Bankruptcy Court for the Southern District of New York, before the Honorable [●], United States Bankruptcy Judge, on (i) **June _____, 2022**, with respect to the sale of the Assets to the Stalking Horse bidder or the Successful Bidder, as applicable.

Additional Information

Any party interested in submitting a bid for the Assets should contact the Debtors' advisors, Glenn Tobias (glenn.tobias@fticapitaladvisors.com) and Jerome Davis (Jerome.davis@fticonsulting.com) of the Debtors' advisory professionals, FTI Capital Advisors, LLC. ("**FTI**").

Copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the Stalking Horse Agreement may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Kurzman Carson Consultants, LLC, located at www.kccllc.net/pareteum.

Reservation of Rights

The Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and in consultation with the Consultation Parties, modify the Bidding Procedures; waive terms and conditions set forth therein; extend the deadlines set forth therein; announce at the Auctions modified or additional procedures for conducting the Auctions; and provide reasonable accommodations to the Stalking Horse Bidder with respect to such terms, conditions, and deadlines of the bidding and auction process to promote further bids by such bidder, in each case, to the extent not materially inconsistent with the Bidding Procedures and the Bidding Procedures Order. **Except as provided in the Stalking Horse Agreement, nothing shall obligate the Debtors to consummate or pursue any transaction with respect to any Asset with any bidder.**

THE FAILURE OF ANY PERSON OR ENTITY TO FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER BY THE APPLICABLE SALE OBJECTION DEADLINE SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING ANY OBJECTION TO THE MOTION, SALE ORDERS, THE PROPOSED SALE TRANSACTIONS, OR THE DEBTORS' CONSUMMATION OF THE STALKING HORSE AGREEMENT OR ANY OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS AND A SUCCESSFUL BIDDER AT THE AUCTION.

Dated: May ____, 2022
New York, New York

TOGUT, SEGAL & SEGAL LLP
One Penn Plaza, Suite 3335
New York, New York 10119
(212) 594-5000
Frank A. Oswald

Counsel for Debtors and Debtors in Possession

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(202) 556-2100
Michael R. Handler

*Special Counsel for Debtors
and Debtors in Possession*

Exhibit 3

Form of Assumption and Assignment Notice

TOGUT, SEGAL & SEGAL LLP

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-and-

*Proposed Counsel to the Debtors and Debtors
in Possession*

KING & SPALDING LLP

Thaddeus D. Wilson (*pro hac vice* pending)
Leia Clement Shermohammed (*pro hac vice*
pending)
1180 Peachtree Street N.E.
Atlanta, GA 30309-3521
(404) 572-4600

*Proposed Special Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	: :
PARETEUM CORPORATION, et al.,	: Chapter 11
	: Case No. 22-[] ()
	: :
Debtors.¹	: (Jointly Administered)
-----X	

**NOTICE OF CURE COSTS AND PROPOSED
ASSUMPTION AND ASSIGNMENT OF EXECUTORY
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION WITH SALE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

Pareteum Corporation and its chapter 11 affiliate debtors, as debtors and debtors in possession in the above-captioned chapter 11 cases (collectively, the “**Debtors**”), filed with the United States Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**”) a motion (ECF No. []) (the “**Motion**”) for the entry of orders (i) an order (the “**Bidding**”

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor’s federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors’ corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

Procedures Order)² (a) approving bidding procedures in connection with the sale or disposition of substantially all of the Debtors' assets (the "**Assets**"); (b) approving Stalking Horse Bid Protections for the Stalking Horse Bidders (as hereinafter defined); (c) scheduling an auction (the "**Auction**") of the Assets and hearings (each, a "**Sale Hearing**") to consider approval of proposed sale transactions; (d) approving the form and manner of notice of sales of the Assets, the Auction, and the Sale Hearings; (e) approving the form and manner of notice to each non-Debtor counterparty (each, a "**Counterparty**") to executory contracts and unexpired leases (collectively, the "**Contracts and Leases**") regarding the Debtors' potential assumption and assignment of their Contracts and Leases and of the Debtors' calculation of the amount necessary to cure all monetary defaults thereunder (collectively, the "**Cure Costs**"); (f) approving procedures for the assumption and assignment of Contracts (the "**Assumption and Assignment Procedures**"); and (g) granting related relief; and (ii) one or more orders (a) authorizing the sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (b) authorizing the assumption and assignment of proposed assumed Contracts and Leases (collectively, the "**Proposed Assumed Contracts**"); and (c) granting related relief.

On May [], 2022, the Bankruptcy Court entered the Bidding Procedures (ECF No. []), approving the relief requested in the Motion, including the bidding procedures attached to the Bidding Procedures Order as **Exhibit 1** (the "**Bidding Procedures**").

You are receiving this Notice because you may be a Counterparty to a Contract or Lease of the Debtors that is proposed to be assumed and assigned to the Stalking Horse Bidders or one or more other bidders.

Stalking Horse Bid

A binding stalking horse bid (the "**Stalking Horse Bid**") has been submitted by Circles MVNE Pte. Ltd. ("**Circles**") and Channel Ventures Group, LLC ("**CVG**," and with Circles, the "**Stalking Horse Bidders**.".) The Stalking Horse Bidders have executed an asset purchase agreement (the "**Stalking Horse Agreement**")³ for the purchase of the Debtors' locations and related assets identified on **Schedule 1** to the Bidding Procedures. The Proposed Assumed Contracts included in the Stalking Horse Package as of the date hereof and the Debtors' calculation of the Cure Costs with respect thereto are set forth on **Exhibit A** annexed hereto.

The inclusion of any Contract or Lease on **Exhibit A** does not constitute an admission that a particular Proposed Assumed Contract is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or require or guarantee that such Proposed Assumed Contract ultimately will be assumed or assigned. All rights of the Debtors with respect thereto are reserved.

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Order.

³ The Stalking Horse Agreement is available at www.kccllc.net/pareteum.

Objections

A. Cure Objections and Adequate Assurance Objections

Any objection to the proposed assumption or assignment of a Contract or Lease identified on **Exhibit A**, the subject of which objection is (1) the Debtors' proposed Cure Costs, or (2) the Stalking Horse Bidder's (or its known assignee's) proposed form of adequate assurance of future performance with respect to such Proposed Assumed Contract, must be (i) in writing, (ii) filed with the Bankruptcy Court; (iii) specify the specific grounds for objection, (iv) be supported by sufficient documentation to prove the objection, and (v) served on the Objection Notice Parties (as defined in the Bidding Procedures Order) by no later than **[SELECT AS APPLICABLE: June 6, 2022; June 14, 2022 at 4:00 p.m.; 10 business days following receipt of this Notice]**

Objections must be served on the following parties so as to be *received* by the above deadline:

- (vii) counsel to the Debtors, (a) King & Spalding LLP, 1180 Peachtree Street, 35th Floor, Atlanta, Georgia 30309 (Attn: Thaddeus D. Wilson, thadwilson@kslaw.com) and (b) Togut, Segal & Segal, LLP, One Penn Plaza, Suite 3335, New York, NY 10119 (Attn: Frank A. Oswald, frankoswald@teamtogut.com);
- (viii) counsel to any statutory committee of unsecured creditors;
- (ix) counsel to Circles, DLA Piper, LLP (US), 1251 Avenue of the Americas, 27th Floor, New York, New York 10036 (Attn: Jamila Justin Willis, jamila.willis@us.dlapiper.com);
- (x) counsel to CVG, Becker, Glynn, Muffly, Chassin & Hosinski LLP, 299 Park Avenue, 16th Floor, New York, New York 10171 (Attn: Alec Ostrow aostrow@beckerglynn.com);
- (xi) counsel to the United States Trustee, 201 Varick Street, Room 1006, New York, New York 10014 (Attn: Susan Arbeit); and
- (xii) FTI, 1345 6th Avenue, New York, NY 10105 (Attn: Glenn Tobias, glenn.tobias@fticapitaladvisors.com).

IF A COUNTERPARTY FAILS TO FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION NOTICE PARTIES A TIMELY CURE OBJECTION, THE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO THE AMOUNT TO CURE ANY DEFAULT UNDER THE APPLICABLE EXECUTORY CONTRACT OR UNEXPIRED LEASE. THE CURE COSTS SET FORTH ON EXHIBIT A SHALL BE CONTROLLING AND WILL BE THE ONLY AMOUNT NECESSARY TO CURE

OUTSTANDING DEFAULTS UNDER THE APPLICABLE EXECUTORY CONTRACT OR LEASE UNDER BANKRUPTCY CODE SECTION 365(b), NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THE EXECUTORY CONTRACT OR UNEXPIRED LEASE, OR ANY OTHER DOCUMENT, AND THE APPLICABLE COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY ADDITIONAL CURE OR OTHER AMOUNTS WITH RESPECT TO SUCH EXECUTORY CONTRACT OR UNEXPIRED LEASE AGAINST THE DEBTORS, ANY SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THEM.

B. Effect of Objections

If an objection is filed to a Proposed Assumed Contract listed on or attached to this Notice, the Contract or Lease shall be deemed provisionally assumed and assigned to the Successful Bidder at sale closing pending resolution of the objection by agreement of the parties or by Court order. During this time, the Contract or Lease will remain in force with the Successful Bidder as taking the place of the Debtor(s). If the objection relates to the inadequacy of a proposed cure amount, the Successful Bidder must maintain a cash reserve equal to the lesser of the amount asserted by the contracting counterparty, or such amount as the Court requires, to be paid upon resolution of the Cure Objection by agreement or Court order.

Sale Hearings

If the Stalking Horse Bid is the only Qualified Bid received by the Debtors by the Global Bid Deadline (as defined in the Bidding Procedures Order), no Auction shall be held. Whether or not an Auction is held, the Sale Hearing for the Stalking Horse Package shall be held before the Honorable _____, United States Bankruptcy Judge, in the Bankruptcy Court, located at _____, on **June _____ at [] (Eastern Time)**].

Additional Information

Copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the Stalking Horse Agreement may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by their claims and noticing agent and administrative advisor, Kurzman Carson Consultants, located at www.kccllc.net/pareteum.

Dated: May _____, 2022
New York, New York

TOGUT, SEGAL & SEGAL LLP
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(212) 594-5000
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Michael R. Handler

*Special Counsel for Debtors
and Debtors in Possession*

EXHIBIT A

PROPOSED ASSUMED CONTRACTS AND CURE COSTS

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-and-

*Proposed Counsel to the Debtors and Debtors
in Possession*

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Thaddeus D. Wilson (*pro hac vice* pending)
Leia Clement Shermohammed (*pro hac vice*
pending)
1180 Peachtree Street N.E.
Atlanta, GA 30309-3521
(404) 572-4600

*Proposed Special Counsel to the Debtors and
Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

-----X	
In re	:
	:
PARETEUM CORPORATION, et al.,	:
	:
Debtors.¹	:
-----X	

**CHAPTER 11
Case No. 22-[_____] (____)

(Jointly Administered)**

**[PROPOSED] ORDER (I) APPROVING ASSET PURCHASE AGREEMENT
AMONG SELLERS AND BUYER; (II) AUTHORIZING SALE
OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF
LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES; (III) AUTHORIZING
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
LEASES IN CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artidium Group Ltd. (f/k/a Artidium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artidium N.V.). The Debtors' corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

Upon the motion, dated May 15, 2022 (ECF No. []) (the “**Sale Motion**”)² of Pareteum Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the “**Debtors**”) seeking, among other things, entry of an order (the “**Sale Order**”), pursuant to Sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”), (i) authorizing the sale of the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases of nonresidential real property of the Debtors in connection therewith; and (iii) granting related relief, all as more fully set forth in the Sale Motion; and the Court having entered this Court’s prior order, dated May ____, 2022 (ECF No. []) (the “**Bidding Procedures Order**”), approving competitive bidding procedures for the Purchased Assets (the “**Bidding Procedures**”) and granting certain related relief; and [] (the “**Buyer**”) having submitted the highest and best bid for the Purchased Assets, as reflected in that certain Asset Purchase Agreement, dated as of [], 2022 by and among certain Debtors, as the Sellers, and [], as the Buyer (as may be amended pursuant to the terms thereof and this Sale Order, the “**Purchase Agreement**”), a copy of which is annexed hereto as **Exhibit A**, pursuant to which the Debtors have agreed, among other things, to sell the Purchased Assets to the Buyer, including the Assumed Contracts that will be assumed and assigned to the Buyer, on the terms and conditions set forth in the Purchase Agreement (collectively, the

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement (as defined herein) or, if not defined in the Purchase Agreement, the meanings ascribed to them in the Sale Motion.

“**Sale Transaction**”); and the Court having conducted a hearing on the Sale Motion (the “**Sale Hearing**”) on June _____, 2022, at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion and the Bidding Procedures Order was approved; and the Court having reviewed and considered (a) the Sale Motion and the exhibits thereto, (b) the Purchase Agreement, (c) the Bidding Procedures Order (ECF No. [____]); (d) the Declaration of Glenn Tobias in Support of the Sale Motion (ECF No. [____]), and (e) the arguments and representations of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due and proper notice of the Sale Motion, the Purchase Agreement, the Bidding Procedures Order, and the proposed form of this Sale Order (the “**Proposed Sale Order**”) having been provided in accordance with the Bidding Procedures Order; [and all objections to the Sale Motion with respect to the relief granted by this Sale Order having been withdrawn, resolved, or overruled as provided in this Sale Order]; and it appearing that the relief requested in the Sale Motion and granted herein is in the best interests of the Debtors, their estates and creditors, and all parties in interest in these Chapter 11 cases; and upon the record of the Sale Hearing and these Chapter 11 cases; and after due deliberation thereon; and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052**. 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. 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. The Court’s findings shall also include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing.

B. **Jurisdiction and Venue.** This Court has jurisdiction to decide the Sale Motion, and jurisdiction over the Sale Transaction and the property of the Debtors' estates, including the Purchased Assets, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these Chapter 11 cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates.** The statutory and other legal predicates for the relief sought in the Sale Motion are Sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, 6006, 9007, and 9014, Local Rules 6004-1 and 6006-1, and the this District's Amended Guidelines for the Conduct of Asset Sales.

D. **Notice and Opportunity to Object.** As evidenced by the certificates of service filed with the Court, due, proper, timely, adequate, and sufficient notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Sale Hearing, the Sale Transaction, the sale of the Purchased Assets free and clear of any Interests or Claims (as defined herein), the Proposed Sale Order, and the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned to Buyer pursuant to this Sale Order, has been provided by the Debtors, as required by Sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 and in compliance with the Bidding Procedures Order, to all Persons entitled to such notice, including, but not limited to, the following: (i) all counterparties to the Assumed Contracts (the "**Counterparties**" and, each, a "**Counterparty**"), (ii) all other Sale Notice Parties (as defined in the Sale Motion); and (iii) all other persons and entities as directed by the Bankruptcy Court. Such notice was good, sufficient, and appropriate under the circumstances, and complied in all respects with the Bidding Procedures Order. No other or further notice of the foregoing is required. With respect to Persons in interest

whose identities could not be reasonably ascertained by the Debtors, publication of the Sale Notice in the national edition of *USA Today* and in the *New York Times* on June [___], 2022 (see Affidavit of Publication [Case No. __ ECF No. [___]]) was sufficient and reasonably calculated to provide notice to such Persons under the circumstances.

E. **Disclosures**. The disclosures made by the Debtors in the Sale Motion, the Sale Notice, and related notices and documents filed with the Court concerning the Purchase Agreement, the Bidding Procedures Order, the hearing to consider approval of the Sale Motion, the Sale Transaction, and the Sale Hearing were good, complete, and adequate.

F. **Final Order**. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

G. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of the Sale Motion, the Purchase Agreement, and the Sale Transaction and in entering into the Purchase Agreement and related or ancillary agreements thereto (collectively, the “**Related Agreements**”). The Debtors’ entry into and performance under the Purchase Agreement and the Related Agreements (i) are a result of due deliberation by the Debtors and constitute a sound and reasonable exercise of the Debtors’ business judgment consistent with their fiduciary duties; (ii) provide value to and are beneficial to the Debtors’ estates, and are in the best interests of the Debtors and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale Transaction include, but are not limited to, the following: (a) the Purchase Agreement constitutes the highest and best offer received for the Purchased Assets; (b) the Purchase Agreement presents the best opportunity to maximize the value of the Purchased Assets on a going-concern basis and avoid decline and devaluation of the Purchased Assets; (c) unless the Sale Transaction and all of

the other transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for pursuant to the Purchase Agreement, recoveries to the Debtors' creditors may be materially diminished; (d) the value of the Debtors' estates will be maximized through the sale of the Purchased Assets pursuant to the Purchase Agreement; and (e) the Purchase Agreement presents the best opportunity for continued employment for a significant number of the Debtors' employees; and (f) the Purchase Agreement presents the best opportunity to maintain mobile service for the Debtors' customers.

H. **Compliance with Bidding Procedures.** The Bidding Procedures were substantively and procedurally fair to all parties. The Debtors, the Buyer, and their respective counsel and other advisors have complied with the Bidding Procedures and the Bidding Procedures Order in all material respects.

I. **Highest or Best Value.** The Debtors and their advisors engaged in a robust and extensive marketing and sale process over a period of over a year, both prior to the Commencement Date and through the postpetition sale process, pursuant to the Bidding Procedures and the Bidding Procedures Order. The Debtors conducted a fair and open sale process. The sale process, the Bidding Procedures were non-collusive, duly noticed, and provided a full, fair, and reasonable opportunity for any person or entity to make an offer to purchase the Purchased Assets. The process conducted by the Debtors and their advisors pursuant to the Bidding Procedures resulted in the highest or best value for the Purchased Assets for the Debtors and their estates, and any other available transaction would not have yielded as favorable an economic result for the Debtors' estates, creditors and other parties in interest.

J. **Fair Consideration.** The consideration to be paid by the Buyer under the Purchase Agreement (i) constitutes fair and reasonable consideration for the Purchased Assets, (ii) is the

highest and best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' estates and creditors than would be provided by any other practically available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and other laws of the United States, any state, territory, possession, the District of Columbia, or any other applicable jurisdiction with laws substantially similar to the foregoing.

K. **No Successor or Other Derivative Liability.** By consummating the Sale Transaction pursuant to the Purchase Agreement: (i) Buyer is not a mere continuation of any Seller or any other Debtor or any Debtor's estate, and there is no continuity, no common identity, and no continuity of enterprise between Buyer and any Debtor; (ii) Buyer is not a successor to any Debtor or any Debtor's estate by reason of any theory of law or equity, and the Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of Buyer and the Debtors; and (iii) neither Buyer nor any of its successors, assigns, members, partners, principals, and shareholders (or equivalent) shall assume or in any way be responsible for any obligation or liability of any Debtor (or any Affiliates thereof) and/or any Debtor's estate, including any obligation under any collective bargaining agreement or labor practice agreement, except as expressly provided in the Purchase Agreement. The sale and transfer of the Purchased Assets to the Buyer, including the assumption by the Debtors and assignment, transfer, and/or sale to the Buyer of the Assumed Contracts, will not subject the Buyer to any liability (including any successor liability) with respect to the operation of the Debtors' business prior to the Closing or by reason of such transfer, except that, upon the Closing, the Buyer shall become liable for the applicable Assumed Liabilities.

L. **No Sub Rosa Plan.** The Sale Transaction neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization of the Debtors. The Sale Transaction does not constitute a *sub rosa* or *de facto* plan

of reorganization or liquidation as it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent Chapter 11 safeguards, such as those set forth in Sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests or extend debt maturities.

M. **Good Faith; No Collusion.** The Debtors, the Buyer, and their respective counsel and advisors, have negotiated, proposed, and entered into the Purchase Agreement, the Related Agreements, and each of the transactions contemplated therein in good faith, without collusion and from arm's-length bargaining positions. The Buyer is a "good faith purchaser" and is acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. The Buyer has proceeded in good faith in all respects. Specifically, (i) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Buyer complied with the provisions of the Bidding Procedures Order; (iii) the Buyer's bid was subjected to competitive Bidding Procedures as set forth in the Bidding Procedures Order; (iv) the Buyer has not violated Section 363(n) of the Bankruptcy Code by any action or inaction; and (v) all payments to be made by the Buyer and all other material agreements or arrangements entered into by the Buyer and the Debtors in connection with the Sale Transaction have been disclosed and are appropriate. The sale price in respect of the Purchased Assets was not controlled by any agreement among potential bidders and neither the Debtors nor the Buyer have engaged in collusion or any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under Section 363(n) of the Bankruptcy Code. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under laws of the United States,

any state, territory, or possession, or the District of Columbia. The Buyer is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in Section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Buyer and the Debtors.

N. **Assumption and Assignment Notices.** As evidenced by the certificates of service filed with the Court, and in accordance with the provisions of the Bidding Procedures Order, the Debtors have served prior to the Sale Hearing Assumption and Assignment Notices, which provided notice of the Debtors’ intent to assume and assign the Assumed Contracts, including the Supplemental Contracts, and of the related proposed Cure Costs upon each Counterparty to the Assumed Contracts. The service of the Assumption and Assignment Notices was good, sufficient, and appropriate under the circumstances and no further notice need be given with respect to the Cure Costs for the assumption and assignment of the Assumed Contracts. All Counterparties have had a reasonable opportunity to object both to the Cure Costs listed on the applicable Assumption and Assignment Notice and to the assumption and assignment of the Assumed Contracts, including the Supplemental Contracts, to the Buyer. No defaults exist in the Debtors’ performance under the Assumed Contracts as of the date of this Sale Order other than the failure to pay the Cure Costs or defaults that are not required to be cured.

O. **Free and Clear Sale.** The Debtors may sell the Purchased Assets free and clear of all liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances, and other interests of any kind or nature whatsoever against the Debtors or the Purchased Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability

claims, environmental liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims, or claims for Taxes of or against the Debtors, any claims under, and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession, or the District of Columbia), whether arising prior to or subsequent to the commencement of these Chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity, or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Purchased Assets, the operation of the Debtors' business before the effective time of the Closing pursuant to the Purchase Agreement, or the transfer of the Debtors' interests in the Purchased Assets to the Buyer, and all Excluded Liabilities (collectively, excluding any Assumed Liabilities, the "**Claims**"), because, in each case, one or more of the standards set forth in Section 363(f)(1)–(5) of the Bankruptcy Code have been satisfied; provided that nothing herein shall be deemed, or construed as, a ruling or determination by this Court that the Assumed Liabilities encumber the Purchased Assets. Without limiting the generality of the foregoing, "Claims" shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to: (i) any of the employee benefit plans, including any Claims related to unpaid contributions or current or potential withdrawal or termination liability; (ii) any of the Debtors' collective bargaining agreements; (iii) the Worker Adjustment and Retraining Notification Act of 1988; or (iv) any of the Debtors' current and former employees. Those holders of Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transaction or the Sale Motion are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object that have an interest in the Purchased

Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Claim pursuant to Section 363(f)(5) or fall within one or more of the other subSections of Section 363(f) of the Bankruptcy Code and, therefore, are adequately protected by having their Claims that constitute interests in the Purchased Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors.

P. **Buyer's Reliance on Free and Clear Sale.** The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets was not free and clear of all Interests and Claims, or if the Buyer would, or in the future could, be liable for any such Interests or Claims, including, as applicable, certain liabilities related to the Business that will not be assumed by the Buyer, as described in the Purchase Agreement. A sale of the Purchased Assets other than one free and clear of all Interests and Claims would adversely impact the Debtors, their estates, and their creditors, and would yield substantially less value for the Debtors' estates, with less certainty than provided under the Sale Transaction.

Q. The total consideration to be provided under the Purchase Agreement reflects the Buyer's reliance on this Sale Order to provide it, pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of all Interests and Claims (including, without limitation, any potential derivative, vicarious, transferee, or successor liability Interests or Claims).

R. **Assumption and Assignment of Assumed Contracts.** The assumption and assignment of the Assumed Contracts are integral to the Purchase Agreement, are in the best

interests of the Debtors and their estates, and represent the valid and reasonable exercise of the Debtors' sound business judgment. Specifically, the assumption and assignment of the Assumed Contracts (i) is necessary to sell the Purchased Assets to the Buyer, (ii) allows the Debtors to sell their business to the Buyer as a going concern, (iii) limits the losses suffered by counterparties to the Assumed Contracts, and (iv) maximizes the recoveries to other creditors of the Debtors by avoiding claims against the Debtors' estates that would arise from the Debtors' rejection of the Assumed Contracts. Any Counterparty to any Transferred Contract, including any Supplemental Contract, that has not actually filed with the Court an objection to such assumption or to such assignment as of the date specified in the Bidding Procedures Order (as such date may have been modified or extended in accordance with the terms of the Bidding Procedures Order) is deemed to have consented to such assumption and assignment.

S. **Adequate Assurance of Future Performance.** Counterparties to Assumed Contracts, including the Supplemental Contracts, were provided with notice and adequate assurance of future performance for the Buyer (*see* Affidavit of Service (ECF No. [])) and were required to file any objections to Buyer's ability to provide adequate assurance of future performance as contemplated under Sections 365(b)(1)(C) and 365(f)(1) of the Bankruptcy Code ("**Adequate Assurance Objections**"), by established deadlines. Counterparties to Assumed Contracts, including the Supplemental Contracts, that failed to timely file an Adequate Assurance Objection are forever barred from objecting to the assumption and assignment of such Assumed Contracts. Based on evidence adduced at the hearing and based on the record in these Chapter 11 cases, to the extent necessary, the Debtors have satisfied the requirements of Section 365 of the Bankruptcy Code, including Sections 365(b)(1)(A), 365(b)(1)(B), 365(b)(1)(C), and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Assumed

Contracts to the extent provided under the Purchase Agreement and (i) Buyer will cure, in accordance with the terms set forth in this Sale Order and the Purchase Agreement, any default existing prior to the date of the assumption the applicable Transferred Contract, within the meaning of Section 365(b)(1)(A) of the Bankruptcy Code; (ii) Sellers have provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of Section 365(b)(1)(B) of the Bankruptcy Code; (iii) Buyer has provided adequate assurance of future performance of and under the Assumed Contracts, within the meaning of Sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code based on the Buyer Declaration and the other evidence adduced at the Sale Hearing. With respect to each of the Assumed Contracts, the Debtors have met all applicable requirements of Section 365(b) of the Bankruptcy Code. Accordingly, the Assumed Contracts may be assumed by the Debtors and assigned to the Buyer as provided under the Purchase Agreement. The assumption and assignment of each Transferred Contract is approved notwithstanding any provision in such Transferred Contract or other restrictions prohibiting its assignment or transfer. The applicable Assumption and Assignment Notice(s) provided by the Debtors is also sufficient to advise the non-Debtor counterparties to the Assumed Contracts that, pursuant to the Purchase Agreement, the Buyer's decision on which executory contracts and unexpired leases will be assumed and assigned may not be made until immediately prior to the Closing.

T. **Validity of Transfer.** As of the Closing and payment of the Purchase Price, the transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective transfer of the Purchased Assets, and will vest the Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims. The consummation of the Sale Transaction 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 complied with in respect of the Sale Transaction.

U. The Debtors (i) have full corporate or limited liability company (as applicable) power and authority to execute the Purchase Agreement, the Related Agreements, all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors, (ii) have all of the corporate or limited liability company (as applicable) power and authority necessary to consummate the transactions contemplated by the Purchase Agreement and the Related Agreements; and (iii) upon entry of this Sale Order, other than any consents identified in the Purchase Agreement (including with respect to antitrust matters), need no consent or approval from any other Person to consummate the Sale Transaction.

V. **Purchased Assets are Property of the Estates.** The Purchased Assets constitute property of, and good title is vested in, the Debtors' estates within the meaning of Section 541(a) of the Bankruptcy Code. The Debtors are the sole and rightful owners of the Purchased Assets with all right, title, and interest to transfer and convey the Purchased Assets to the Buyer, and no other Person has any ownership right, title, or interests therein.

W. **Valid and Binding Contract.** The Purchase Agreement is a valid and binding contract between the Debtors and the Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any Chapter 7

or Chapter 11 trustee appointed in these Chapter 11 cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

X. Other than claims arising under the Purchase Agreement, the Debtors agree and acknowledge that they have no claims against the Buyer.

Y. **Waiver of Bankruptcy Rules 6004(h) and 6006(d)**. Based on the record at the Sale Hearing, and for the reasons stated on the record at the Sale Hearing, the sale of the Purchased Assets must be approved and consummated promptly in order to preserve the value of the Purchased Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtors and the Buyer intend to close the Sale Transaction as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and good, sufficient, and sound business purposes and justifications for the immediate approval and consummation of the Sale Transaction as contemplated by the Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regards to the transactions contemplated by this Sale Order.

Z. **Personally Identifiable Information**. As contemplated in the Purchase Agreement, and subject to the terms of this Sale Order, the sale to the Buyer under the Purchase Agreement of any personally identifiable information (as such term is defined in section 101(41A) of the Bankruptcy Code) (“**PII**”) is consistent with the privacy policy of the Debtors in effect on the date of commencement of these Chapter 11 cases (the “**Privacy Policy**”). Moreover, the Buyer has agreed to adhere to the Privacy Policy. The contemplated transaction satisfies the requirements of Section 363(b)(1) with respect to PII.

AA. **Single Integrated Transaction**. The Purchase Agreement and Sale Transaction must be approved and the Closing must occur to preserve the value of the Debtors’ assets. Entry

of this Sale Order approving the Purchase Agreement and all provisions thereof is a necessary condition precedent to Buyer consummating the Sale Transaction. The transactions contemplated by the Purchase Agreement are inextricably linked technically and economically and collectively constitute a single, integrated transaction.

BB. **Legal and Factual Bases.** The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Sale Motion is Granted.** The Sale Motion and the relief requested therein (to the extent not previously granted by this Court pursuant to the Bidding Procedures Order or otherwise) is granted and approved as set forth herein.

2. **Objections Overruled.** All objections (except for Cure Objections, if any, that have been adjourned, solely to the extent such objections relate to any asserted cure or adequate assurance obligations pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code), if any, to the Sale Motion or the relief requested therein that have not been withdrawn with prejudice, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice.

3. **Notice.** Notice of the Sale Motion, the Bidding Procedures, the Sale Hearing, the Sale Transaction, the sale of the Purchased Assets free and clear of any Interests or Claims, the assumption and assignment of the Assumed Contracts, and the Proposed Sale Order was adequate, reasonable, appropriate, and equitable under the circumstances and complied in all respects with Section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and all applicable Local Bankruptcy Rules.

4. **Fair Purchase Price.** The consideration provided by the Buyer pursuant to the Purchase Agreement (a) is fair and adequate; (b) 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 (including the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and similar laws); and (c) will provide an equal or greater recovery for the Debtors' creditors than would be provided by any other reasonably practicable available alternative.

5. **Approval of Purchase Agreement.** The Purchase Agreement and all transactions contemplated therein (including, but not limited to, all Related Agreements contemplated thereby), and all of the terms and conditions thereof, are hereby approved as a valid exercise of the Debtors' business judgment. Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform under and make all payments required by the Purchase Agreement and all Related Agreements as and when due thereunder without further order of the Court. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all Related Agreements contemplated thereby) be authorized and approved in its entirety.

Sale and Transfer of Purchased Assets

6. Pursuant to Sections 105(a), 363(b), and 365 of the Bankruptcy Code, the Debtors, acting by and through their existing agents, representatives and officers, are authorized and empowered, without further order of the Court, to take any and all actions necessary or appropriate to: (i) consummate and close the Sale Transaction pursuant to and in accordance with the terms and conditions of the Purchase Agreement; (ii) transfer and assign all right, title, and interest in and to all Purchased Assets, property, licenses, and rights to be conveyed in accordance with the

terms and conditions of the Purchase Agreement; and (iii) execute and deliver, perform under, consummate, and implement the Purchase Agreement and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale Transaction, including any Related Agreements, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such other ancillary documents. The Purchased Assets shall be transferred to the Buyer, and upon the Closing, such transfer shall (a) be valid, legal, binding, and effective; and (b) vest the Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets.

7. All Persons that are currently in possession of any or all of the Purchased Assets are hereby directed to surrender possession of such Purchased Assets to the Buyer at Closing. To the extent required by the Purchase Agreement, the Debtors agree to exercise commercially reasonable efforts to assist the Buyer in assuring that all Persons that are presently, or on the Closing Date may be, in possession of any or all of such Purchased Assets will surrender possession of the Purchased Assets to either (a) the Debtors before the Closing Date, or (b) the Buyer on or after the Closing Date.

8. All Persons are prohibited from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Buyer in accordance with the Purchase Agreement and this Sale Order; provided that the foregoing restriction shall not prevent any party from appealing this Sale Order in accordance with applicable law or opposing any appeal of this Sale Order.

9. Each and every any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental

entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. To the maximum extent available under applicable law, and to the extent provided for under the Purchase Agreement, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration, application, and governmental authorization or approval of the Debtors with respect to the Purchased Assets for a reasonable period of time pending Buyer's obtaining of any licenses, permits, registrations, applications, and/or governmental authorizations or approvals in its own name. To the maximum extent available under applicable law, and to the extent provided for under the Purchase Agreement, all such licenses, permits, registrations, applications, and governmental authorizations and approvals are deemed to have been transferred to the Buyer as of the Closing Date and shall remain in place for the Buyer's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Purchased Assets sold, transferred, assigned, or conveyed to Buyer on account of the filing or pendency of these Chapter 11 cases or the consummation of the Sale Transaction.

11. On the Closing Date, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in and to all of the Purchased Assets to the Buyer.

Transfer of Assets Free and Clear

12. Pursuant to Sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, upon the Closing Date and pursuant to and except as otherwise set forth in the Purchase

Agreement, the Purchased Assets shall be transferred to Buyer free and clear of all encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), interests, and liens, including the Excluded Liabilities, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, possessory interests (including those under section 365(h) of the Bankruptcy Code), other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, including any pension liabilities, retiree medical benefit liabilities, liabilities related to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), liabilities related to the Internal Revenue Code, or any other liability relating to Debtors' current and former employees, including any liabilities under any collective bargaining agreement or labor practice agreement, retiree healthcare or life insurance claims or claims for Taxes of or against the Debtors (except as otherwise provided for in the Purchase Agreement), and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule, or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the Commencement Date, of the Debtors or any of the Debtors' predecessors or Affiliates, claims, whether known or unknown, choate or inchoate, filed or unfiled,

scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (other than Assumed Liabilities and Permitted Liens) (collectively, the **“Interests or Claims”**), with all such Interests or Claims to attach to the cash proceeds of the Sale Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto. Without limiting the generality of the foregoing, “Interests or Claims” shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to (in each case, other than Assumed Liabilities and Permitted Liens) (a) any labor agreements or any of the employee benefit plans, including any Interests or Claims related to unpaid contributions or current or potential withdrawal or termination liability; (b) any of the Debtors’ collective bargaining agreements; (c) the Worker Adjustment and Retraining Notification Act of 1988, as amended, or other comparable state or local law; and (d) any of the Debtors’ current and former employees.

13. Those holders of Interests or Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transaction are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests or Claims who did object that have an interest in the Purchased Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest or Claim pursuant to section 363(f)(5) or fall within one or more of the other subSections of section 363(f) of the Bankruptcy Code and are therefore

adequately protected by having their Interests or Claims that constitute interests in the Purchased Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. Nothing herein shall be deemed or construed as a ruling or determination by this Court that the Assumed Liabilities encumber the Purchased Assets.

14. Except to the extent included in Assumed Liabilities or Permitted Liens, or to enforce the Purchase Agreement, all persons and entities (and their respective successors and assigns), including all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities, governmental units, lenders, parties to executory contracts and unexpired leases, contract Counterparties, customers, licensors, litigation claimants, employees and former employees, dealers and sale representatives, pension plans, labor unions, trade creditors, and any other creditors holding Interests or Claims against the Debtors or the Purchased Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 cases, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the transfer of the Purchased Assets to Buyer, or the Purchased Assets or the Debtors' businesses prior to the Closing Date, hereby are forever barred, estopped, and permanently enjoined from asserting any Interests or Claims relating to the Purchased Assets or the transfer of the Purchased Assets against Buyer or its successors, designees, assigns, or property, or the Purchased Assets transferred to Buyer, including, without limitation, taking any of the following actions with respect to or based on any Interest or Claim relating to the Purchased Assets

or the transfer of the Purchased Assets to Buyer (other than Assumed Liabilities): (a) commencing or continuing in any manner any action or other proceeding against Buyer or its successors or assigns, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Buyer or its successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Interest or Claims against Buyer, its successors or assigns, assets or properties; (d) asserting an Interest or Claims as a setoff, right of subrogation, or recoupment of any kind against any obligation due Buyer or its successors or assigns; (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale Order or the agreements or actions contemplated or taken in respect thereof; or (f) interfering with, preventing, restricting, prohibiting, or otherwise enjoining the consummation of the Sale Transaction. No such persons or entities shall assert or pursue against Buyer or its successors or assigns any such Interest or Claim.

15. This Sale Order (a) shall be effective as a determination that, as of the Closing, all Interests or Claims have been unconditionally released, discharged, and terminated as to the Buyer and the Purchased Assets, and that the conveyances and transfers described herein have been effected; and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of federal, state, county, and local officials, and all other Persons 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 that reflect that the Buyer is the assignee and owner of the Purchased Assets free and clear of all Interests or Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as “**Recording Officers**”). All

Recording Officers are authorized and specifically directed to strike recorded encumbrances, claims, liens, and other interests against the Purchased Assets recorded prior to the date of this Sale Order. A certified copy of this Sale Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens, and other interests against the Purchased Assets recorded prior to the date of this Sale Order. All Recording Officers are hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and Related Agreements.

16. As of and after the Closing, (a) each of the Debtors' creditors is hereby authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests or Claims in the Purchased Assets (if any) as such Interests or Claims may have been recorded or may otherwise exist; and (b) any Purchased Asset that may be subject to a statutory or mechanic's lien shall be turned over and such liens shall attach to the proceeds of the Sale Transaction in the same priority they currently enjoy with respect to the Purchased Asset.

17. Following the Closing, no holder of any Interest or Claim shall interfere with the Purchaser's title to or quiet use and enjoyment of the Purchased Assets based on or related to any such Interest or Claim or based on any actions the Debtors may take in these Chapter 11 cases.

No Successor or Other Derivative Liability

18. Buyer and its successors and assigns, members, partners, principals, and shareholders (or equivalent) are not and shall not be deemed or considered to (a) be a legal successor, or otherwise be deemed a successor to any of the Debtors or their estates; (b) have, *de facto* or otherwise, merged with or into any of the Debtors or their estates; (c) have a common identity with the Debtors; (d) have a continuity of enterprise with the Debtors; or (e) be a continuation or substantial continuation, or be holding itself out as a mere continuation, of any of

the Debtors or their respective estates, businesses, or operations, in each case, by any law or equity, and the Buyer has neither assumed nor is it in any way responsible for any liability or obligation of the Debtors or the Debtors' estates, except with respect to the Assumed Liabilities. Except as expressly set forth in the Purchase Agreement, the Buyer and its respective successors and assigns, members, partners, principals and shareholders (or equivalent) shall have no (i) liability or responsibility for any Claim against the Debtors; (ii) liability or responsibility with respect to any Interests or Claims or Excluded Liability and shall not be required to satisfy the same in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly; or (iii) successor, transferee, or vicarious liability of any kind or character, including, without limitation, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee or transferee liability, labor, product liability, employment, *de facto* merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, without limitation, liabilities on account of any Taxes or other Governmental Authority fees, contributions, or surcharges, in each case, arising, accruing, or payable under, out of, in connection with, or in any way relating to, the operation of the Purchased Assets prior to the Closing Date or arising based on actions of the Debtors or their Affiliates taken after the Closing Date

19. Notwithstanding any provision of this Order to the contrary, the Debtors' Privacy Policy shall remain in effect, and Buyer will continue to adhere to the terms and provisions of such policy.

20. Without limiting the effect or scope of the foregoing, as of the Closing (except as expressly set forth in the Purchase Agreement), the Buyer and its affiliates, members, successors, and assigns shall have no liability for any Interest, Claim, or Excluded Liabilities, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature, or character whatsoever, by reason of any theory of law or equity, including, without limitation, Interests or Claims arising under (a) any employment or labor agreements, including without limitation, any Affected Labor Agreement or the termination thereof; (b) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of or related to any of the Debtors or any Debtor's affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, the Employee Benefit Plans and any participation or other agreements related to the Employee Benefit Plans, or the termination of any of the foregoing; (c) the Debtors' business operations or the cessation thereof; (d) any litigation involving one or more of the Debtors; and (e) any employee, workers' compensation, occupational disease, or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to (i) ERISA, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, as amended, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, (x) the Multiemployer Pension Plan Amendments Act of 1980, (xi) state and local discrimination laws, (xii) state and local unemployment compensation

laws or any other similar state and local laws, (xiii) state workers' compensation laws, (xiv) any other state, local, or federal employee benefit laws, regulations, or rules relating to, wages, benefits, employment, or termination of employment with any of the Debtors or their predecessors; (xv) any antitrust laws; (xvi) any product liability or similar laws, whether state, federal, or otherwise; (xvii) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (xviii) any bulk sales or similar laws; (xix) any federal, state, or local tax statutes, regulations, or ordinances, including, without limitation, the Internal Revenue Code; and (xx) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory, or any other theory of or related to successor liability, in each case whether known or unknown as of the Closing, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to, the operation of the Purchased Assets prior to each applicable Closing Date or arising based on actions of the Debtors taken after each applicable Closing Date.

Assumption and Assignment of Assumed Contracts

21. Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, Sellers' assumption and assignment to Buyer, and Buyer's assumption on the terms set forth in the Purchase Agreement of the Assumed Contracts (including, for the avoidance of doubt, any Supplemental Contracts included on a Supplemental Assumption and Assignment Notice) is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied, subject to resolution of pending objections as provided in the Bidding Procedures Order.

22. Subject to and condition upon the occurrence of the Closing Date, the Debtors are hereby authorized, in accordance with Sections 105(a), 363, and 365 of the Bankruptcy Code, to assume and assign the Assumed Contracts to the Buyer free and clear of all Interests and Claims (including all Excluded Liabilities), and to execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to the Buyer as provided in the Purchase Agreement.

23. Upon the Closing, the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in and to the Assumed Contracts and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts. The Buyer acknowledges and agrees that from and after the Closing, subject to and in accordance with the Purchase Agreement, it shall comply with the terms of each assumed and assigned Transferred Contract in their entirety, including any indemnification obligations expressly contained in such Transferred Contract that could arise as a result of events or omissions that occur from and after the Closing, unless any such provisions are not enforceable pursuant to the terms of this Sale Order. The assumption by the Debtors and assignment to the Buyer of a Transferred Contract shall not be, or result in, a default under any such Transferred Contract or constitute a termination of any such Transferred Contract.

24. Buyer has provided adequate assurance of future performance for the Assumed Contracts within the meaning of Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

25. All Cure Costs shall be determined in accordance with the Bidding Procedures Order and paid in cash by the Buyer in accordance with the terms of the Purchase Agreement after the Closing. Notwithstanding any provision of this Order to the contrary, objections not resolved by the Closing date shall be resolved as set forth in the Bidding Procedures Order. Notwithstanding

the existence of an objection as of the Closing date, if the Buyer maintains a cash reserve in the lesser amount of (1) the amount asserted by an objecting Counterparty to be the correct Cure Cost, or (2) an amount set by this Court, then the affected Contract or Lease shall be provisionally assumed and assigned to the Buyer pending resolution of the objection through agreement of the parties or by Court order.

26. Payment of the Cure Costs by the Buyer shall (a) be in full satisfaction and cure of any and all defaults under the Assumed Contracts, whether monetary or non-monetary, and (b) compensate the Counterparties for any actual pecuniary loss resulting from such defaults. Each Counterparty shall be forever barred, estopped, and permanently enjoined from asserting against the Debtors or the Buyer, their respective affiliates, successors, or assigns, or the property of any of them, any assignment fee, rent acceleration, rent increase on account of assignment, default, breach, claim, pecuniary loss, or condition to assignment arising under or related to the Assumed Contracts, existing as of the date that such Assumed Contracts are assumed or arising by reason of the Closing. Nothing in this Sale Order shall affect the rights of the Buyer, to the extent such rights are provided in the Purchase Agreement, to add or remove any Assumed Contracts to or from the list of Assumed Contracts set forth in the Purchase Agreement up to 14 days after the Closing in accordance with the terms thereof.

27. The Cure Costs for the Assumed Contracts, including the Supplemental Contracts, for which no timely Cure Objection was filed are hereby fixed at the amounts set forth on the applicable Assumption and Assignment Notices, and Counterparties to such Assumed Contracts are forever bound by such Cure Costs. Pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, Sellers or the Buyer shall pay to the applicable Counterparty the Cure Costs relating to any Assumed Contracts for which no timely Cure Objection was filed on the Closing

Date in accordance with the Purchase Agreement. Upon payment of such Cure Costs as provided for herein, the Counterparties to such Assumed Contracts are hereby enjoined from taking any action against the Debtors and the Debtors' estates (and any respective successor entity), the Buyer or the Purchased Assets with respect to any Claim for cure.

28. To the extent not resolved prior to entry of this Sale Order, the Debtors or the Buyer shall maintain a cash reserve for any timely Cure Objection (the "**Cure Cost Reserve**") filed with respect to a Transferred Contract, including any Supplemental Contract, equal to the lesser of (a) the amount the objecting Counterparty has asserted to be required to cure the asserted defaults under the applicable Transferred Contract, and (b) such other cash reserve amount as may be ordered by the Court, until a Cure Cost amount is agreed to by the parties or determined by the Court. The resolution of Cure Objections for Assumed Contracts shall be adjourned to a date undetermined until scheduled for hearing by the Debtors on at least twenty (20) days' notice to the Counterparty. Upon resolution of a Cure Objection, the Cure Cost Reserve shall be reduced as appropriate, and such available cash shall be applied to the Obligations in accordance with the terms of the DIP Orders.

29. Pursuant to Sections 365(f)(1) and (3), the Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, including all obligations of the Buyer as the assignee of the Assumed Contracts, notwithstanding any provision in any Transferred Contract or under applicable law (including, without limitation, those of the type described in Sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer.

30. Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, all Counterparties are forever barred and permanently enjoined from raising or asserting against the

Debtors and the Debtors' estates (and any respective successor entity) or the Buyer any defaults, cross-defaults, breach, claim, pecuniary loss, rent accelerations, escalations, rent increase, assignment fees, increases or any other fees charged to the Buyer or the Debtors existing as of the date of assumption of the Assumed Contracts or as a result of the assumption or assignment of the Assumed Contracts on the Closing Date. For the avoidance of doubt, and without limiting the generality of the foregoing, any provision in a Transferred Contract, any other document, or under applicable law that prohibits, restricts or otherwise impairs assignment of the Assumed Contracts or the Buyer's ability to operate the Purchased Assets is hereby void and of no force or effect, including any provision that (a) requires any or all of the proceeds from the assignment of such Transferred Contract be paid to or shared with the applicable Counterparty or distributed in a manner inconsistent with the terms of the Purchase Agreement, an agreement between the Debtors and the Buyer to assume and assign the Transferred Contract, or the intent of the Debtors and the Buyer with respect to the distribution of such proceeds; (b) terminates any extension option rights or any other rights of the Buyer under such Transferred Contract; (c) cross-defaults to or from any other lease or executory contract that is not a Transferred Contract; (d) restricts the Buyer's operation of the Purchased Assets; or (e) requires a Counterparty's consent prior to assignment of the Transferred Contract to the Buyer.

31. Upon the Debtors' assignment of Assumed Contracts to the Buyer under the provisions of this Sale Order, no default shall exist under any Assumed Contracts, and no Counterparty to any Assumed Contracts shall be permitted to declare a default by any Debtor or the Buyer 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 relevant Transferred Contract. Any provision in a Transferred Contract, other document, or under applicable law that prohibits or

conditions the assignment or sublease of such Transferred Contract (including without limitation, the granting of a lien therein) or allows the relevant Counterparty to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force or effect. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Transferred Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Buyer's rights to enforce every term and condition of the Transferred Contract. Any party having the right to consent to the assumption or assignment of any Assumed Contracts that failed to object to such assumption or assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

32. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement and Related Agreements are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Purchased Assets or the assignment of Assumed Contracts to the Buyer, free and clear of Interests or Claims, unless such authorization is duly stayed before the Closing Date pending such appeal. The Buyer is a good faith purchaser of the Purchased Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Debtors and the Buyer will be acting in good faith if they proceed to consummate the Sale Transaction at any time after entry of this Sale Order.

33. **No Avoidance of Purchase Agreement.** Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Purchase Agreement or Related Agreements to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

Accordingly, the Purchase Agreement, Related Agreements, and the Sale Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Purchase Agreement, Related Agreements, or the Sale Transaction.

34. **Waiver of Bankruptcy Rules 6004(h), 6006(d), and 7062.** Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), 7062, or any applicable provisions of the Local Rules, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale Transaction and the Debtors and the Buyer may close the Sale Transaction as soon as practicable. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal being foreclosed as moot.

35. **Personally Identifiable Information.** The Buyer is directed to adhere to the Debtors' policies disclosed to individuals prohibiting the transfer of personally identifiable information concerning individuals to persons unaffiliated with the Debtors, as such policies existed on the Petition Date, to the extent not modified subsequently in accordance with those policies.

36. **Binding Effect of Sale Order.** The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon the Debtors, their estates, and their creditors, all holders of equity interests in the Debtors, all holders of any Interests or Claims (whether known or unknown) against any Debtor, any holders of Interests or Claims against, or on all or any portion of, the Purchased Assets, all Counterparties (including any collective bargaining

agreement or labor agreement), Buyer and all successors and assigns of Buyer, leaseholders, governmental units, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in any of these Chapter 11 cases or upon a conversion to Chapter 7 under the Bankruptcy Code of these Chapter 11 cases. The terms and provisions of the Purchase Agreement and this Sale Order shall inure to the benefit of the Debtors, their estates and their creditors, the Buyer, and its respective affiliates, successors, and assigns.

37. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Sale Order, the Purchase Agreement, or any documents executed in connection therewith, the provisions contained in this Sale Order, the Purchase Agreement, any documents executed in connection therewith shall govern, in that order. Nothing contained in any Chapter 11 plan hereinafter confirmed in these Chapter 11 cases, any order confirming such plan, or in any other order of any type or kind entered in these Chapter 11 cases (including, without limitation, any order entered after any conversion of any or all of these Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code) or in any related proceeding shall alter or derogate from the provisions of the Purchase Agreement or the terms of this Sale Order. For the avoidance of doubt, nothing herein shall modify, alter, impair, or otherwise affect any of the provisions of the DIP Order or the DIP Documents, or the rights or remedies of the DIP Agent or the DIP Lenders under the DIP Documents (each as defined in the DIP Order) except with respect to the Purchased Assets.

38. **Modification of Purchase Agreement.** The Purchase Agreement, the Related Agreements, and any other related agreements, documents, or other instruments executed in connection therewith, may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment, or supplement shall not materially

change the terms of the Purchase Agreement, Related Agreements, or any documents or other instruments executed in connection therewith. The Debtors shall provide the Consultation Parties with prior notice of any such modification, amendment, or supplement of the Purchase Agreement, and shall consult with the Consultation Parties with respect thereto. For the avoidance of doubt, all material modifications, amendments, or supplements that have a material or an adverse effect on the Debtors' estates or their creditors shall require Court approval and the reasonable consent of the DIP Agents (acting at the direction of the DIP Lenders).

39. **Bulk Sales; Taxes.** No bulk sales law, bulk transfer law, or similar law of any state or other jurisdiction (including those relating to Taxes other than Transfer Taxes) shall apply in any way to the transactions contemplated by the Purchase Agreement, the Related Agreements, the Sale Motion, or this Sale Order. Except as otherwise expressly provided in the Purchase Agreement, all obligations of the Debtors relating to Taxes, whether arising under any law, by the Purchase Agreement, or otherwise, shall be the obligation of the Debtors.

40. **Transferred Contract Prorations.** To the extent not previously paid by the Debtors, upon the Closing, the Buyer shall become responsible for any accruing but unbilled charges relating to year-end reconciliations under the Assumed Contracts that are billed to the Buyer by the applicable Counterparty subsequent to the Closing.

41. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce, and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, and any waivers and consents thereunder (and of each of the agreements executed in connection therewith) to adjudicate disputes related to this Sale Order or the Purchase Agreement (and such other related agreements, documents, or other instruments) and to enforce the injunctions set forth herein.

Dated: _____, 2022
New York, New York

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

APPROVED PURCHASE AGREEMENT

**Execution Version
Confidential**

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

**PARETEUM CORPORATION
PARETEUM NORTH AMERICA CORP.
DEVICESCAPE HOLDINGS, INC.
IPASS, INC.
IPASS IP LLC
PARETEUM EUROPE B.V.
ARTILIUM GROUP LTD.
PARETEUM N.V.
PARETEUM ASIA PTE. LTD.,
AS SELLERS**

AND

**CIRCLES MVNE PTE. LTD.
CHANNEL VENTURES GROUP, LLC,
AS PURCHASERS**

**DATED AS OF
MAY 15, 2022**

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the “Agreement”) is made and entered into as of May 15, 2022 (the “Effective Date”) by and among Pareteum Corporation, a Delaware corporation (“Parent”), Pareteum North America Corp., a Delaware corporation (“Pareteum NA”), Devicescape Holdings, Inc., a Delaware corporation (“Devicescape”), iPass, Inc., a Delaware corporation (“iPass”), iPass IP LLC, a Delaware corporation (“iPass IP”), Pareteum Europe B.V., a Netherlands private limited company (“Pareteum Europe” and, together with Parent, Pareteum NA, Devicescape, iPass, and iPass IP, collectively, the “Borrower Sellers”), Artilium Group Ltd., an England, UK, private limited company (“Artilium Group”), Pareteum N.V., a Belgian private limited company (“NV”), and Pareteum Asia Pte. Ltd., a Singapore private limited company (“Pareteum Asia” and, together with the Artilium Group, NV and the Borrower Sellers, each a “Seller” and, collectively, the “Sellers”), Circles MVNE Pte. Ltd., a Singapore private limited company (“Circles”) and Channel Ventures Group, LLC, a Delaware limited liability company (“CVG” and, together with Circles, each a “Purchaser” and together the “Purchasers”). Capitalized terms used herein but not otherwise defined shall have the meanings set forth in Article I of this Agreement.

RECITALS

WHEREAS, the Sellers, together with certain of their Affiliates, are engaged in the business of cloud software communication systems and tools (such businesses, as presently conducted, shall be collectively referred to herein as the “Business”);

WHEREAS, the Business includes only the MVNE Business and the Non-MVNE Business;

WHEREAS, on May 15, 2022 (the “Petition Date”), the Sellers commenced Cases No. 22-10615, 22-10616, 22-10617, 22-10618, 22-10619, 22-10620, 22-10621, 22-10622 and 22-10623 (collectively, the “Bankruptcy Case”) by filing a voluntary petition for relief under Chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, in connection therewith, the Sellers wish to sell, transfer, convey, assign and deliver to the Purchasers (where applicable, in accordance with Sections 363 and 365 and the other applicable provisions of the Bankruptcy Code), all of the Purchased Assets (defined below), together with the Assumed Liabilities (defined below) upon the terms and subject to the conditions set forth in this Agreement (hereinafter collectively referred to as the “Transaction”);

WHEREAS, the Purchasers wish to purchase and take delivery of such Purchased Assets and Assumed Liabilities upon such terms and subject to such conditions;

WHEREAS, the Purchased Assets owned by the Debtors shall be sold pursuant to a Sale Order of the Bankruptcy Court approving such sale under Section 363 of the Bankruptcy Code and such Sale Order may include the assumption and assignment of certain executory contracts and service agreements, unexpired leases of equipment and liabilities thereunder, under Section 365 of the Bankruptcy Code and pursuant to the terms and conditions of this Agreement; and

WHEREAS, all of the obligations of the Debtors are conditioned upon the approval of the Bankruptcy Court in accordance with the terms hereof.

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

ARTICLE I DEFINITIONS

Section 1.1 Definitions. For purposes of this Agreement (including the Disclosure Schedules hereto) the terms defined in this Agreement shall have the respective meanings specified herein, and, in addition, the following terms shall have the following meanings:

“Accounts Receivable” means, with respect to any Seller (with respect to the Sellers’ Accounts Receivable) or the Purchasers (with respect to the Purchasers Accounts Receivable) and a particular date, (i) any and all accounts receivable, trade accounts and other amounts (including overdue accounts receivable) owed to such Person relating to, or arising in connection with, the operation and conduct of, the Business and any other similar rights of such Person to payment from third parties whether or not invoiced as of such date, and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of such services rendered, in each case owing to such Person; (ii) all other accounts or notes receivable of such Person related to the Business and the full benefit of all security for such accounts or notes receivable; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case that have not been satisfied or discharged prior to the close of business on the day immediately preceding such date or have not been written off or sent to collection prior to the close of business on the day immediately preceding such date (it being understood that the receipt of a check prior to the close of business on the day immediately preceding such date shall constitute satisfaction or discharge of the applicable account or note receivable to the extent of the payment represented thereby).

“Affiliate” means, as to any Person, any other Person, which, directly or indirectly, is in control of, is controlled by, or is under common control with, such Person. The term “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as applied to any Person, means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of voting securities or other direct or indirect ownership interest, by Contract or otherwise.

“Affiliated Group” means any affiliated, consolidated, combined, unitary, or similar group, including any arrangement for group or consortium relief or similar arrangement.

“Agreement” shall have the meaning set forth in the Preamble.

“Allocation” shall have the meaning set forth in Section 3.3.

“Alternative Transaction” shall have the meaning set forth in Section 8.14(a)(iii).

“Anti-Bribery Laws” means any and all applicable statutes, regulations, orders, directives, treaties, decrees and Laws which relate to anti-bribery and anti-corruption.

“Artium Group” shall have the meaning set forth in the Preamble.

“Assignment Agreements” means an assignment agreement substantially in the form attached hereto as Annex V.

“Assumed Contracts” shall have the meaning set forth in Section 2.1(b)(vii).

“Assumed Liabilities” shall have the meaning set forth in Section 2.3(b).

“Assumption Agreements” shall have the meaning set forth in Section 4.2.

“Bankruptcy Case” shall have the meaning set forth in the Recitals.

“Bankruptcy Code” means 11 U.S.C. §§ 101, *et seq.*, and any amendments thereof.

“Bankruptcy Court” shall have the meaning set forth in the Recitals.

“Bidding Procedures Orders” shall have the meaning set forth in Section 8.14(b)(iii)(1).

“Bills of Sale” shall have the meaning set forth in Section 4.1.

“Borrower Sellers” shall have the meaning set forth in the Preamble.

“Breaching Party” shall have the meaning set forth in Section 11.1.

“Break Up Fee” shall have the meaning set forth in Section 8.14(a)(iii).

“Bridge Loan” means that certain loan made by Circles MVNE Pte. Ltd to Pareteum Corporation pursuant to that certain Senior Secured Bridge Note due 2022, dated as of April 25, 2022.

“Bridge Loan Agreement” means that certain Senior Secured Bridge Note due 2022, dated as of April 25, 2022.

“Business” shall have the meaning set forth in the Recitals.

“Business Days” means any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City of New York and/or Singapore.

“Business Employees” shall have the meaning set forth in Section 8.8(e).

“Cash” means cash on hand, cash in bank or other accounts, readily marketable securities, security deposits, certificates of deposit and other cash-equivalent liquid assets of Seller.

“Cash and Cash Equivalents” means all of the Sellers’ cash (including petty cash but excluding any checks that remain uncashed or uncleared prior to the close of business on the

Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper and government securities and other cash equivalents.

“Circles” shall have the meaning set forth in the Preamble.

“Circles Assumed Contracts” shall have the meaning set forth in Section 2.1(a)(vi).

“Circles Assumed Liabilities” shall have the meaning set forth in Section 2.3(a).

“Circles Cure Payments” shall have the meaning set forth in Section 2.3(a)(iv).

“Circles Purchased Assets” shall have the meaning set forth in Section 2.1(a).

“Circles Purchased Equity Interests” means the Debtors' interest in the equity of Pareteum Africa Pty Ltd.

“Closing” shall have the meaning set forth in Section 5.1.

“Closing Date” shall have the meaning set forth in Section 5.1.

“COBRA” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” shall have the meaning set forth in the NDA.

“Contract” means any written or oral contract, agreement, lease, license, financial instrument, covenant not to sue, or other document or commitment, arrangement, undertaking, or understanding, practice or authorization.

“Contractors” shall have the meaning set forth in Section 8.8(f).

“Cure Payments” means, with respect to the Debtors, “cure payments” required to be made under Section 365 of the Bankruptcy Code in connection with any assumption and assignment of an Assumed Contract to the Purchasers required to be paid in connection with the assignment of, or outstanding with respect to periods before the Closing under, any Assumed Contract assigned to the Purchasers.

“CVG” shall have the meaning set forth in the Preamble.

“CVG Assumed Contracts” shall have the meaning set forth in Section 2.1(a)(vi).

“CVG Assumed Liabilities” shall have the meaning set forth in Section 2.3(b).

“CVG Cure Payments” shall have the meaning set forth in Section 2.3(b)(iv).

“CVG Purchased Assets” shall have the meaning set forth in Section 2.1(b).

“CVG Purchased Equity Interests” means the purchased equity interests related to the Non-MVNE Business and set forth on Schedule 1.1(a).

“Debtors” means Parent and any Affiliate that is a debtor-in-possession in the Bankruptcy Case.

“Deemed Purchaser Confidential Information” shall have the meaning set forth in Section 8.10.

“Devicescape” shall have the meaning set forth in the Preamble.

“DIP Agent” has the meaning given to such term in the DIP Loan Agreement.

“DIP Budget” means a 13-week cash flow and fee and expense incurrence forecast, in form and substance acceptable to the DIP Agent, attached to the Interim Order submitted to the Bankruptcy Court, and updated by the Borrower on the first Wednesday of each month, in accordance with the requirements set forth in the DIP Loan Agreement.

“DIP Documents” means the “Loan Documents” as such term is defined in the DIP Loan Agreement.

“DIP Loan” means the amount that Circles has funded pursuant to a debtor-in-possession financing loan that has been made pursuant to an order of the Bankruptcy Court.

“DIP Loan Agreement” means that certain Senior Secured, Priming and Superpriority Debtor-in-Possession Credit Agreement, dated as of May 15, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “DIP Facility Agreement”), among Parent, each of the direct and indirect Subsidiaries of Parent party thereto as borrowers, CIRCLES MVNE PTE. LTD., as lender (in such capacity, the “Lender”, and each person who becomes a lender party thereto after the date hereof, each a “Lender”) and CIRCLES MVNE PTE. LTD., as administrative agent for the Lenders.

“Disclosure Schedules” means the schedules delivered by the Sellers to the Purchasers as of the Effective Date setting forth the exceptions to the representations and warranties contained in Article IV and certain other information called for by this Agreement.

“Effective Date” shall have the meaning set forth in the Preamble.

“Employee Census” shall have the meaning set forth in Section 8.8(f).

“Employee Plans” means any employment, consulting, severance or other similar plan, arrangement or policy, and each plan, arrangement (written or oral), program, agreement or commitment providing for insurance coverage (including any self-insured arrangements), workers’ compensation, disability benefits, supplemental unemployment benefits, vacation benefits, provident plans, retirement benefits, life, health, disability or accident benefits or for deferred compensation, profit-sharing bonuses, stock options, stock purchases or other forms of incentive compensation or post-retirement insurance, compensation or benefits which is entered into, maintained, contributed to or required to be contributed to, by any Seller or under which any

Seller may incur any liability including under any employee pension benefit plan and any employee welfare benefit plan which any Seller maintains, administers, contributes to or is required to contribute to, or has maintained, administered, contributed to or was required to contribute to, or under which any Seller may incur any liability.

“Employees” means all individuals with whom the Sellers maintain as of the date hereof an employer-employee relationship.

“Employment Contracts” means any employment, retention, severance, indemnification, consulting, expatriate or supplemental pension contract, or other employment-related Contract, between the Sellers and an individual.

“Excluded Assets” shall have the meaning set forth in Section 2.2.

“Excluded Contracts” shall have the meaning set forth in Section 2.2(e).

“Excluded Liabilities” shall have the meaning set forth in Section 2.3(c).

“Expense Reimbursement” means the actual out-of-pocket costs, expenses, and fees, including legal, accounting, diligence and other third party advisory or service costs, expenses and fees incurred by Circles and its Affiliates in connection with evaluating, investigating, negotiating, documenting, consummating and/or performing the Transaction contemplated by this Agreement, the acquisition of the First Lien Notes, the transactions contemplated by the Bridge Loan Agreement and DIP Loan Agreement (to the extent that such costs, fees and/or expenses are not actually paid to Circles, as lender, pursuant to the Bridge Loan Agreement or the DIP Loan Agreement) in an amount not to exceed one million five hundred thousand dollars (\$1,500,000.00), as contemplated by Section 8.14 of this Agreement.

“First Lien Agent” means Circles, in its capacity as administrative agent under that certain Security Agreement, dated as of June 8, 2020, by and among the Borrower Sellers, each of the subsidiaries of the Sellers from time to time party thereto and Circles, as further amended, restated, supplemented or otherwise modified from time to time.

“First Lien Notes” means those notes, including the class A and class B notes, evidenced by that certain Securities Purchase Agreement dated as of June 8, 2020, among the Pareteum Corporation and the buyers party thereto, as amended, restated, supplemented or otherwise modified from time to time, and the promissory notes, security documents and other transaction documents executed and delivered by the Pareteum Corporation and its subsidiaries, as purchased by Circles from CVG and High Trail pursuant to that Note Sale Contract dated as of April 25, 2022.

“Governmental Authority” means any federal, state, provincial, municipal and foreign governmental entity, authority, or agency, or any other political subdivision, or any entity exercising executive, legislative, judicial, regulatory or administrative functions of government, and quasi-governmental authorities.

“High Trail” means High Trail Investments SA LLC.

“Intellectual Property” means, on a worldwide basis: (i) all patents, patent applications, patent disclosures and all related re-issuances, continuations, continuations-in-part, renewals, substitutions, refiles, divisions, revisions, extensions, reexaminations and counterparts thereof, all industrial designs, industrial models and utility models, certificates of invention, plant patents and design patents, as well as the rights to file for, and to claim priority to, any such patent rights, (ii) all registered and unregistered trademarks, service marks, domain names, trade dress and product configurations, logos, trade names, together with all translations, adaptations, modifications, derivations and combinations thereof and including all goodwill associated therewith and all applications, registrations, renewals and extensions in connection therewith, (iii) all registered and unregistered copyrights in both published and unpublished works and all moral rights, and all applications, registrations, renewals and extensions in connection therewith, together with all translations, adaptations, modifications, derivations, combinations and derivative works thereof, (iv) all internet domain names and registration rights, uniform resource locators, internet or worldwide web sites or protocol addresses, social media accounts, and all content, programming, and related security passwords or codes related to all of the foregoing, (v) all inventions, developments, discoveries and concepts (whether or not patentable and whether or not reduced to practice), all methods and/or materials, technical information, technologies, systems, processes, procedures, know-how, data, trade secrets (as such are determined under applicable law), samples, compositions, devices, formulae, illustrations, works of authorship, compilations, programs, schematics, designs, drawings, technical plans, prototypes, production and manufacturing processes and techniques, research, development activities and plans, specifications, computer programs, object and source code, databases, passwords, log on identifiers, algorithms and mask works, (vi) all other intellectual property rights, industrial property rights, and proprietary rights relating to any of the foregoing, (vii) all rights in software, (viii) all copies and tangible embodiments thereof (in whatever form or medium), (ix) and the right to sue and recover for past, present or future infringements, misappropriations, dilution, unauthorized use or disclosure, or other conflict with any of the foregoing intellectual property.

“Intellectual Property Assets” shall refer to all Intellectual Property, owned by any Seller that relates to, or is used or held for use in connection with, the Business.

“Intellectual Property Assignment Agreement” shall have the meaning set forth in Section 4.1.

“Interim Contracts” shall have the meaning set forth in Section 2.3(e).

“Interim Order” has the meaning given to such term in the DIP Loan Agreement.

“IoT Business” shall refer to the Sellers’ Internet of Things business.

“IP Agreements” shall have the meaning set forth in Section 8.18.

“iPass” shall have the meaning set forth in the Preamble.

“iPass IP” shall have the meaning set forth in the Preamble.

“IP Contributor” shall have the meaning set forth in Section 6.14(h).

“IP Registrations” shall have the meaning set forth in Section 6.14(d).

“Key MVNE Customer Contracts” means, collectively, those Contracts primarily relating to the MVNE Business, which Key MVNE Customer Contracts include but are not limited to Vodafone Enabler Espana, Telenet/Proximus, M1, Telecall Communication Corp, and Vodacom.

“Knowledge” means in the case of any Seller, the knowledge of the parties listed on Schedule 1.1(b) which means, with respect to each such Person that (a) such Person is actually aware of such fact or matter, (b) such Person, after reasonably inquiry, would have become aware of such fact or matter, or (c) such Person, in connection with the reasonable and diligent discharge of such Person’s employment or other responsibilities with respect to the entity in question, should reasonably be expected to have acquired knowledge of such fact or matter.

“Laws” means any federal, state, provincial, local or foreign statute, law, ordinance, regulation, rule, code, order or other requirement or rule of law.

“Legal Proceeding” means any action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, investigative or informal) commenced, brought, conducted or heard by or before, or otherwise involving, any Governmental Authority or arbitrator.

“Liability” means any liability, indebtedness, obligation, expense, claim, loss, cost, obligation, damage, responsibility, guaranty, Tax or endorsement of or by any Person, absolute or contingent, accrued or unaccrued, known or unknown, due or to become due, liquidated or unliquidated, whether or not secured.

“Liens” means any security interests, mortgages, interests, liens, pledges, charges, defects of title, options and other rights of third parties, rights of first refusal, claims or any other encumbrance or restriction on ownership.

“Material Adverse Effect” means any event or change or circumstance that, individually or when aggregated with any one or more of the other such changes, events or circumstances, has had or could reasonably be expected to have a material adverse effect on or with respect to (a) the Purchased Assets, the Assumed Liabilities or the operation of the Business that is attributed to the Borrower Sellers taken as a whole, or (b) the ability of the Borrower Sellers to consummate the Transaction; provided, however, that none of the following events, changes or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be deemed to be or constitute a Material Adverse Effect under clause (a) above, and none of the following changes, events or circumstances (individually or when aggregated with any one or more of the other such changes, events or circumstances) shall be taken into account when determining whether a Material Adverse Effect has occurred under clause (a) above: (i) war, acts of nature, general strike, acts of terror or acts of hostilities, including but not limited to, military engagements and shelling of civilian areas, (ii) general economic, market or political changes or conditions, (iii) events, changes or circumstances which generally affect the industries in which the Sellers conduct business, (iv) changes in Laws, (v) the filing and the pendency of the Bankruptcy Case or ancillary proceedings in any other jurisdiction regardless of where commenced and by whom, (vi) the commencement of any action against any Non-Borrower Seller or the assets of any Non-Borrower Seller, (vii) the execution against any Non-Borrower

Seller or any asset of any Non-Borrower Seller, (viii) the failure of the liens granted under the DIP Loan on the assets of the applicable Non-Borrower Seller to be recorded or enforced outside of the United States, (ix) the attrition, dismissal, strike, work stoppage, work cessation, lockout or other similar act by or with regard to any employees of any Non-Borrower Seller, and (x) events, changes or circumstances arising from or caused by the announcement of this Agreement or the taking of any action specifically required hereunder; provided that, with respect to clauses (i) through (iv), such event, change or circumstance does not disproportionately affect the Business or the Purchased Assets compared to other Persons operating in the same industry or market as the Business or Purchased Assets.

“Material Contracts” shall have the meaning set forth in Section 8.18.

“MVNE Business” means Sellers’ Mobile Virtual Network Enabler business, and also includes the IoT Business.

“NDA” shall have the meaning set forth in Section 8.10.

“Note Sale Contract” means that certain Note Sale Contract providing for the sale of First Lien Notes, dated as of April 25, 2022, between Circles, as purchaser and High Trail and CVG as sellers.

“Non-Borrower Sellers” means, collectively, Artilium Group, NV and Pareteum Asia.

“Non-Breaching Party” shall have the meaning set forth in Section 11.1.

“Non-Material IP Registrations” means IP Registrations that Sellers have allowed to lapse during the last 12 months, a list of which shall be provided to Sellers within 10 days after the date hereof.

“Non-MVNE Business” means collectively, (i) Sellers’ Small and Medium Business Enterprise (Including United Telecom), (ii) Sellers’ Mobile Virtual Network Operation business, (iii) Sellers’ messaging business conducted by Interactive Digital Media GmbH business, and (iv) Sellers’ iPass business.

“NV” shall have the meaning set forth in the Preamble.

“OFAC” shall have the meaning set forth in Section 6.12(b).

“Ordinary Course of Business” means the ordinary course of business of the Sellers consistent with the current custom and practice of the Sellers (including with respect to quantity and frequency) in light of Debtors’ current financial condition, financial distress and pending Bankruptcy Case, if applicable; provided, however, that any terminations of Business Employees, other than terminations for cause, and any failures to pay any Business Employees, between the date hereof and the Closing shall not be deemed to be in the ordinary course of business.

“Outside Closing Date” shall have the meaning set forth in Section 8.14(b)(iii)(6).

“Parent” shall have the meaning set forth in the Preamble.

“Pareteum Africa JV Agreement” means, collectively, that certain Joint Venture and Collaboration Agreement entered into by and between Pareteum N.V., Pareteum Africa Pty Ltd. and Virtual Mobile Operations Pty. Ltd. effective as of June 1, 2021 and that certain Joint Venture and Collaboration Agreement Amendment Number 1 entered into by and between Pareteum N.V., Pareteum Africa Pty Ltd. and Virtual Mobile Operations Pty. Ltd. effective as of March 10, 2022.

“Pareteum Asia” shall have the meaning set forth in the Preamble.

“Pareteum Europe” shall have the meaning set forth in the Preamble.

“Pareteum NA” shall have the meaning set forth in the Preamble.

“Parties” means, collectively, the Sellers and Purchasers.

“Paying Party” shall have the meaning set forth in Section 8.6(b).

“Periodic Taxes” shall have the meaning set forth in Section 8.6(b).

“Permitted Liens” means the restrictions or requirements set forth in the Sale Order relating to the Purchased Assets, and all Liens set forth on Schedule 1.1(c).

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

“Personal Information” shall have the meaning set forth in Section 6.14(j).

“Petition Date” shall have the meaning set forth in the Recitals.

“Post-petition Accrued AP” means any allowed claim (as defined in Bankruptcy Code Section 101(5)) on account of any post-Petition Date expense that is incurred at or prior to Closing by any of the Debtors in the Ordinary Course of Business that relates to the operation of the Business and is entitled to administrative expense priority pursuant to Bankruptcy Code Section 503(b) but have not been paid by the Debtors (or otherwise) at the time of Closing.

“Professional Fee Escrow Amount” means the segregated account, funded by the Debtors for the exclusive purpose of payment of allowed professional fees in accordance with the DIP Budget and DIP Documents.

“Purchased Assets” shall have the meaning set forth in Section 2.1(b).

“Purchased Equity Interests” means collectively the Circles Purchased Equity Interests and the CVG Purchased Equity Interests.

“Purchase Price” shall have the meaning set forth in Section 3.1(b).

“Purchaser” shall have the meaning set forth in the Preamble.

“Purchasers” shall have the meaning set forth in the Preamble.

“Purchasers’ Allocation” shall have the meaning set forth in Section 3.3.

“R&D Sponsor” shall have the meaning set forth in Section 6.14(l).

“Real Property Leases” shall have the meaning set forth in Section 6.5.

“Reimbursing Party” shall have the meaning set forth in Section 8.6(b).

“Releasees” shall have the meaning set forth in Section 12.14.

“Required Consents” shall have the meaning set forth in Section 2.4(a).

“Sale Motion” means the motion to be filed with the Bankruptcy Court by Debtors, in form and substance satisfactory to the First Lien Agent and the Second Lien Agent and the Purchasers, seeking approval of the applicable terms and conditions of the Transaction Documents, authorization for the sale of the applicable Purchased Assets by the Debtors pursuant to Section 363 of the Bankruptcy Code and the assumption and assignment of the Purchased Assets that are executory contracts or unexpired leases pursuant to Section 365 of the Bankruptcy Code, free and clear of all Liens, and all as provided in the Sale Order.

“Sale Order” means the order of the Bankruptcy Court substantially in the form attached as Exhibit A (which Exhibit A has been reviewed by and is satisfactory to each of the First Lien Agent and the Second Lien Agent), and in final form and substance satisfactory to the First Lien Agent and the Second Lien Agent, and the Purchasers, each in their respective discretion.

“Second Lien Agent” means CVG, in its capacity as administrative agent under that certain Security Agreement, dated as of February 22, 2021, by and among the Sellers, each of the subsidiaries of the Sellers from time to time party thereto and CVG, as further amended, restated, supplemented or otherwise modified from time to time.

“Seller” shall have the meaning set forth in the Preamble.

“Sellers” shall have the meaning set forth in the Preamble.

“Sellers’ Allocation Notice” shall have the meaning set forth in Section 3.3.

“Specified Representations” means the representations and warranties set forth in Section 6.1, Section 6.2, the first sentence of Section 6.3 and Section 6.9.

“Straddle Period” means any taxable period beginning on or ending after the Closing Date.

“Taxes” mean any (a) 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, 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 of any kind whatsoever or any 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, (b) interest, penalties, fines or additions to Tax or additional amounts with respect to any item described in clause (a) or the failure to comply with any requirement imposed with respect to any Tax Returns, and (c) liabilities in respect of any items described in clause (a) or clause (b) payable by reason of Contract, membership of an Affiliated Group, assumption, transferee liability, succession, operation of Law or otherwise.

“Tax Return” means any return, report, information return or other document (including any related or supporting information) filed or required to be filed in connection with the determination, assessment or collection of Taxes of any party or the administration of any Laws, regulations or administrative requirements relating to any Taxes.

“Transaction” shall have the meaning set forth in the Preamble.

“Transaction Documents” shall have the meaning set forth in Section 6.1.

“Transferred Employees” shall have the meaning set forth in Section 8.8(a).

“WARN Act” means the Worker Adjustment and Retraining Notification Act of 1988, as amended, any implementing regulations thereof, and any similar state or local Law, including the New York State Worker Adjustment and Retraining Notification Act.

“Wind Down Amount” means an amount of up to six hundred thousand U.S. Dollars (\$600,000.00) to be used by the Debtors in connection with the process to wind down, dissolve and liquidate the Debtors’ estates and distribute remaining assets in accordance with a plan of liquidation pursuant to sections 1123 and 1129 of the Bankruptcy Code.

ARTICLE II PURCHASE AND SALE OF PURCHASED ASSETS; EXCLUDED ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchased Assets. Upon the terms and subject to the conditions set forth in this Agreement, subject to Bankruptcy Court approval, as applicable, at the Closing:

(a) Each Seller shall, as applicable, sell, convey, transfer, assign and deliver to Circles and/or one or more Affiliates of Circles designated in writing by Circles, and Circles and/or its applicable Affiliates shall purchase, acquire and take assignment and delivery from such Sellers, all right and title to and interest in and to the following assets, properties, and rights (contractual or otherwise) owned by such Seller and primarily used or held for use in connection with or necessary for the operation of the MVNE Business (collectively, the “Circles Purchased Assets”) free and clear of all Liens, claims or interests of any type or nature, whether known or unknown, of any Seller or any other party (other than Permitted Liens), including without limitation:

- (i) all assets primarily related to the MVNE Business;

(ii) all agreements and telecommunications contracts where the Sellers provide software platform solutions related to the Sellers' MVNE Business to telecommunications companies, including but not limited to the Key MVNE Customer Contracts;

(iii) all assets primarily related to the Sellers' "Internet of Things" products and services related to the MVNE Business;

(iv) All deposits related to the MVNE Business, including all deposits and prepayments held by third parties pursuant to any executory contract or unexpired lease assumed and assigned to Circles which are related to the MVNE Business (excluding deposits related to Contracts that are not Assumed Contracts);

(v) Subject to the timing and process contemplated by the Sale Order, the Contracts, agreements, contract rights, leases of real property, leases of equipment, machinery or other tangible personal property license agreements, customer contracts, vendor contracts, Employment Contracts, purchase and sales orders (if any), financial instruments, royalty agreements, third party guaranties, indemnifications, arrangements and understandings, whether oral or written, to which any Seller is a party (whether or not legally bound thereby) and which primarily relate to the operation of the MVNE Business and which are designated as Assumed Contracts pursuant to Section 2.3(d) below (collectively the "Circles Assumed Contracts");

(vi) The Circles Purchased Equity Interests;

(vii) All rights, title and interests of the Sellers and their Affiliates in the Pareteum Africa JV Agreement;

(viii) All Accounts Receivable related to the MVNE Business;

(ix) all permits necessary for the operation of the MVNE Business or the ownership of the MVNE Business, transferable to Circles pursuant to their terms and in accordance with applicable Laws;

(x) all Intellectual Property Assets which relate to, or are used or held for use, in connection with, the MVNE Business, including but not limited to the Pareteum and Artilium brand names, and trademarks (whether registered or otherwise), ARTA software and Coreserver software;

(xi) all prepaid items and expenses primarily related to the MVNE Business, including prepayments of customers of the MVNE Business;

(xii) all books and records including customer or client lists, files, documentation, records and the related documentation primarily related to the MVNE Business or Circles Assumed Liabilities, but specifically excluding the books and records set forth in Section 2.2(f);

(xiii) all claims, indemnities, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) primarily related to the

MVNE Business, the Circles Purchased Assets or the Circles Assumed Liabilities (other than those on insurance policies of the Sellers);

(xiv) all Cash and Cash Equivalents (regardless of the derivation of such Cash or Cash Equivalents), less the Wind Down Amount and the Professional Fee Escrow Amount; *provided* that the Wind Down Amount and the Professional Fees Escrow Amount shall be Excluded Assets.

(xv) all other assets, properties, and rights used in the MVNE Business that are not defined below as Excluded Assets; and

(xvi) all claims and causes of action of any Debtor against Affiliates, current Independent Directors, current officers, employee or current vendors or third party providers related to the MVNE Business, including such claims and causes of action arising under Chapter 5 of the Bankruptcy Code, including Sections 510, 541, 544, 545, 547, 548, 549, 550, 553 or 558, or similar state laws.

(b) Each Seller shall, as applicable, sell, convey, transfer, assign and deliver to CVG and/or one or more Affiliates of CVG designated in writing by CVG, and CVG and/or its applicable Affiliates shall purchase, acquire and take assignment and delivery from such Sellers, all right and title to and interest in and to the following assets, properties, and rights (contractual or otherwise) owned by such Seller and primarily used or held for use in connection with or necessary for the operation of the Non-MVNE Business (collectively, the “CVG Purchased Assets” and, together with the Circles Purchased Assets, the “Purchased Assets”) free and clear of all Liens, claims or interests of any type or nature, whether known or unknown, of any Seller or any other party (other than Permitted Liens), including without limitation:

(i) all assets related to the Sellers’ Small and Medium Business Enterprise products and services;

(ii) all assets related to the Sellers’ Mobile Virtual Network Operation business;

(iii) all assets related to the Sellers’ operation of the messaging business conducted by Interactive Digital Media GmbH business;

(iv) all assets related to iPass;

(v) all deposits related to the Non-MVNE Business, including all deposits and prepayments held by third parties pursuant to any executory contract or unexpired lease assumed and assigned to CVG which are related to the Non-MVNE Business (excluding deposits related to Contracts that are not Assumed Contracts);

(vi) all equipment, machinery or other tangible personal property primarily used or held for use in connection with the Sellers’ Non-MVNE Business;

(vii) subject to the timing and process contemplated by the Sale Order, the Contracts, agreements, contract rights, leases of real property, leases of equipment, machinery

or other tangible personal property license agreements, customer contracts, purchase and sales orders (if any), financial instruments, royalty agreements, third party guaranties, indemnifications, arrangements and understandings, whether oral or written, to which any Seller is a party (whether or not legally bound thereby) and which relate to the operation of the Non-MVNE Business and which primarily relate to the operation of the Non-MVNE Business and which are designated as Assumed Contracts pursuant to Section 2.3(d) below (collectively, the “CVG Assumed Contracts” and, together with the Circles Assumed Contracts, the “Assumed Contracts”);

- (viii) the CVG Purchased Equity Interests;
- (ix) all Accounts Receivable related to the CVG Purchased Assets;
- (x) all permits necessary for the operation of the Sellers’ Non-MVNE Business, transferable to CVG pursuant to their terms and in accordance with applicable Laws;
- (xi) all Intellectual Property Assets which relate solely to, or are solely used or held for use, in connection with, the Non-MVNE Business, including, but not limited to the wi-fi business of Devscape;
- (xii) all prepaid items and expenses related to the Sellers’ Non-MVNE Business;
- (xiii) all books and records including customer or client lists, files, documentation, records and the related documentation related to the Sellers’ Non-MVNE Business, or CVG Assumed Liabilities, but specifically excluding the books and records set forth in Section 2.2(f);
- (xiv) all claims, indemnities, warranties, guarantees, refunds, causes of action, rights of recovery, rights of set-off and rights of recoupment of every kind and nature (whether or not known or unknown or contingent or non-contingent) related to the Sellers’ Non-MVNE Business or the CVG Assumed Liabilities (other than those on insurance policies of the Sellers);
- (xv) all deposits and prepayments held by third parties pursuant to any executory contract or unexpired lease assumed and assigned to CVG;
- (xvi) all other assets, properties, and rights used in the Sellers’ Non-MVNE Business that are not defined below as Excluded Assets and not included in Circles Purchased Assets; and
- (xvii) all claims and actions of any Debtor against Affiliates, vendors and third party providers of any Debtor arising under Sections 510, 541, 544, 545, 547, 548, 549, 550, 553 or 558 of the Bankruptcy Code or similar state laws related in each case to the CVG Purchased Assets.

For the avoidance of doubt, if a Purchased Asset has an equal relation to the MVNE Business and Non MVNE Business, such Purchased Asset shall constitute a Circles Purchased Asset. To the extent a Purchased Asset is desired by both Purchasers, the Purchasers will work in good faith to

determine which Purchaser shall purchase the Purchased Asset and whether, to the extent possible, a license or other accommodation may be made to allow both Purchasers to use the applicable Purchased Asset.

Section 2.2 Excluded Assets. Notwithstanding the foregoing, the following assets, properties, and rights of the Sellers are specifically excluded from the definition of Purchased Assets (collectively, such assets, properties, and rights, the “Excluded Assets”):

(a) Cash and Cash Equivalents in an amount equal to the sum of the Wind Down Amount and the Professional Fee Escrow Amount;

(b) all prepaid professional and other expenses paid solely in connection with the Bankruptcy Cases;

(c) [Reserved.]

(d) any permits that are not transferable pursuant to their terms and in accordance with applicable Laws;

(e) any Contracts that are not Assumed Contracts (the “Excluded Contracts”) and any deposits related thereto;

(f) any of the following books and records of the Sellers: corporate seals, organizational documents, corporate governance agreements, minute books, stock books, books of account or other records having to do with the corporate organization or governance of any Seller, all employee-related or employee benefit-related files or records (other than personnel files of Transferred Employees identified by the Purchasers as being included in the Purchased Assets), and any other books and records which any Seller is prohibited from disclosing or transferring to the Purchasers under applicable Law and is required by applicable Law to retain;

(g) all insurance policies of any Seller and all credits, premium refunds, rights to applicable claims and proceeds thereunder;

(h) equity securities or other ownership interest of the Sellers and any of the Sellers’ direct or indirect subsidiaries, except for the Purchased Equity Interests;

(i) any 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;

(j) any Seller’s bank accounts;

(k) the Sellers’ rights under this Agreement, including any agreement, certificate, instrument or other document executed and delivered between the Sellers and the Purchasers in connection with the transactions contemplated hereby, and any other agreement between the Sellers and the Purchasers entered into on or after the date hereof;

- (l) any assets, rights or properties to the extent related to, or used or held for use in any other business lines of any Seller that are not the Business;
 - (m) the Post-petition Accrued AP;
 - (n) any adequate assurance deposit under Section 366 of the Bankruptcy Code;
- and
- (o) claims, refunds, causes of action and rights of recovery, to the extent not related to the Business, as a result of resellers allowing fraudulent usage of any product sold or resold by the Debtors.

Section 2.3 Assumed Liabilities; Excluded Liabilities.

(a) Circles Assumed Liabilities: At the Closing, Circles shall assume and agree to perform and discharge only the following Liabilities of the Sellers to the extent not previously performed or discharged, and no others (collectively, the “Circles Assumed Liabilities”):

(i) all Liabilities of a Seller which first accrue and are to be performed from and after the Closing under the Circles Assumed Contracts;

(ii) all Liabilities and obligations relating to and arising from the possession or ownership of or interest in the Circles Purchased Assets which first accrue on or after the Closing;

(iii) the obligations relating to and arising from the possession or ownership of or interest in the Circles Purchased Equity Interests, solely to the extent set forth in the Pareteum Africa JV Agreement which first accrue on or after the Closing;

(iv) the Cure Payments solely associated with the Circles Assumed Contracts (the “Circles Cure Payments”), which Circles Cure Payments shall be determined in accordance with the Chapter 11 sale and bid procedures;

(v) all Liabilities (including wages and commissions) relating to the employment of the Transferred Employees acquired by Circles that accrue on or after the Closing and relate to periods of employment with either Circles or its Affiliates after the Closing (it being acknowledged that the Sellers shall be liable for the wages and commissions and other Liabilities relating to the employment of the Transferred Employees that accrue prior to the Closing Date or relate to periods of employment with any of the Sellers before the Closing); and

(vi) all Liabilities related to Permitted Liens on the Circles Purchased Assets.

(b) CVG Assumed Liabilities: At the Closing, CVG shall assume and agree to perform and discharge only the following Liabilities of the Sellers to the extent not previously performed or discharged, and no others (collectively, the “CVG Assumed Liabilities” and, together with the Circles Assumed Liabilities, the “Assumed Liabilities”):

(i) all Liabilities of a Seller which first accrue and are to be performed from and after the Closing under the CVG Assumed Contracts;

(ii) all Liabilities and obligations relating to and arising from the operation of the Sellers' Small and Medium Business Enterprise, Mobile Virtual Network Operation, Interactive Digital Media GmbH, and iPass Businesses or the possession or ownership of or interest in the CVG Purchased Assets after the Closing;

(iii) all Liabilities and obligations relating to and arising from the possession or ownership of or interest in the CVG Purchased Equity Interests;

(iv) all Cure Payments associated with the executory contracts and unexpired leases assumed and assigned to CVG (the "CVG Cure Payments") which CVG Cure Payments shall be determined in accordance with the Chapter 11 sale and bid procedures;

(v) all Liabilities (including wages and commissions) relating to the employment of the Transferred Employees acquired by CVG that accrue on or after the Closing and relate to periods of employment with either CVG or its Affiliates after the Closing (it being acknowledged that the Sellers shall be liable for the wages and commissions and other Liabilities relating to the employment of the Transferred Employees that accrue prior to the Closing Date or relate to periods of employment with any of the Sellers before the Closing);

(vi) the Post-petition Accrued AP related to the Sellers' Small and Medium Business Enterprise, Mobile Virtual Network Operation, Interactive Digital Media GmbH, and iPass Businesses or CVG Purchased Assets; and

(vii) all Liabilities related to Permitted Liens on the CVG Purchased Assets.

(c) Other than the Assumed Liabilities, the Purchasers shall not assume or be bound by or be obligated or responsible for, and the Sellers shall pay or otherwise satisfy, any duties, responsibilities, services, commitments, expenses, obligations or liabilities of any Seller or relating to the Business or the Purchased Assets (or which may be asserted against or imposed upon either Purchaser as a successor or transferee of any Seller or any of its Affiliates as an acquirer of the Purchased Assets as a matter of law) of any kind or nature, fixed or contingent, known or unknown, including the following (collectively, the "Excluded Liabilities"):

(i) any Liability (A) for Taxes of any Seller or Affiliate, or (B) Taxes relating to the Purchased Assets or the Business for any period ending on or prior to the Closing Date;

(ii) any Liability of any Seller or any Affiliate under any Excluded Contract or Excluded Asset;

(iii) any Liability of any Seller or any Affiliate relating to and arising from operation, possession or ownership of or interest in the Business or the Purchased Assets prior to the Closing Date, including all Liabilities for wages, commissions and benefits relating to

the employment of any employee prior to the Closing or the termination of their employment with any Seller or Affiliate;

(iv) any Liability under the WARN Act as to any current or former employee of the Sellers or any Affiliate, whether accruing before, on, or after the Closing, except any such Liabilities to any of the Transferred Employees that accrue after the Closing and arise from a covered employment loss with the Purchasers or their respective Affiliates after the Closing;

(v) any Liability of any Seller or any Affiliate (other than relating to the Purchased Equity Interests) arising out of or resulting from its compliance or noncompliance with any Law;

(vi) any Liability of any Seller or any Affiliate (other than relating to the Purchased Equity Interests) relating to any Legal Proceeding arising out of or in connection with the conduct of the Business or any other conduct of any Affiliate or any of its officers, directors, employees, consultants, agents or advisors, in each case, for the period prior to Closing (other than the Assumed Liabilities);

(vii) any Liabilities of any Seller or any Affiliate arising under or in connection with any Employee Plans of, or maintained or required to be maintained by, any Affiliate;

(viii) any Liability of any Seller or any Affiliate to pay any fees or commissions to any broker or finder in connection with the transactions contemplated by this Agreement;

(ix) Post-petition Accrued AP;

(x) any Liability of any Seller or any Affiliate (other than relating to the Purchased Equity Interests) arising from an obligation to escheat property; and

(xi) any other Liability of any Seller or any Affiliate that is not an Assumed Liability.

(d) The Purchasers shall provide Sellers with Schedules setting forth the Assumed Contracts and the Excluded Contracts at any time on or before three (3) calendar days prior to the Closing Date in order to include or exclude from the definition of Assumed Contract and include or exclude in the definition of Excluded Contract, any Contract.

(e) On or before three (3) calendar days prior to the Closing Date, the Purchasers may provide Sellers with a list of Contracts (the "Interim Contracts") for which a Purchaser, at Purchaser's sole cost and expense, desires to be maintained by Sellers for fourteen (14) calendar days after the Closing Date with the applicable Purchaser to receive the benefits of such Interim Contracts and be responsible for the obligations under such Interim Contracts from the Closing Date unless and until the Purchasers designate such Interim Contracts as Assumed Contracts or Rejected Contracts, at which time Sellers, at Purchaser's sole cost and expense, shall use their reasonable best efforts to effectuate such determination.

(f) The Assumed Contracts of the Debtors shall be assumed by the applicable Debtor and assigned to the applicable Purchaser in accordance with the requirements of Section 365 of the Bankruptcy Code and the Sale Order.

(g) To the extent that any Assumed Contract is not an executory contract or unexpired lease or cannot be assumed and assigned pursuant to Section 365 of the Bankruptcy Code, the Sellers shall seek to transfer the benefits of such Assumed Contract through the sale and/or assignment of such Assumed Contract to the applicable Purchaser in accordance with Section 2.4 hereof.

Section 2.4 Required Consents.

(a) Notwithstanding anything to the contrary contained herein, to the extent that the sale, conveyance, transfer, assignment or delivery or attempted sale, conveyance, transfer, assignment or delivery to the Purchaser of any Purchased Asset (including pursuant to Sections 363 and 365 of the Bankruptcy Code if applicable) (i) is prohibited by any applicable Law or (ii) would require the consent of any third party or any Governmental Authority and such consent cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court (all such required consents of third parties which are necessary for the consummation of the transactions contemplated hereby, the “Required Consents”) and shall otherwise not have been obtained prior to Closing, this Agreement shall not constitute a sale, conveyance, transfer, assignment or delivery, or an attempted sale, conveyance, transfer, assignment or delivery of such Purchased Asset and the provisions set forth below in Section 2.4(b) shall govern.

(b) During the period from the date hereof through the Closing Date, the Sellers shall, and shall cause its Affiliates to, use their reasonable best efforts to obtain promptly (and before Closing) the consents and Required Consents with respect to the contracts set forth on Schedule 2.4(b).

(c) If, at any time after entry of the Sale Order by the Bankruptcy Court and for a period of up to ninety (90) days following the Closing Date, (i) the Purchasers identify any asset relating to the Business that it believes is material or necessary to the Business and the post-closing operations of such Purchaser that is not a Purchased Asset pursuant to Section 2.1, and (ii) such asset is still owned by a Seller, then such asset shall be deemed to be a Purchased Asset for all purposes of this Agreement, and the Sellers shall use, and shall cause each of their Affiliates to use, reasonable best efforts to convey such asset to the Purchasers. For the avoidance of doubt, to the extent any contract is deemed to be a Purchased Asset pursuant to this Section 2.4(c), such Contract shall be deemed to be an Assumed Contract for all purposes of this Agreement.

Section 2.5 Accounts Receivable. If, at any time after the Closing, (a) any Seller receives any payments with respect to the Accounts Receivable, such Seller shall pay all such amounts to the applicable Purchaser, or (b) any Seller receives any payments from any third-party relating to or arising from the Purchasers’ ownership of the Purchased Assets or operation of the Business after the Closing, including any payments with respect to the Purchasers Accounts Receivable, the Sellers shall pay all such amounts to the applicable Purchaser, in each case within ten (10) Business Days of receipt thereof. If, at any time after the Closing any Purchaser receives

any payments from any third-party relating to or arising from an Excluded Asset, such Purchaser shall pay all such amounts to the applicable Seller in each case within ten (10) Business Days of receipt thereof.

Section 2.6 Delivery of Assets. Sellers shall deliver, or cause to be delivered, the Purchased Assets as set forth in Section 2.1 to the applicable Purchaser or any Affiliate of such Purchaser designated in writing by such Purchaser at the Closing using such delivery method as Purchaser may reasonably request prior to the Closing, including by way of electronic delivery. Any source code, software, or other intangible assets in electronic form that are included within the Purchased Assets shall be delivered by way of electronic delivery upload from computer storage devices owned by Sellers directly to computer storage devices owned by the Purchasers or by such other method as may be reasonably requested by the Purchasers.

Section 2.7 Disposition of Excluded Assets. Sellers shall be solely responsible for the disposition, disposal or maintenance of Excluded Assets.

ARTICLE III PURCHASE PRICE; ALLOCATION

Section 3.1 Purchase Price. In exchange for the sale, assignment, transfer, conveyance and delivery of the Purchased Assets, the Purchasers shall, as applicable:

- (a) assume the Assumed Liabilities, including assumption of the Circles Cure Payments and CVG Cure Payments, which shall be paid in accordance with this Section 3.1; and
- (b) pay, as a credit bid of outstanding debt allocated among the Parties, the total purchase price of Sixty Million Eight Thousand One Hundred Sixty-Seven U.S. Dollars (\$60,008,167) (the "Purchase Price") as follows:

- (i) the aggregate amount of outstanding indebtedness of the Bridge Loan, First Lien Notes, Second Lien Notes and all other pre-petition indebtedness of the Sellers held by the Purchasers or their Affiliates and all other holders of such pre-petition indebtedness under common agreement with the Purchasers; *plus*

- (ii) the aggregate amount of outstanding indebtedness of the DIP Loan and all other post-petition indebtedness of the Seller held by the Purchasers and all other holders of such post-petition indebtedness under common agreement with the Purchasers; *plus*

- (iii) the aggregate amount of any debt secured by any of the Purchased Assets of the Sellers that is held by the Purchasers and all other holders of such indebtedness under common agreement with the Purchasers.

At least five (5) Business Days prior to the Closing, the Sellers shall certify to the Purchasers in writing all required Cure Payments with respect to the Assumed Contracts. Such Cure Payments shall be made directly by the applicable Purchaser to the Assumed Contract counterparty and shall be included in the amount of the Purchase Price.

Section 3.2 Deposit. [Reserved].

Section 3.3 Purchase Price Allocation. The parties agree to allocate for Tax purposes (and, as applicable, to cause their respective Affiliates to allocate for Tax purposes) the Purchase Price and any other amounts treated as additional consideration for Tax purposes among the Purchased Assets in accordance with the following procedures and, to the extent applicable, in accordance with Section 1060 of the Code, and the Treasury Regulations promulgated thereunder. Within ninety (90) days after the Closing Date, the Purchasers shall jointly deliver to the Sellers (or such other Person as the parties may agree) a proposed allocation of the Purchase Price and any other amounts treated as additional consideration for Tax purposes as of the Closing Date (the “Purchasers’ Allocation”). No later than thirty (30) days following the delivery of the Purchasers’ Allocation, the Sellers may deliver to the Purchasers a statement setting forth in reasonable detail any objections thereto, the basis for such objections, and the Sellers’ proposed allocation (“Sellers’ Allocation Notice”). If Seller timely delivers to the Purchasers a Sellers’ Allocation Notice, the Sellers and the Purchasers shall, during the twenty (20) days following such delivery, use commercially reasonable efforts to reach agreement on the disputed items or amounts. The Purchasers’ Allocation, if no Sellers’ Allocation Notice is timely delivered, or as adjusted pursuant to any agreement between the Sellers and the Purchasers during the twenty (20) day period following the timely delivery of Sellers’ Allocation Notice (the “Allocation”), shall be final and binding on the parties; provided, that if the Sellers’ Allocation Notice is timely delivered and the Sellers and the Purchasers are unable to reach agreement within such twenty (20) day period, they shall not be required to reach agreement, and each party shall file its respective Tax Returns in accordance with such allocation as it determines to be correct and consistent with applicable Law. If an Allocation is determined pursuant to the foregoing provisions of this Section 3.2, each of the parties (a) shall (and shall cause its Affiliates to) prepare and file all Tax Returns (and Internal Revenue Service Forms 8594) in a manner consistent with the Allocation and (b) shall not (and shall cause its Affiliates not to) take any position on any Tax Return or in connection with any Tax proceeding inconsistent with the Allocation, in each case, except to the extent otherwise required by a “determination” within the meaning of Section 1313(a) of the Code (or any analogous provision of applicable state, local or non-U.S. Law).

ARTICLE IV INSTRUMENTS OF TRANSFER AND ASSUMPTION

Section 4.1 Transfer Documents. At the Closing, the Sellers shall deliver to the Purchasers (a) one or more Bills of Sale in form and substance attached hereto as Annex II (the “Bills of Sale”), (b) an assignment with respect to the Purchased Equity Interests in form and substance reasonably acceptable to the parties and (c) all such other good and sufficient instruments of sale, transfer and conveyance consistent with the terms and provisions of this Agreement, including an assignment of the Intellectual Property Assets of the MVNE Business or the Non-MVNE Business, as the case may be, in form and substance attached hereto as Annex IV (the “Intellectual Property Assignment Agreement”) and any other assignments as shall be reasonably necessary to vest in the Purchasers all of the Sellers’ right and title to, and interest in, the Purchased Assets.

Section 4.2 Assignment and Assumption Documents. At the Closing, the Purchasers and the Sellers, as applicable, shall execute and deliver one or more Assignment and Assumption Agreements in form and substance attached hereto as Annex V (the “Assumption Agreements”) in order to effect the assignment and assumption of the Assumed Liabilities.

ARTICLE V CLOSING

Section 5.1 Closing Date. Subject to the terms and conditions hereof, the closing of the transactions contemplated by this Agreement (the “Closing”) shall take place via email or videoconference, at the offices of King & Spalding LLP, 1180 Peachtree Street, NE, Suite 1600, Atlanta, Georgia 30309, or at such other location as may be mutually agreed upon among the parties hereto on the earliest practicable business day after the date on which all conditions to Closing set forth in Articles IX and X have been satisfied (or waived) or such later date as the parties mutually agree in writing (the “Closing Date”). The Closing shall be effective as of 12:01 a.m. Eastern Time on the Closing Date.

ARTICLE VI SELLERS’ REPRESENTATIONS AND WARRANTIES

Each Seller represents and warrants to each Purchaser that the statements contained in this Article VI are true and correct as of the date of this Agreement, subject to the disclosures and exceptions set forth in the Disclosure Schedules attached hereto:

Section 6.1 Organization, Qualification and Corporate Power. Each Seller is a company duly organized and validly existing under the Laws of the state or country of its formation. Each Seller has all necessary power and authority to own and operate its properties and to carry on its business as it is now being conducted. Subject to entry of the Sale Order, each Seller has the corporate power and corporate authority to execute and deliver and perform its obligations under this Agreement and the other Transaction Documents, and to undertake the transactions contemplated hereby and thereby. As used herein, the term “Transaction Documents” means this Agreement and all other agreements, documents, exhibits, annexes, and instruments executed in connection herewith or required to be executed and/or delivered by a Seller in accordance with the provisions of this Agreement.

Section 6.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. Subject to the entry of the Sale Order, the execution, delivery and performance of this Agreement and the other Transaction Documents by each Seller and the transfer or assignment of the Purchased Assets to the Purchasers, as set forth in Section 2.1, have been duly and validly authorized and approved by all necessary corporate action of each Seller. Subject to the entry of the Sale Order and receipt of the Required Consents, each Seller has full power, right and authority to sell and convey to the Purchasers the Purchased Assets owned by such Seller.

Section 6.3 Title to Assets; Sufficiency of Assets. Each Seller has title to, or a valid leasehold interest in, all of the properties and assets included in the Circles Purchased Assets and in the CVG Purchased Assets that it is conveying pursuant hereto. Subject to entry of the Sale Order and upon the consummation of the transactions contemplated hereby and by the Transaction Documents, the Purchasers shall acquire title to all of the Purchased Assets, as set forth in Section 2.1, free and clear of all Liens other than Permitted Liens. Except for the Excluded Assets set forth in Section 2.2(a) and Section 2.2(f), the Purchased Assets (taken as a whole) are sufficient for the continued conduct of the Business after the Closing in substantially the same manner as conducted as of the date hereof (subject to any Excluded Contracts that the Purchasers elect not to acquire as

provided in Section 2.3(d)); *provided that* the Circles Purchased Assets are sufficient for the continued conduct and operations of the MVNE Business after the Closing in substantially the same manner as conducted as of the date hereof; *provided, further* notwithstanding the foregoing, the foregoing representation regarding the Circles Purchase Assets does not take into account any transition services agreement, shared services agreement, or similar agreement that may exist between Circles and CVG. The Purchased Assets constitute all of the material rights, property and assets necessary to conduct the Business as conducted as of the date hereof (subject to any Excluded Contracts that the Purchasers elect not to acquire as provided in Section 2.3(d)). Except for the Excluded Assets set forth in Section 2.2(a), Section 2.2(e) and Section 2.2(f), none of the Excluded Assets are material to or necessary for the conduct of the Business. The Purchased Assets include all material books and records owned, primarily used or primarily held for use by any Seller with respect to the Business. No Affiliate of any Seller that is not a Seller under this Agreement has any right, title or interest in, to or under any properties, assets and rights primarily used in, or primarily held for use in, the Business, other than immaterial assets, and no Seller or Affiliate of any Seller has any claim against the Business or any Seller in respect of the Business.

Section 6.4 Legal Proceedings. Except for the Bankruptcy Case and as set forth on Schedule 6.4, there is no Legal Proceeding pending or, to the Knowledge of the Sellers, threatened in writing against any Seller, the Business or the Purchased Assets (or to the Knowledge of the Sellers, pending or threatened, against any of the officers, directors or employees of any Seller with respect to their business activities related to the Purchased Assets or the Business) (a) that as of the date hereof challenges or that as of the date hereof is reasonably expected to have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement; or (b) that as of the date hereof would have a Material Adverse Effect on the portion of the Purchased Assets or the Business that is attributed to the Borrower Sellers, if successfully prosecuted.

Section 6.5 Real Property. No Seller owns any real property. Schedule 6.5 sets forth the street addresses of all real property primarily used or primarily held for use in the Business which any Seller leases, operates, occupies or subleases in connection with the Business or upon which any tangible Purchased Assets are located and certain of the instruments, easements, leases, subleases, options and other material agreements (including all amendments thereto) creating any interest or right in any Seller or any other party in any of the real property specifying the name of the lessor or sublessor (as applicable) (collectively, the “Real Property Leases”).

Section 6.6 No Violation of Laws or Agreements. Subject to the entry of the Sale Order and receipt of the Required Consents, the execution and delivery by the Sellers of this Agreement and the Transaction Documents contemplated hereby, the performance by any Seller or any other Seller of obligations hereunder and thereunder and the consummation by any Seller of the transactions contemplated herein and therein shall not violate, (a) any Laws or any judgment, decree, order, regulation or rule of any court or Governmental Authority to which any Seller is subject; (b) result in any breach of, or constitute a default (or event which with the giving of notice or lapse of time, or both, would become a default) under, or give to any Person any rights of termination, amendment, acceleration or cancellation of, or result in the creation of any Lien on any of the Purchased Assets, any note, bond, mortgage, indenture, contract, agreement, lease, license, permit, franchise or other instrument to which any Seller is a party and which relates to any of the Purchased Assets; or (c) contravene, conflict with or result in a violation of any provision

of any organizational documents of any Seller, except in the cases of clauses (a) and (b) for such violations which are not material to the Business.

Section 6.7 Employee Benefits. Schedule 6.7 sets forth all material Employee Plans covering employees, directors or consultants or former employees, directors or consultants in, or related to, the Business or any of the Sellers (other than Employee Plans that constitute Employment Contracts). The Sellers have made available to the Purchasers a summary description of all Employee Plans which are not in writing.

Section 6.8 Labor Matters. Except as set forth on Schedule 6.8, no Seller (a) is or during the past three years has been, a party to or bound by any collective bargaining or similar agreement with any labor organization, trade union, works council or other organization or body involving any of its Business Employee or Business Employee representatives; is otherwise required (under any Law, under any Contract or otherwise) to provide payment, benefits or working conditions under any of the foregoing; and has ever had any employees that are represented by any labor organization, trade union, works council or other similar organization or body; (b) is or during the past three years has been a member of any employers' association or organization and has ever paid and is required to pay and has ever been requested to pay any payment (including professional organizational handling charges) to any employers' association or organization; and (c) has knowledge of any existing or past organizing activities among the Business Employees of any Seller or Affiliate. No Seller has ever been engaged in any unfair labor practice of any nature. Other than their salaries and other compensation as set forth in the Employee Census, the Business Employees are not entitled to any material payment or benefit that should be reclassified as part of their determining salary for any purpose. All current and former Contractors of the Business are and have been rightly classified as independent contractors and are not entitled to any employment benefits which would be material to the Sellers.

Section 6.9 Brokers. Except for those persons set forth on Schedule 6.9, to whom the Sellers shall be solely responsible for any fees or commissions owing, no Seller has engaged any agent, broker or other Person acting pursuant to the express or implied authority of any Seller which is or may be entitled to a commission or broker's or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 6.10 Permits. Each Seller is and at all times during the last two (2) years has been in compliance in all material respects with all permits applicable to it, or applicable to the conduct and operations of the Business, or relating to or affecting the Purchased Assets. No Seller has received any written notice during the last two (2) years from any Governmental Authority specifically alleging (a) any actual, alleged, possible or potential material violation of, or failure to comply with, any such permits or (b) any actual, alleged, possible or potential revocation, withdrawal, suspension, cancellation or termination of, or any modification to, any permit. Schedule 6.10 sets forth an accurate and complete list of all of the permits material or necessary to the operation of the MVNE Business.

Section 6.11 Taxes; Tax Returns. Except as set forth on Schedule 6.11, Sellers have filed or caused to be filed on a timely basis all material Tax Returns with respect to Taxes that are or were required to be filed pursuant to applicable Laws by each Seller or with respect to the Assets

or the Business. All such Tax Returns are true, correct and complete in all material respects. Seller has timely paid all material Taxes related to the Assets or the Business (whether or not shown on any Tax Return). No Seller currently is the beneficiary of any extension of time within which to file any Tax Return related to the Business or Assets. Except as set forth on Schedule 6.11, no Seller has received any outstanding notice of audit, and is not undergoing any audit, of Tax Returns relating to the Business and has never received any written notice of deficiency or assessment from any taxing authority with respect to liability for any material amount of Taxes relating to the Business which has not been fully paid or finally settled. Except as set forth on Schedule 6.11, each Seller has complied in all material respects with all applicable Laws, rules and regulations relating to the payment and withholding of Taxes and has withheld all material amounts required by law to be withheld from the wages or salaries of employees and independent contractors of the Business and is not liable for any material Taxes with respect to the employees and independent contractors of the Business for failure to comply with such laws, rules and regulations.

Section 6.12 Compliance with Laws.

(a) Each Seller and the conduct of the Business are and at all times during the last two (2) years have been in compliance in all material respects with all Laws applicable to them or to the conduct and operations of the Business or relating to the Purchased Assets. Except as set forth on Schedule 6.12, no Seller has received any written notice during the last two (2) years to the effect that, or otherwise been advised of, and to the Knowledge of the Sellers there has not occurred with respect to the Purchased Assets or the Business, (a) any actual, alleged, possible or potential violation of, or failure to comply with, in all material respects, any such Laws, or (b) any actual, alleged, possible or potential obligation on the part of any Seller to undertake, or to bear all or any portion of the cost of, any material remedial action of any nature.

(b) Each Seller and the conduct of the Business is, and at all times has been, in compliance with applicable Laws of the United States and other jurisdictions in which the Sellers operate or to which any Seller is subject with respect to import and export control and economic sanctions, including the U.S. Export Administration Regulations, the U.S. International Traffic in Arms Regulations, and the U.S. Department of the Treasury Office of Foreign Asset Control (“OFAC”) economic sanctions regulations. No Seller has at any time been counterparty to any commercial agreement with any Person who is the target of, or listed as a designated person in respect of, any economic sanction administered by OFAC or the U.S. Department of Commerce or has engaged, directly or indirectly, in any business with or related to any country or territory that is the subject of any comprehensive economic or financial sanctions or trade embargoes administered or enforced by OFAC (currently Russia, Crimea, Cuba, Iran, Sudan, Syria, and North Korea).

(c) No Business nor any of its representatives acting on its behalf has at any time (i) taken any action, directly or indirectly, in violation (or that may result in any violation) of Anti-Bribery Laws, including corruptly making, offering, authorizing or promising any payment, contribution, gift, business courtesy, bribe, rebate, kickback or any other thing of value, regardless of form or amount, to any Person to induce the recipient to act improperly, to obtain a competitive advantage for any party or to receive favorable treatment in obtaining or retaining business or (ii) corruptly or improperly accepted, received or solicited anything of value in connection with the Business. Each Seller conducts, and has at all times conducted, its business in compliance with

Anti-Bribery Laws and none of any Seller's principals, directors, officers, employees, or other agents is an official, agent, employee, or representative of any national, provincial, or local government, wholly or partially government-owned or government-controlled entity, political party, political candidate, or public international organization.

Section 6.13 Material Contracts. Each Material Contract is and, as of the Closing will be, valid and in full force and effect, and is and, as of the Closing will be, enforceable by Sellers in accordance with its terms except to the extent such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors. Sellers have not waived any of their material rights, defenses, setoffs or rights of recoupment under any Material Contract. No Seller, Affiliate or, to the Knowledge of the Sellers, any other party thereto, is in material breach of, or material default under, any Material Contract except for any material breach of or default under, any Material Contract that (a) would be remedied solely by the payment of Cure Payments and/or (b) arises directly and solely from the filing of the Bankruptcy Case.

(a) Key MVNE Customer Contracts. To the Knowledge of Sellers, each Key MVNE Customer Contract is, and as of the Closing will be, valid and in full force and effect, and is, and as of the Closing will be, enforceable by Sellers in accordance with its terms. Sellers have not waived any of their material rights, defenses, setoffs or rights of recoupment under any Key MVNE Customer Contract.

(b) Required Consents. Schedule 6.13(b) sets forth an accurate and complete list of all Required Consents and, to the Knowledge of Sellers, no other consents or approvals are necessary for the acquisition of the Purchased Assets or the assignment of the Assumed Contracts, after giving effect to the Sale Order.

Section 6.14 Intellectual Property.

(a) The Sellers exclusively own all of the Intellectual Property Assets, free and clear of all Liens (other than Permitted Liens). The Intellectual Property Assets being conveyed to Circles relating to the MVNE Business are sufficient for the continued conduct and operations of the MVNE Business after the Closing in substantially the same manner as conducted as of the date hereof; *provided, however*, that notwithstanding the foregoing, the foregoing representation regarding the Intellectual Property Assets being conveyed to Circles relating to the MVNE Business does not take into account any transition services agreement, shared services agreement, or similar agreement that may exist between Circles and CVG.

(b) Intentionally Deleted

(c) Intentionally Deleted

(d) Schedule 6.14(d) sets forth an accurate and complete list in all material respects of all of the Intellectual Property that is an Intellectual Property Asset subject to any issuance, registration, application or other filing by, to or with any Governmental Authority or authorized private registrar in any jurisdiction, including without limitation, any and all registered trademarks, registered copyrights, issued and reissued patents and pending applications for any of the foregoing (the "IP Registrations").

(e) Excluding the Non-Material IP Registrations, all IP Registrations (i) are subsisting and, to the Knowledge of the Sellers, valid and enforceable; (ii) have not (to the extent applicable) expired, been cancelled or abandoned; and (iii) are not subject to any order, judgment, injunction, decree, ruling or agreement that would materially affect the enforceability of, use of or rights to, such Intellectual Property. The Seller takes commercially reasonable steps to protect and preserve the confidentiality, secrecy, and value of all material trade secrets that are an Intellectual Property Asset. Excluding Non-Material IP Registrations, all filings and fees related to the IP Registrations that are required to maintain such IP registrations have been paid by the date of this Agreement and have been timely filed with and paid to the relevant Governmental Authority and authorized registrars.

(f) The operation of the Business and the Intellectual Property Assets (i) do not conflict with, infringe, violate, or interfere with or misappropriate any right, title or interest of any Person and (ii) do not constitute unfair competition or unfair trade practices under any Laws. There is no pending or, to the Knowledge of the Sellers, threatened claim that any of the Intellectual Property Assets are invalid or which contests the ownership or right of any Seller to use or exploit any of the Intellectual Property Assets, and, to the Knowledge of the Sellers, there is no reasonable basis for any claim contesting the validity, ownership or right of any Seller to use or exploit any of the Intellectual Property Assets.

(g) To the Knowledge of the Sellers, there is no unauthorized use, unauthorized disclosure, infringement, violation, or misappropriation in any material respect of any Intellectual Property Assets. No Seller has received any written notice within the last three years (whether written or oral) that any Person is infringing, violating, or misappropriating any Intellectual Property Assets otherwise making any unauthorized use or disclosure of any Intellectual Property Assets. To the Knowledge of the Sellers, no such infringement, violation, misappropriation, use, or disclosure is occurring or has occurred.

(h) Each current or former director, officer, employee, consultant, and contractor who has been materially involved in, or who contributed to, the creation or development of any of the Intellectual Property Assets (each, an “IP Contributor”) in sufficient degree as to otherwise derive a right, title or interest in such Intellectual Property, such IP Contributor has executed and delivered to the applicable Seller a valid and enforceable assignment in the form provided to the Purchasers of all rights, title, and interests that such Person may have, may have had, or may hereafter acquire in or to such Intellectual Property and a valid and enforceable waiver of any and all rights (including moral rights) that such Person may have.

(i) Each Seller (a) has taken commercially reasonable steps to maintain the confidentiality of its confidential and proprietary trade secrets and confidential information that are Intellectual Property Assets, (b) taken all appropriate steps to not disclose confidential, proprietary Business information, or know-how to any Person other than an officer, director, employee, or consultant of that Seller and under a nondisclosure agreement, and (c) taken commercially reasonable steps to have not deposited, disclosed, or delivered to any Person, or agreed to or permitted the deposit, disclosure, or delivery to any Person of, any Business software source code. To the Knowledge of the Sellers, no event has occurred, and no circumstances or conditions exist, that with or without notice or lapse of time or both, shall, or could reasonably be

expected to, result in the disclosure or delivery to any Person of any software source code used in the Business.

(j) Each Seller has taken commercially reasonable measures to protect and maintain the confidential nature of, and prevent unauthorized access to, Personal Information contained in any computer or data storage system hosted or maintained by or on behalf of any Seller that constitutes a Purchased Asset. No Seller sells, rents, or otherwise makes available to third parties any Personal Information submitted by individuals that constitutes a Purchased Asset. No claims have been asserted or threatened in writing with respect to any Seller's receipt, collection, use, storage, processing, disclosure, or disposal of Personal Information that constitutes a Purchased Asset. "Personal Information" means data that relates to and identifies an identified or identifiable individual, including name, address, telephone number, electronic mail address, unique government-issued identifier, bank account number, credit card number, or any other data that may be used to identify an individual.

(k) Each Seller has implemented and maintained, consistent with customary industry practices and its obligations to third parties, security and other measures adequate to protect computers, networks, software, and systems used by the Sellers to store, process, or transmit Personal Information from loss, theft, unauthorized access, use, disclosure, or modification, in each case, that constitute Purchased Assets. No violation by any Seller of any data security policy in relation to any Personal Information owned or controlled by such Seller that constitutes a Purchased Asset has occurred or is threatened in writing, and to the Knowledge of the Sellers, excluding the security incidents as set forth in Schedule 6.14(k), there has been no breach or security incident involving Personal Information owned or controlled by the Sellers or any unauthorized or illegal processing by a third party of any such Personal Information.

(l) No funding, facilities, resources or personnel of any Governmental Authority, university, college, military, other educational institution or research center (each, an "R&D Sponsor") were used, directly or indirectly, by any Seller, in the development or creation of any Intellectual Property Asset. None of the Sellers has received a written claim of ownership interest by an R&D Sponsor in any Intellectual Property Asset. To the Knowledge of the Sellers, no R&D Sponsor has any claim of right to, ownership of or other lien on any Intellectual Property Asset. No Seller has received any written notice from any Governmental Authority claiming any rights in any Intellectual Property Asset.

(m) The Business's products do not involve the use or development of, or engagement in, encryption technology, or other technology whose development, commercialization or export is restricted or otherwise requires a license under Law.

(n) Except pursuant to the IP Agreements, there are no royalties, fees, honoraria or other payments payable to any Person by reason of the ownership, development, modification, use, license, sublicense, sale, distribution or other disposition of the Intellectual Property Assets.

Section 6.15 Cybersecurity. The information technology and equipment, computers, systems, networks, hardware, software, websites, applications, and databases owned or controlled by the Sellers that constitute Purchased Assets (collectively, "IT Systems") are adequate for, and operate and perform in all material respects as required in connection with the operation of the

Business as currently conducted, free and clear of all material bugs, errors, defects, Trojan horses, time bombs, malware and other corruptants. The Sellers have implemented and maintained commercially reasonable physical, technical and administrative controls, policies, procedures, and safeguards to maintain and protect their material confidential information and the integrity, continuous operation, redundancy and security of all IT Systems and data, including Personal Information used in connection with the Business. To the Knowledge of the Sellers, there have been no material breaches, violations, outages or unauthorized uses of or accesses of the IT System, except for those that have been remedied without material cost or liability or the duty to notify any other person, nor any incidents under internal review or investigations relating to the same. The Sellers are presently in material compliance with all applicable laws or statutes and all judgments, orders, rules and regulations of any court or arbitrator or governmental or regulatory authority, internal policies and contractual obligations relating to the privacy and security of IT Systems and Personal Information and to the protection of such IT Systems and Personal Information from unauthorized use, access, misappropriation or modification.

Section 6.16 Financial Statements. Except as set forth on Schedule 6.16, the Sellers have delivered or made available to the Purchasers or their respective representatives true, correct and complete copies of each of the reports, schedules, forms, proxy statements, statements and other documents required to be filed with the SEC (the "SEC Documents") that exist and are not available on the EDGAR system;

(a) as of their respective dates, the financial statements of the Sellers that have been filed with the SEC (including, without limitation, any notes or any letter of the independent accountants of the Company with respect thereto) included in the SEC Documents (the "Financial Statements") complied in all material respects with applicable accounting requirements and the published rules and regulations of the SEC with respect thereto as in effect as of the time of filing, and such financial statements have been prepared in accordance with generally accepted accounting principles ("GAAP"), consistently applied, during the periods involved (except (x) as may be otherwise indicated in such financial statements or the notes thereto, or (y) in the case of unaudited interim statements, to the extent they may exclude footnotes or may be condensed or summary statements) and fairly present in all material respects the financial position of the Sellers as of the dates thereof and the results of its operations and cash flows for the periods then ended (subject, in the case of unaudited statements, to normal year-end audit adjustments which will not be material, either individually or in the aggregate)

(b) the Sellers are not currently contemplating to amend or restate any of the Financial Statements, nor are the Sellers currently aware of facts or circumstances which would require the Sellers to amend or restate any of the Financial Statements, in each case, in order for any of the Financials Statements to be in material compliance with GAAP and the rules and regulations of the SEC; and

(c) the Sellers have not been informed by its independent accountants that they recommend that the Sellers amend or restate any of the Financial Statements or that there is any need for the Sellers to amend or restate any of the Financial Statements.

Section 6.17 Absence of Certain Changes. Since the date of the Sellers' most recent audited financial statements contained in a Form 10-K, except as specifically set forth on Schedule 6.17 or in a subsequent SEC Document filed prior to the date hereof:

(a) neither the Sellers nor any of their Affiliates have (i) declared or paid any dividends to any Person other than a Seller or an Affiliate, (ii) sold any assets, individually or in the aggregate, in excess of \$250,000, or (iii) made any capital expenditures, individually or in the aggregate, in excess of \$250,000; and

(b) neither the Sellers nor any of their Affiliates have made any revaluation of any of their respective assets, including, without limitation, writing down the value of capitalized inventory or writing off notes or accounts receivable or any sale of assets other than in the ordinary course of business.

ARTICLE VII PURCHASERS' REPRESENTATIONS AND WARRANTIES

Each of the Purchasers represents and warrants to the Sellers that the statements contained in this Article VII are true, correct and complete as of the date of this Agreement.

Section 7.1 Organization; Qualification and Corporate Power. Each Purchaser is a corporation duly organized, validly existing and in good standing, in the case of Circles, under the Laws of the country of Singapore and in the case of CVG, under the Laws of the state of Delaware. Each Purchaser has all necessary power and authority to (a) own and operate its properties and carry on its business as it is now being conducted, (b) perform its obligations under this Agreement and the other Transaction Documents, and to undertake and carry out the transactions contemplated hereby and thereby, and (c) own the Purchased Assets.

Section 7.2 Authorization, Execution and Delivery of Agreement and Transaction Documents. All necessary consents and approvals have been obtained by each Purchaser for the execution and delivery of this Agreement and the Transaction Documents. The execution, delivery and performance of this Agreement and the other Transaction Documents in accordance with their terms by each Purchaser have been duly and validly authorized and approved by all necessary corporate action. Each Purchaser has full power, right and authority to acquire the Purchased Assets, as set forth in Section 2.1. This Agreement is, and each of the other Transaction Documents when so executed and delivered, shall be, a valid and binding obligation of such Purchaser, enforceable against it in accordance with its terms, except to the extent such enforceability may be limited by bankruptcy, insolvency or other similar laws affecting creditors.

Section 7.3 Brokers. Neither Purchaser has engaged any agent, broker or other Person acting pursuant to the express or implied authority of such Purchaser which is or may be entitled to a commission or broker's or finder's fee in connection with the transactions contemplated by this Agreement or otherwise with respect to the sale of the Purchased Assets.

Section 7.4 No Violation of Laws or Agreements. The performance by each Purchaser of its obligations contemplated hereunder and the consummation by each Purchaser of the transactions contemplated herein shall not violate, (a) any Laws or any judgment, decree, order, regulation or rule of any court or Governmental Authority to which such Purchaser is subject; or

(b) contravene, conflict with or result in a violation of any provision of any organizational documents of such Purchaser, except in the case of clause (a) for such violations which are not material to such Purchaser.

Section 7.5 Legal Proceedings. There is no Legal Proceeding pending or, to the knowledge of either Purchaser, threatened in writing against either Purchaser or any of the officers, directors or employees of either Purchaser that as of the date hereof challenges or that as of the date hereof is reasonably expected to have the effect of preventing, making illegal, delaying or otherwise interfering with any of the transactions contemplated by this Agreement.

Section 7.6 Adequate Assurances Regarding CVG Cure Payment and Circles Cure Payment. As of and after the Closing, CVG has sufficient funds available to deliver the CVG Cure Payments and shall be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts, as applicable. As of and after the Closing, Circles has sufficient funds available to deliver the Circles Cure Payments and shall be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assumed Contracts, as applicable.

Section 7.7 Purchasers Experience; Non-Reliance. Each Purchaser agrees to accept the Purchased Assets, as set forth in Section 2.1, and the Assumed Liabilities, as set forth in Section 2.3, in the condition they are in at the Closing without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to the Sellers, except as expressly set forth in this Agreement.

ARTICLE VIII SELLERS' AND PURCHASERS' COVENANTS AND AGREEMENTS

Section 8.1 Conduct of Business. Except as otherwise expressly contemplated by this Agreement or with the prior joint written consent of the Purchasers or except as described on Schedule 8.1, from the date hereof until the Closing Date, each Seller shall use, and shall cause each of its Affiliates to use reasonable best efforts to (i) preserve the Purchased Assets and (ii) operate the Business in the Ordinary Course of Business. Without limiting the generality of the foregoing, each Seller shall, and shall cause each of its Affiliates to, other than in the Ordinary Course of Business, as required by law or with the Purchasers' joint written consent, refrain from doing any of the following in respect of the Purchased Assets: (a) disposing of or transferring any Purchased Asset and Business Employees, (b) transferring any tangible Purchased Asset to any other location to the extent that such other location is not otherwise part of the Purchased Assets, or (c) except as otherwise provided or required in this Agreement, terminating, amending or modifying the material terms of any of the Assumed Contracts.

Section 8.2 Mutual Covenants. The parties hereto mutually covenant (subject to the other terms of this Agreement):

(a) from the date of this Agreement to the Closing Date, to cooperate with each other in determining whether filings or notifications are required to be made or consents (including any Required Consents) are required to be obtained in any jurisdiction in connection with the consummation of the transactions contemplated by this Agreement which consents shall not, in

any event, include any consent the need for which is obviated by the Sale Order or otherwise by the provisions of the Bankruptcy Code; *provided, however*, that Sellers shall make or cause to be made any such filings as reasonably required or requested to timely obtain the Required Consents; *provided, further however* that each party hereto shall furnish to the other and to the other's counsel all such information as may be reasonably required in order to effectuate the foregoing action; and

(b) from the date of this Agreement to the Closing Date, to advise the other party promptly if such party determines that any condition precedent to its obligations hereunder shall not be satisfied in a timely manner.

Section 8.3 Access to Information. Prior to and through the date on which the Closing occurs or this Agreement is terminated, the Purchasers shall be permitted to discuss the Purchasers' entering into this Agreement and its intent to acquire the Purchased Assets subject to the approval of the Bankruptcy Court, if applicable, with current customers, vendors and other key stakeholders of the Business and the Sellers shall, and shall cause each of its Affiliates to, cooperate with the Purchasers and shall give the Purchasers and its representatives (including the Purchasers' accountants, consultants, counsel and employees), upon reasonable notice and during normal business hours, full access to all properties, Contracts, customers, vendors, leases, equipment, employees, affairs, books, documents, records and other information of the Sellers to the extent relating to the Business, the Purchased Assets, Assumed Liabilities, and any other aspect of this Agreement and shall cause their respective officers, employees, agents and representatives to furnish to the Purchasers all available documents, records and other information (and copies thereof), to the extent relating to the Purchased Assets, Assumed Liabilities, and any other aspect of this Agreement, in each case, as the Purchasers may reasonably request. Notwithstanding anything herein to the contrary, no such investigation or examination shall be permitted to the extent that it would require any Seller to disclose information subject to attorney-client privilege.

Section 8.4 Public Announcement. No party hereto shall make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the transactions contemplated hereby without making reasonable and good faith efforts to consult with and seek input from the other parties hereto prior to release about the content of any such announcement or statement or unless counsel to such party advises that such announcement or statement is required by law (such as an obligation to disclose under federal securities laws of the United States) (in which case the parties hereto shall make reasonable efforts to consult with each other prior to such required announcement).

Section 8.5 Preservation of Records. From and after the Closing Date, upon request of at least two (2) Business Days, by any Seller, the Purchasers shall permit the Sellers and their representatives to have reasonable access during normal business hours, and in a manner so as not to interfere unreasonably with the normal business operations of the Purchasers, to all premises, properties, personnel, books and records, contracts, and documents of or related to the Purchased Assets or the Assumed Liabilities for the purposes of (a) preparing any Tax Returns or (b) complying with the requirements of, or responding to inquiries by, any Governmental Authority; provided, however, that, for the avoidance of doubt, the foregoing shall not require the Purchasers to take any such action if (i) such action may result in a waiver or breach of any attorney/client privilege or conflict with any confidentiality obligations to which the Purchasers are bound, or (ii) such action could reasonably be expected to result in violation of applicable Law or court order.

The Purchasers agree to maintain the files or records which are contemplated by the first sentence of this Section 8.5 for six (6) years following the Closing Date.

Section 8.6 Taxes.

(a) Subject to Section 8.6(b) and (f) (which shall govern any transfer Taxes), the Sellers shall be responsible for and pay or discharge all Taxes of the Sellers and their Affiliates, and all Taxes in connection with, relating to or arising out of the Business, the Excluded Assets, the Excluded Liabilities or the ownership of the Purchased Assets, or the Assumed Liabilities attributable to taxable periods, or portions thereof, ending on or before the Closing Date, which Taxes shall be an Excluded Liability.

(b) For purposes of this Agreement, with respect to any Purchased Asset, the Sellers and the Purchasers shall apportion the liability for real and personal property Taxes, ad valorem Taxes, and similar Taxes (“Periodic Taxes”) for Straddle Periods applicable to such Purchased Asset in accordance with this Section 8.6(b). The Periodic Taxes described in this Section 8.6(b) shall be apportioned between the Sellers and the Purchasers as of the Closing Date, with the Purchasers liable for that portion of the Periodic Taxes for a Straddle Period equal to the Periodic Taxes for such Straddle Period *multiplied* by a fraction, the numerator of which is the number of days remaining in such Straddle Period after the Closing Date, and the denominator of which is the total number of days in such entire Straddle Period (which portion of such Taxes shall for purposes of this Agreement be deemed an Assumed Liability). The Sellers shall be liable for that portion of the Periodic Taxes for a Straddle Period for which the Purchasers are not liable under the preceding sentence (which portion of such Taxes shall for purposes of this Agreement be deemed an Excluded Liability). The party hereto responsible under applicable Law for paying a Tax described in this Section 8.6(b) shall be responsible for administering the payment of such Tax. To the extent the liability for Periodic Taxes for a certain Straddle Period is not determinable at the time of Closing or such Periodic Taxes are charged in arrears, such Periodic Taxes shall be prorated for such Straddle Period, based on the most recent ascertainable full tax year. For purposes of this Section 8.6(b), the Straddle Period for ad valorem Taxes and real and personal property Taxes shall be the fiscal period for which such Taxes were assessed by the applicable Tax jurisdiction. The Sellers, on the one hand, or the Purchasers, on the other hand, as the case may be (the “Reimbursing Party”), shall promptly provide reimbursement for any Tax paid by the other (the “Paying Party”), all or a portion of which is the responsibility of the Reimbursing Party in accordance with the terms of this Agreement (including this Section 8.6). Within a reasonable time prior to the payment of any such Tax, the Paying Party shall give notice to the Reimbursing Party of the Tax payable and the Paying Party’s and Reimbursing Party’s respective liability therefor, although failure to do so shall not relieve the Reimbursing Party from its liability hereunder except to the extent the Reimbursing Party is actually prejudiced thereby.

(c) The Sellers and the Purchasers shall (i) provide such assistance as may reasonably be requested by either of them in connection with the preparation of any Tax Return, any audit or other examination by any taxing authority or any judicial or administrative proceeding with respect to Taxes, (ii) retain and provide the other with any records or other information which may be relevant to such return, audit, examination or proceeding, and (iii) provide the other with any final determination of any such audit or examination proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period (which shall be

maintained confidentially); provided, however, that notwithstanding anything to the contrary herein, neither the Purchasers nor any of their respective Affiliates shall be required to provide any Tax information that it regards as privileged or confidential, including any Tax Return of Purchaser or any of its Affiliates.

(d) The parties shall (i) for purposes of taxes imposed under the United States Federal Unemployment Tax Act and the United States Federal Insurance Contributions Act, treat each Purchaser as a “successor employer” and the applicable Seller as a “predecessor,” within the meaning of Sections 3121(a)(1) and 3306(b)(1) of the Code, with respect to any employees of the Sellers who become employees of either Purchaser (including the Transferred Employees) and (ii) implement the alternate procedure described in Section 5 of Revenue Procedure 2004-53 (provided that at or prior to Closing, the Sellers have provided to each Purchaser all information reasonably necessary to implement such alternative procedure), in each case, to the extent applicable.

(e) [Reserved.]

(f) Purchasers and Sellers shall cooperate in preparing, executing and filing sales, use, real estate, transfer and similar Tax Returns relating to the purchase and sale of the Assets, and also shall cooperate to minimize or avoid any transfer Taxes that might be imposed to the extent permitted by applicable Law (such as, for example and not by way of limitation, Purchaser providing any Seller with a copy of Purchaser’s resale certificate, or such other instruments as will relieve Purchaser or a Seller from Liability for any transfer Tax). Purchasers shall be responsible for all such transfer Taxes incurred in connection with the purchase and sale of the Purchased Assets contemplated by this Agreement, including any interest or penalties in respect thereof. The Purchase Price (and any other consideration required to be taken into account for purposes of determining the amounts of such Taxes) with respect to Purchased Assets subject to such Taxes shall be allocated for such purpose in a manner consistent with the Allocation as finally determined

Section 8.7 Good Faith Efforts. Without limiting the specific obligations of any party hereto under any covenant or agreement hereunder, each party hereto shall, and shall cause its Affiliates to, use its good faith efforts to take all action and do all things necessary to consummate the transactions contemplated in this Agreement as soon as reasonably practicable; provided, however, that (a) no party hereto or its Affiliates shall be required to make any concessions that would adversely affect its business or be materially more burdensome to such party (including to amend any contract to increase the amount payable thereunder, commence any litigation, settle or compromise any matter, offer or grant any accommodation (financial or otherwise) to any third party or Governmental Authority, pay any amount or bear any other incremental economic burden to obtain any consent or order or to effect the assignment or transfer of a Purchased Asset), (b) no party hereto or its Affiliates shall incur any expense that would be payable or otherwise borne by another party hereto or such other party’s Affiliates without the consent of such other party, (c) the Sellers shall not, and shall cause each of its Affiliates to not, make any concessions that would purport to bind the Business from and after the Closing or be an Assumed Liability and (d) the Purchasers shall not make any concessions that would purport to bind any Seller or any of their Affiliates.

Section 8.8 Employees.

(a) Subject to and in accordance with the provisions of this Section 8.8 and applicable law, each Purchaser shall, or shall cause one of its Affiliates to, effective upon the Closing, offer employment to certain Business Employees who are employed by the Sellers or their Affiliates as of the Closing, identified in writing by such Purchaser to the Sellers any time on or before one (1) business day prior to the Closing Date. Employees who accept such offers or whose employment otherwise transfers by operation of Law and become either full-time or part-time employees of an applicable Purchaser, or its Affiliate, upon the Closing (or thereafter consistent with applicable Law) are hereinafter referred to as “Transferred Employees.”

(b) The Sellers shall, and shall cause each of its Affiliates to, (i) use reasonable commercial efforts to assist the applicable Purchaser in securing the employment of the employees, (ii) deliver assignment of the Employment Contracts to Circles with the employees identified to Sellers within three (3) days prior to Closing and (iii) pay such Business Employees all amounts that are or become owing, up to and including the Closing (including, for the avoidance of doubt, all wages, bonuses, commissions, and other amounts that become owing to any Business Employee due to the termination of such Business Employee’s employment with any Seller or Affiliate effective upon Closing), as such amounts become due.

(c) With respect to those Transferred Employees that the Sellers and such applicable Purchaser mutually agree will have their employment transfer by operation of Law, each Seller agrees, with respect to themselves and their Affiliates, that it shall use its commercially reasonable efforts to (i) up to and including the Closing, comply with all of its material obligations and those of any of its predecessors (whether or not legally binding or in respect of which it would be expected to comply by any regulatory or other body to which it is subject) due to or in connection with such Transferred Employees (or any of such obligations such Seller would have had under or in connection with such contracts but for their transfer under applicable Law); (ii) provide to such applicable Purchaser such information as such applicable Purchaser may reasonably request in writing in order to verify such compliance; (iii) not alter (whether to take effect before, on or after the Closing) any of the material terms of employment or engagement of any of such Transferred Employees (without the prior written consent of such applicable Purchaser); (iv) not terminate or take any steps to terminate (constructively or otherwise) the employment of any of such Transferred Employees (without the prior written consent of such applicable Purchaser which shall not be unreasonably withheld), other than terminations for cause; (v) not employ, engage, or transfer any person who is not a Business Employee to work in the Business (without the prior written consent of such applicable Purchaser which shall not be unreasonably withheld); (vi) comply in all material respects with its obligations under applicable Law that derive from the Acquired Rights Directive 77/187/EC (as subsequently amended by the Transfers of Undertakings Directive 2001/23/EC) and provide such applicable Purchaser with such information as it reasonably requires in order to comply with its own such obligations; and (vii) subject to any requirements under the Data Protection Act 2018, facilitate an orderly transfer of the employment (and records relating to employment) of such Transferred Employees and will cooperate with such applicable Purchaser in relation to any reasonable requests that such applicable Purchaser may make to meet or communicate with Business Employees prior to the Closing in order to discuss the proposed transfer of employment to such applicable Purchaser; provided that prior to such meeting or communication, the nature and scope of such meeting or communication must be approved by the Sellers, which approval shall not be unreasonably withheld and shall be deemed given if the Sellers has not responded within one (1) business day

of being provided written notice thereof. Notwithstanding the transfer by operation of Law of the Transferred Employees described in this Section 8.8(c), the aggregate amount of all Liabilities (including wages, bonuses, commissions, and vacation) relating to the employment of such Transferred Employees that accrue before Closing shall either be paid by the Sellers prior to the Closing. Notwithstanding anything contained in this Agreement, such applicable Purchaser or its Affiliates shall be solely responsible for any Liabilities arising as a result of the termination of employment of any Transferred Employee at any time after the Closing.

(d) No less than 30 days prior to the date on which a Seller ceases to sponsor any group health plan applicable to U.S. employees, the Sellers shall provide to Purchasers (i) written notice of their intention thereof and (ii) information regarding “M&A qualified beneficiaries” (as defined under COBRA) sufficient to permit the applicable Purchaser and its Affiliates to comply with any applicable COBRA obligations.

(e) On or before May 20, 2022, Sellers shall provide Purchasers with all employment, consulting, severance or indemnification contracts between the Sellers or any Affiliate of any Seller and any employees who work for or directly or indirectly support the Business (the “Business Employees”), except for offer letters or contracts that may be terminated “at will” and do not contain post-termination obligations in excess of any such obligations imposed by applicable Law.

(f) On or before May 20, 2022, the Sellers shall deliver a true and complete list, organized by country, of all Business Employees to the Purchasers, which list includes each employee’s name, position and title, employment entity, department, work location, scope of employment (e.g., full- or part-time or temporary), overtime classification (e.g., exempt or non-exempt), date of commencement of employment, prior notice entitlement, salary and any and all other compensation or benefit payable, maintained or contributed to or with respect to which any potential liability is borne by the Sellers or any Affiliate of any Seller (whether now or in the future, by virtue of any Law, Contract or otherwise) to each of the listed employees (the “Employee Census”). On or before May 20, 2022, the Sellers have delivered a true and complete list of all present material independent contractors and consultants (“Contractors”) engaged by each Seller with respect to the Business, which list includes each Contractor’s name, date of commencement, and rate of all regular compensation and benefits, bonus or any other compensation payable.

Section 8.9 Further Assurances. From time to time after the Closing and without further consideration, each Purchaser and each Seller, at the request of the other party, shall, and shall cause their respective Affiliates to, execute and deliver such other instruments of conveyance and transfer or other instruments or documents and take or arrange for such other actions, as may reasonably be required to effect any of the transactions contemplated by this Agreement or to provide any party hereto with the benefits intended to be conferred and conveyed by this Agreement; provided that, notwithstanding anything to the contrary in this Section 8.9 or any other provision of this Agreement, neither Purchaser nor any Seller nor any of their respective Affiliates shall be required to execute any document or take any action that would (i) increase the liability or obligation of the party of whom such document or action is requested beyond that which such party would have pursuant to the other provisions of this Agreement, (ii) require or cause the party of whom such action or document is requested to initiate, join in or otherwise become a party to

any Legal Proceeding, or (iii) cause such party to incur any material cost or expense that is not already imposed upon it by another provision of this Agreement.

Section 8.10 Confidentiality. Each party hereto acknowledges that the Mutual Non-Disclosure Agreement the (“NDA”), dated as of October 8, 2021 between certain of the Sellers and Circles shall remain in full force and effect following the Closing and that the terms of this Agreement and the Transaction are “Confidential Information” as defined in the NDA. For avoidance of doubt, any Confidential Information of the Sellers and their Affiliates relating to the Purchased Assets and the Assumed Contracts shall be deemed to be Confidential Information of the Purchasers as of the Closing (“Deemed Purchaser Confidential Information”), notwithstanding the fact that the Sellers or any of their respective officers, directors, employees or representatives have knowledge of such Deemed Purchaser Confidential Information obtained prior to the negotiation and performance of this Agreement; provided, however, that (i) Confidential Information of the Sellers relating to the Excluded Assets, Excluded Liabilities and the Excluded Contracts shall not be deemed to be Deemed Purchaser Confidential Information, and (ii) the Sellers shall be permitted to disclose to potential purchasers of its Excluded Assets, the Confidential Information regarding shared use assets or contracts solely to the extent necessary to provide (or arrange for the provision of) transitional services to any such purchaser. Notwithstanding any provisions to the contrary in the NDA, the Purchasers may, in accordance with this Agreement, at any time after the date hereof, issue a joint press release announcing this Agreement, the existence of this Agreement and the transactions contemplated hereby. For the avoidance of doubt, any Confidential Information relating to Excluded Assets that ends up in the possession of Purchasers (for example, information on laptops which are included in the Purchased Assets) shall not be Deemed Purchaser Confidential Information and shall be subject to the applicable provisions of the NDA.

Section 8.11 Survival of Representations and Warranties. None of the representations and warranties of the Sellers or the Purchasers contained in this Agreement or made in any other documents or instruments delivered pursuant to this Agreement shall survive the Closing hereunder.

Section 8.12 Disclaimer of Implied Warranties. Except as expressly provided in Article VI above, the Purchasers hereby jointly acknowledge and agree that no Seller makes any representations or warranties whatsoever, express or implied, with respect to any matter relating to the Purchased Assets including income to be derived or expenses to be incurred in connection with the Purchased Assets, the physical condition of any personal property comprising a part of the Purchased Assets or which is the subject of any Assumed Contract, the value of the Purchased Assets (or any portion thereof), the transferability of the Purchased Assets, the terms, amount, validity, collectability or enforceability of any Assumed Liabilities, Assumed Contracts, the title of the Purchased Assets (or any portion thereof), the merchantability or fitness of the personal property comprising a portion of the Purchased Assets or any other portion of the Purchased Assets for any particular purpose, or any other matter or thing relating to the Purchased Assets (or any portion thereof). Without in any way limiting the foregoing, except as otherwise expressly provided in Article VI above, each Seller hereby disclaims any warranty (express or implied) of merchantability or fitness for any particular purpose as to any portion of the Purchased Assets.

Section 8.13 Acknowledgement. The Purchasers hereby jointly acknowledge that the Sellers and its Affiliates are intending to wind up after the Closing in connection with the Bankruptcy Case and other wind up procedures under the laws of the respective jurisdictions of organization. The parties hereby acknowledge and agree that any wind-up procedures (and the timing thereof) shall be subject to the provisions of this Agreement and will vary from jurisdiction to jurisdiction. Due to such wind-up procedures, the Purchasers jointly acknowledge that any recourse shall be limited.

Section 8.14 Bankruptcy Court Approval.

(a) Entry of Order Approving Sale.

(i) Debtors shall file voluntary petitions for relief under chapter 11 of the Bankruptcy Code on a date not later than May 15, 2022.

(ii) Debtors shall use their reasonable best efforts to obtain entry of the Bid Procedures Order on a date not later than twenty-eight (28) calendar days following the Petition Date.

(iii) In the event that the Sellers accept any bid for any transaction, including an acquisition, related to the Purchased Assets other than the Transaction with the Purchasers contemplated by this Agreement or otherwise enters into an agreement to sell, transfer or assign the Purchased Assets (or stock or other securities from Sellers), or if the Bankruptcy Court enters an order approving another transaction in respect of assets of the Sellers, including an acquisition proposal submitted by a party other than the Purchasers (each, an "Alternative Transaction"), no later than one (1) Business Day following the earlier of (x) termination of this Agreement or (y) the closing date of such Alternative Transaction, the Sellers shall pay to Circles a breakup fee in an amount equal to 1.9% of the Purchase Price (the "Break Up Fee"), plus the Expense Reimbursement. The Break Up Fee and the Expense Reimbursement may be paid from the proceeds of such Alternative Transaction and shall constitute an allowed administrative expense claim in the Bankruptcy Cases with priority of the kind specified in sections 503 and 507 of the Bankruptcy Code. Sellers acknowledge that Circles would not have invested the effort in negotiating and documenting this proposed Transaction and incurred obligations to pay its outside advisors if Circles were not entitled to the Break Up Fee and Expense Reimbursement in accordance with the terms of this Agreement.

(iv) The Sellers shall provide copies to each Purchaser of any motion concerning this Transaction, including the motion to approve the Sale Order or any other matter before the Bankruptcy Court relating to this Agreement or the Transaction Documents, upon three (3) Business Days' notice for review and consultation thereof. The Sellers shall provide notice to each Purchaser of any hearing on the motion to approve the Sale Order or any other matter before the Bankruptcy Court relating to this Agreement or the Transaction Documents, in each case as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules for the Southern District of New York or as otherwise ordered by the Bankruptcy Court

(v) The Purchasers shall take such actions as are, in its sole discretion, necessary to assist in obtaining entry by the Bankruptcy Court of the Sale Order, including furnishing declarations, affidavits, or other documents or information for filing with the Bankruptcy Court for purposes, among others, of: (i) demonstrating that each Purchaser is a “good faith” purchaser; and (ii) establishing “adequate assurance of future performance” within the meaning of Section 365 of the Bankruptcy Code.

(b) Certain Bankruptcy Undertakings by Debtors and Purchasers.

(i) On or before the date that is one (1) calendar day after the Petition Date, Sellers shall file the Sale Motion in a form reasonably acceptable to Purchasers. Except as ordered by the Bankruptcy Court or to the extent the each Seller’s board of directors or equivalent governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law, the Sellers shall neither take any action, nor fail to take any action, which action or failure to act would reasonably be expected to (A) prevent or impede the consummation of the Transaction in accordance with the terms of this Agreement, or (B) result in (I) the reversal, avoidance, revocation, vacating or modification (in any manner that would reasonably be expected to materially and adversely affect the Purchasers’ rights hereunder) of the Sale Order, or (II) the entry of a stay pending appeal. Furthermore, neither Purchaser shall take any action, nor fail to take any action, which action or failure to act would reasonably be expected to prevent or impede the consummation of the transactions contemplated by this Agreement in accordance with the terms of this Agreement.

(ii) If the Sale Order or any other order of the Bankruptcy Court relating to this Agreement shall be appealed by any Person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), Debtors, with the cooperation and support of the Purchasers, shall take all steps as may be reasonable and appropriate to defend against such appeal, petition or motion, and shall endeavor to obtain an expedited resolution of such appeal.

(iii) Transaction Milestones

(1) No later than fifteen (15) calendar dates after the Petition Date, Sellers shall have received an order signed by the Bankruptcy Court approving the bidding procedures, including the Break Up Fee and the Expense Reimbursement, in a form and substance acceptable to the Purchasers (the “Bidding Procedures Orders”).

(2) The deadline for any bid in compliance with the Bidding Procedures Order to compete against the proposed Transaction and be considered by Sellers shall be no later than twenty-nine (29) calendar days after the Petition Date.

(3) No later than thirty-one (31) calendar days after the Petition Date, Sellers shall have completed an auction in compliance with the

Bidding Procedures Order if there are any competing bids that are “qualified bids.”

(4) No later than thirty-eight (38) calendar days after the Petition Date, Sellers shall have a hearing to approve the sale of its assets.

(5) No later than forty (40) calendar days after the Petition Date, the Bankruptcy Court shall have entered the Sale Order that includes: (i) a finding that the Transaction is in good faith and otherwise satisfies the provisions of section 363, including section 363(m), of the Bankruptcy Code, (ii) authorization and approval of the proposed Transaction pursuant to this Agreement, and (iii) a provision that (x) the Purchased Assets are being transferred free and clear of all liens, claims, encumbrances and interests to the Purchasers, and (y) assigning the Circles Assumed Contracts and CVG Assumed Contracts identified for assignment in connection with this Agreement.

(6) No later than July 12, 2022, the Parties shall consummate the Transaction (the “Outside Closing Date”).

(iv) Purchasers shall support, and not object to, the Debtor’s motion seeking the Bankruptcy Court’s entry of an order approving Sellers’ entry into the DIP Loan Agreement and consensual use of cash collateral, and provide any and all necessary consents in their capacity as prepetition secured lenders as required therein (as determined by the Debtors in their reasonable discretion) or as otherwise reasonably requested by the Debtors.

Section 8.15 Additional Covenants. Each Seller shall, and shall cause each of their Affiliates to, take no knowing action, directly or indirectly, to avoid or invalidate the Transaction. No Seller shall knowingly take any action, nor fail to take any action, which action or failure to act would reasonably be expected to prevent or impede the consummation of the Transaction contemplated by this Agreement in accordance with the terms of this Agreement.

Section 8.16 Business Policies. From and after Closing, (i) Circles shall use commercially reasonable efforts to cause the MVNE Business to comply with Sellers’ privacy policies and (ii) CVG shall use commercially reasonable efforts to cause the Non-MVNE Business to comply with Sellers’ privacy policies.

Section 8.17 Pareteum Africa Joint Venture. The Sellers shall use commercially reasonable efforts to cause ninety percent (90%) of the interests in Pareteum Africa Pty. Ltd. to be transferred to a Seller entity in accordance with the terms of the Pareteum Africa JV Agreement prior to Closing.

Section 8.18 Material Contracts. On or before May 25, 2022, Sellers will provide Purchasers with an accurate and complete list in all respects of all Contracts (a) by which any of the Purchased Assets are bound or affected, (b) to which any Seller is a party or by which it is bound in connection with the Business or the Purchased Assets, or (c) used in connection with or necessary for the operation of the Business (together with all Real Property Leases and the IP Agreements, the “Material Contracts”) and indicates, where applicable, if such Material Contract

also applies to assets that are not Purchased Assets or services that are not part of the Business, and such list shall be certified to by an officer of Parent. On or before May 25, 2022, Sellers will provide Purchasers with an accurate and complete list in all respects of all material Contracts that are an assumed Contract including a license granting rights in Intellectual Property, but excluding customer contracts that grant the customer a license to use Intellectual Property Assets (the “IP Agreements”). On or before May 25, 2022, Sellers will provide Purchasers with an accurate and complete list in all respects of all domain names that constitute an Intellectual Property Asset.

ARTICLE IX CONDITIONS PRECEDENT TO PURCHASERS’ OBLIGATION TO CLOSE

The obligation of the Purchasers under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by the Purchasers:

Section 9.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by each Seller shall be true and correct on and as of the Effective Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty shall be considered only as of such particular date) and at and as of the Closing Date, except, in the case of the representations and warranties that are not Specified Representations, for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect. Each Seller shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing, including but not limited to Sellers’ obligations set forth in Sections 8.8(e), 8.8(f) and 8.18.

Section 9.2 Officer’s Certificate. The Sellers shall have delivered to the Purchasers a certificate executed by an executive officer of each Seller (including incumbency certificates) as the Purchasers may reasonably request in order to evidence compliance with the conditions set forth in Section 9.1.

Section 9.3 Bill of Sale; Assumption Agreement; Intellectual Property Assignment Agreement. Each Seller shall have delivered to the Purchasers an executed Bill of Sale, Assumption Agreement and Intellectual Property Assignment Agreement, as applicable, pursuant to Section 4.1 and Section 4.2 hereof; *provided* that each Seller shall deliver a sufficient number of original, wet ink signature copies of the executed Intellectual Property Assignment Agreement to record the assignment of such Intellectual Property purchased by and assigned to the Purchasers in each jurisdiction where such Intellectual Property is registered.

Section 9.4 [Reserved.]

Section 9.5 Compliance with Laws; Legal Proceedings. The consummation of the Transaction shall be legally permitted by all Laws to which any party hereto is subject; provided however that no Law applicable to a Non-Borrower Seller shall be applicable for determining if the condition precedent to Closing of this paragraph is satisfied. No order of any Governmental Authority shall be in effect that enjoins, restrains, conditions or prohibits consummation of the

Transaction and no litigation, investigation or administrative proceeding shall be pending or threatened that would enjoin, restrain, condition or prevent consummation of the Transaction; provided however that no order of any Governmental Authority or litigation, investigation or administrative proceeding that is applicable to a Non-Borrower Seller shall be applicable for determining if the condition precedent to Closing of this paragraph is satisfied.

Section 9.6 Bankruptcy Matters. The Sale Order shall have been entered by the Bankruptcy Court. Such order must be in effect and must not have been reversed or stayed or modified in any material respect.

Section 9.7 [Reserved.]

Section 9.8 Certain Contracts. The Sellers' Key MVNE Customer Contracts shall have been assumed by the Debtors and assigned to Circles prior to or at Closing by operation of the Sale Order, entry of an order of the Bankruptcy Court or consent of the required parties.

Section 9.9 [Reserved.]

Section 9.10 Third Party Consents. All Required Consents shall have been received.

Section 9.11 Pareteum Africa Joint Venture. The Sellers shall have caused ninety percent (90%) of the interests in Pareteum Africa Pty. Ltd. to be transferred to a Seller entity in accordance with the terms of the Pareteum Africa JV Agreement prior to Closing; *provided, however,* that the Sellers and Circles shall have good faith discussions regarding a waiver of this condition precedent on a date that is fifteen (15) calendar days prior to the Closing Date.

Section 9.12 [Reserved.]

ARTICLE X CONDITIONS PRECEDENT TO SELLERS' OBLIGATION TO CLOSE

The obligations of the Sellers under this Agreement with respect to the purchase and sale of the Purchased Assets shall be subject to the fulfillment on or prior to the Closing of each of the following conditions, any of which may be waived in writing by the Sellers:

Section 10.1 Accuracy of Representations and Warranties; Performance of this Agreement. Each of the representations and warranties made by each Purchaser in this Agreement shall be true and correct on and as of the Effective Date (unless such representation or warranty is given as of a particular date in which case such representation or warranty shall be considered only as of such particular date) and at and as of the Closing Date, except for any failure to be so true and correct that, individually or in the aggregate, has not had and would not reasonably be expected to have a Material Adverse Effect on the ability of the Purchasers to timely consummate the transactions contemplated hereunder (including payment or undertaking the Purchase Price and any other cash payments, fees or expenses contemplated hereby). The Purchasers shall have complied with and performed in all material respects all of the agreements and covenants required by this Agreement and each other Transaction Document to be performed or complied with by it on or prior to the Closing.

Section 10.2 Officer's Certificate. Each of the Purchasers shall have delivered to the Sellers a certificate executed by an executive officer of such Purchaser (including incumbency certificates) as the Sellers may reasonably request in order to evidence compliance with the conditions set forth in Section 10.1.

Section 10.3 Assumption Agreement. The Purchasers shall have delivered to the Sellers an executed Assumption Agreement pursuant to Section 4.2 hereof.

Section 10.4 Bankruptcy Matters. The Sale Order shall have been entered by the Bankruptcy Court. Such order must be in effect and must not have been reversed or stayed or modified in any material respect.

Section 10.5 [Reserved.]

ARTICLE XI TERMINATION

Section 11.1 Breaches and Defaults; Opportunity to Cure. Prior to the exercise by a party of any termination rights afforded under Section 11.2(b)(i) or Section 11.2(c)(i) of this Agreement, if any party (the "Non-Breaching Party") believes any other party (the "Breaching Party") to be in breach hereunder, the Non-Breaching Party shall provide the Breaching Party with written notice specifying in reasonable detail the nature of such breach, whereupon if such breach is curable the Breaching Party shall have five (5) calendar days from the receipt of such notice to cure such breach to the reasonable satisfaction of the Non-Breaching Party. If the breach is not cured within such time period, then the Non-Breaching Party's sole remedy shall be to terminate this Agreement if the breach is such that the condition set forth in Section 9.1 or Section 10.1, as applicable, shall not be satisfied (as provided in Section 11.2); provided, however, that the Non-Breaching Party shall not be entitled to terminate this Agreement if it is in material breach of this Agreement.

Section 11.2 Termination. This Agreement may be terminated and the transactions contemplated herein may be abandoned, by written notice given to the other party hereto, at any time prior to the Closing:

- (a) by mutual written consent of the Sellers and the Purchasers;
- (b) (i) subject to the right to cure set forth in Section 11.1, at any time prior to the Closing Date, by the Purchasers if any Seller is in breach of any covenant, representation, undertaking or warranty such that the condition set forth in Section 9.1 shall not be satisfied, and the Purchasers have not waived such condition in writing on or before the Closing Date or (ii) by the Purchasers, if all of the conditions set forth in Article IX and Article X have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and the Sellers fails to consummate the Closing as required herein;
- (c) (i) subject to the right to cure set forth in Section 11.1, at any time prior to the Closing Date, by the Sellers if either Purchaser is in breach of any covenant, representation or warranty such that the condition set forth in Section 10.1 shall not be satisfied, and the Sellers have not waived such condition in writing on or before the Closing Date or (ii) by the Sellers, if all of the conditions set forth in Article IX and Article X have been satisfied (other than conditions that

by their nature are to be satisfied at the Closing) or waived and either Purchaser fails to consummate the Closing as required herein;

(d) at or prior to the Bankruptcy Court hearing regarding approval of this Agreement, by either the Sellers or the Purchasers, if the Bankruptcy Court enters an order approving an offer to purchase all or substantially all of the Purchased Assets of the Debtors submitted by a party other than the Purchasers or enters an order confirming a plan of reorganization of Debtors (other than a plan under which the Purchasers acquire the Purchased Assets on or before the Closing Date); and

(e) by the Purchasers if the Bankruptcy Court has not entered the Sale Order on or before the date that is seventy-five (75) calendar days following the Petition Date or if the Closing shall not have occurred on or before the Outside Closing Date, unless the failure to have the Closing shall be due to the failure of the party seeking to terminate this Agreement to perform in any material respect its obligations under this Agreement required to be performed by it or them at or prior to the Closing.

Section 11.3 Effect of Termination. In the event of termination of this Agreement pursuant to Section 11.2, this Agreement shall become null and void and there shall be no liability on the part of any party hereto or any of its partners, officers, directors or shareholders; provided that no termination shall relieve either Purchaser or any Seller, as applicable, from any liability for damages (including damages based on the loss of the economic benefits of the transactions contemplated by this Agreement), losses, costs or expenses (including reasonable legal fees and expenses) resulting from any breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, shall be deemed to include any failure by the Purchasers or the Sellers to consummate the Closing if and when it is obligated to do so hereunder); provided further that no party shall be liable for consequential, special, exemplary or incidental damages.

ARTICLE XII MISCELLANEOUS

Section 12.1 Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given if delivered personally, sent by electronic mail with confirmation of receipt received from the recipient, recognized overnight delivery service or registered or certified mail, return receipt requested, postage prepaid, to the following addresses:

If to CVG:

Channel Ventures Group, LLC
c/o Becker, Glynn, Muffly, Chassin & Hosinski LLP
299 Park Avenue, 16th Floor
New York, New York 10171
Attention: Markwin H. Maring, Statutory Director
Email: markwin@hollandoffice.nl

with a required copy to:

Becker, Glynn, Muffly, Chassin & Hosinski LLP
299 Park Avenue, 16th Floor
New York, New York 10171
Attention: Alec Ostrow, Esq.
Email: aostrow@beckerglynn.com

If to Circles:

Circles MVNE Pte. Ltd.,
221 Henderson Road #06-10
Henderson Building
Singapore 159557
Attention: Legal
Email: legal@circles.asia

with a required copy to:

DLA Piper LLP (US)
1251 Avenue of the Americas, 27th Floor
New York, New York
Attention: Jamila Justine Willis, Esq.
Email: jamila.willis@us.dlapiper.com

If to the Sellers:

Pareteum Corporation
1185 Avenue of the Americas, 37th Floor
New York, NY 10036
Attention: Laura Thomas
Email: laura.thomas@parateum.com

with a required copy to:

King & Spalding LLP
1180 Peachtree Street, NE, Suite 1600
Atlanta, GA 10020
Attention: Thad Wilson
Email: thadwilson@kslaw.com

Notices delivered personally shall be effective upon delivery against receipt. Notices transmitted by telecopy shall be effective when received, provided that the burden of proving notice when notice is transmitted by telecopy shall be the responsibility of the party providing such notice. Notices transmitted by electronic mail (with hard copy to follow) shall be effective upon confirmation of receipt. Notices delivered by overnight mail shall be effective when received.

Notices delivered by registered or certified mail shall be effective on the date set forth on the receipt of registered or certified mail, or seventy-two (72) hours after mailing, whichever is earlier.

Section 12.2 Expenses. Except to the extent that the Purchasers are otherwise entitled thereto in accordance with the provisions of this Agreement, each party shall bear its own expenses and costs, including the fees of any attorney retained by it, incurred in connection with the preparation of this Agreement and the consummation of the transactions contemplated hereby.

Section 12.3 Governing Law; Jurisdiction; Waiver of Jury Trial. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without application of principles of conflict of laws). In connection with any controversy arising out of or related to this Agreement, each Seller and each Purchaser hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Court declines or may not accept jurisdiction over a particular matter, the United States District Court for the Southern District of New York, or if, and only if, the United States District Court for the Southern District of New York declines or may not accept jurisdiction over a particular matter, the courts of the State of New York. Each of the Sellers and Purchasers irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts. EACH OF THE PARTIES HERETO 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.

Section 12.4 Assignment. The Purchasers shall not have the right to assign any of its rights under this Agreement or delegate any performance of its obligations under this Agreement without the prior written consent of the Sellers, the First Lien Agent and the Second Lien Agent; provided that, the Purchasers shall be permitted to assign its rights under this Agreement to the Purchasers' respective Affiliates without such prior written consent; provided further, that in the event of such assignment Purchaser shall continue to be jointly and severally liable with the Affiliate assignee for its duties and obligations under this Agreement. The Sellers shall not have the right to assign any of their rights under this Agreement or delegate any performance of their obligations under this Agreement without the prior joint written consent of the Purchasers, the First Lien Agent and the Second Lien Agent.

Section 12.5 Successors and Assigns. All agreements made and entered into in connection with this Transaction shall be binding upon and inure to the benefit of the parties hereto, their successors and permitted assigns.

Section 12.6 Amendments; Waivers. No alteration, modification or change of this Agreement shall be valid except by an agreement in writing executed by the parties hereto, and no alteration, modification or change of this Agreement that adversely affects the First Lien Agent, and/or the Second Lien Agent shall be valid except by an agreement in writing executed by the parties hereto and the First Lien Agent and/or the Second Lien Agent, as applicable. Except as otherwise expressly set forth herein, no failure or delay by any party hereto or the First Lien Agent or the Second Lien Agent, as applicable, in exercising any right, power or privilege hereunder (and

no course of dealing between or among any of the parties hereto) shall operate as a waiver of any such right, power or privilege. No waiver of any default on any one occasion shall constitute a waiver of any subsequent or other default. No single or partial exercise of any such right, power or privilege shall preclude the further or full exercise thereof.

Section 12.7 Entire Agreement. This Agreement (including the Exhibits and Disclosure Schedules, which are hereby incorporated by reference into and made a part of this Agreement for all purposes), merges all previous negotiations and agreements between the parties hereto, either verbal or written, and constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter of this Agreement.

Section 12.8 Counterparts. This Agreement may be executed in two or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile and/or PDF signatures shall be deemed original signatures.

Section 12.9 Severability. If any provision of this Agreement or the application thereof to any Person or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law, but only as long as the continued validity, legality and enforceability of such provision or application does not materially (a) alter the terms of this Agreement, (b) diminish the benefits of this Agreement or (c) increase the burdens of this Agreement, for any Person. Upon a determination that any term or other provision is invalid or unenforceable, the parties shall negotiate in good faith to modify this Agreement so as to affect the original intent of the parties hereto to the fullest extent possible.

Section 12.10 Section Headings. The section headings contained in this Agreement are solely for the purpose of reference, are not part of the agreement of the parties hereto and shall not in any way affect the meaning or interpretation of this Agreement.

Section 12.11 Interpretation. As all parties hereto have participated in the drafting of this Agreement, any ambiguity shall not be construed against any party as the drafter. Unless the context of this Agreement clearly requires otherwise, (a) “or” has the inclusive meaning frequently identified with the phrase “and/or,” (b) “including” has the inclusive meaning frequently identified with the phrase “including, but not limited to” and (c) references to “hereof,” “hereunder” or “herein” or words of similar import relate to this Agreement. Unless the context requires otherwise, words in this Agreement using the singular or plural number also include the plural or singular number, respectively, and the use of any gender herein shall be deemed to include the other genders.

Section 12.12 Third Parties. Nothing herein, expressed or implied, is intended to or shall confer on any Person other than the parties hereto any rights, remedies, obligations or liabilities under or by reason of this Agreement, except each of the First Lien Agent, the Second Lien Agent and the Releasees (defined below) shall each be a third-party beneficiary of this Agreement.

Section 12.13 Specific Performance. The parties agree that irreparable damage would occur to the Purchasers, the First Lien Agent (solely with respect to its specific consent or approval rights herein) and the Second Lien Agent (solely with respect to its specific consent or approval

rights herein) and that the Purchasers, the First Lien Agent (solely with respect to its specific consent or approval rights herein) and the Second Lien Agent (solely with respect to its specific consent or approval rights herein) would not have any adequate remedy at law in the event that any of the other provisions this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that, the Purchasers, the First Lien Agent (solely with respect to its specific consent or approval rights herein) and the Second Lien Agent (solely with respect to its specific consent or approval rights herein) shall be entitled to an injunction or injunctions to prevent breaches or threatened breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement (with respect to each of the First Lien Agent, solely with respect to its specific consent or approval rights herein and the Second Lien Agent, solely with respect to its specific consent or approval rights herein) without proof of actual damages or otherwise (and, to the fullest extent permitted by Law, each of the Sellers hereby waives any requirement for the securing or posting of any bond in connection with such remedy), this being in addition to any other remedy to which the Purchasers are entitled at law or in equity. The Sellers shall not be entitled to any injunction or injunctions to prevent breaches or threatened breaches of this Agreement or to enforce specifically the terms and provisions of this Agreement.

Section 12.14 Release. Upon Closing, Purchasers, on behalf of the Purchasers and their respective Affiliates (including the entities acquired at Closing as part of the Purchased Assets) and each of their respective principals, trustees, officers, and directors (whether acting in such capacity or individually), attorneys, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf, hereby unconditionally and irrevocably remise, waive, satisfy, release, acquit, and forever discharge Sellers and each of their principals, trustees, officers, and directors (acting in such capacity), attorneys, accountants, nominees, agents (alleged, apparent, or actual), representatives, employees, managers, administrators, and each person or entity acting or purporting to act for them or on their behalf (collectively, the “Releasees”) from and against any and all past and present claims, counterclaims, actions, suits, rights, causes of action, lawsuits, set-offs, costs, losses, controversies, agreements, promises and demands, or liabilities, of whatever kind or character, direct or indirect, whether known or unknown or capable of being known, arising at law or in equity, by right of action or otherwise, from any claim that they have or may have against the Releasees. Notwithstanding the foregoing, the release set forth in this Section 12.14 shall not apply in the case of claims, counterclaims, actions, suits, rights, causes of action, lawsuits, set-offs, costs, losses, controversies, agreements, promises and demands, or liabilities arising out of fraud, gross negligence or intentional misrepresentation.

Section 12.15 Schedules. The disclosure of any matter in any section or subsection of the Disclosure Schedule shall be deemed to be a disclosure under any other section or subsection of such Disclosure Schedule to the extent such other section or subsection is referenced herein and the relevance of such item to such section or subsection referenced herein is reasonably apparent on the face of such disclosure. The mere inclusion of any item in any section or subsection of any of the Disclosure Schedules, as an exception to any representation or warranty or otherwise shall not be deemed to constitute an admission by Sellers, or to otherwise imply, that any such item has

had or is reasonably likely to have, individually or in the aggregate, a Material Adverse Effect or otherwise represents an exception or material fact, event or circumstance for the purposes of this Agreement, that such item meets or exceeds a monetary or other threshold specified for disclosure in this Agreement or that such item represents a determination that the Transaction requires the consent of any third party. The sections or subsections of each Disclosure Schedule are arranged in sections corresponding to the numbered and lettered sections and subsections of this Agreement. Matters disclosed in any section or subsection of any of the Disclosure Schedules are not necessarily limited to matters that are required by this Agreement to be disclosed therein. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature or impose any duty or obligation to disclose any information beyond what is required by this Agreement, and disclosure of such additional matters shall not affect, directly or indirectly, the interpretation of this Agreement or the scope of the disclosure obligations hereunder. Headings inserted in the sections or subsections of any of the Disclosure Schedules are for convenience of reference only and shall to no extent have the effect of amending or changing the express terms of the Sections or subsections as set forth in this Agreement.

[Remainder of Page Intentionally Left Blank; Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto has caused this Asset Purchase Agreement to be executed by its duly authorized representative as of the day and year first above written.

SELLERS:

PARETEUM CORPORATION, a
Delaware corporation

DocuSigned by:
By: Laura W. Thomas
Name: Laura W. Thomas
Title: Authorized Signatory

PARETEUM NORTH AMERICA CORP., a
Delaware corporation

DocuSigned by:
By: Laura W. Thomas
Name: Laura W. Thomas
Title: Authorized Signatory

DEVICESCAPE HOLDINGS, INC., a
Delaware corporation

DocuSigned by:
By: Laura W. Thomas
Name: Laura W. Thomas
Title: Authorized Signatory

IPASS, INC. a Delaware corporation

DocuSigned by:
By: Laura W. Thomas
Name: Laura W. Thomas
Title: Authorized Signatory

IPASS IP LLC a Delaware corporation

DocuSigned by:
By: Laura W. Thomas
Name: Laura W. Thomas
Title: Authorized Signatory

PARETEUM EUROPE B.V., a Netherlands
private limited company

DocuSigned by:
By: Bart Weijermars
Name: Bart Weijermars
Title: Authorized Signatory

ARTILIUM GROUP LTD., a United
Kingdom private limited company

DocuSigned by:
By: Bart Weijermars
Name: Bart Weijermars
Title: Authorized Signatory

PARETEUM ASIA PTE . LTD. a Singapore
private limited company


DocuSigned by:
By: Bart Weijermars
Name: Bart Weijermars
Title: Authorized Signatory

PARETEUM N.V., a Belgian private limited
company

DocuSigned by:
By: Bart Weijermars
Name: Bart Weijermars
Title: Authorized Signatory

PURCHASERS:

CHANNEL VENTURES GROUP, LLC, a
Delaware limited liability company

By: 
Name: Markwin H. Maring
Title: CEO

CIRCLES MVNE PTE. LTD., a Singapore
private limited company

By: _____
Name:
Title:

PURCHASERS:

CHANNEL VENTURES GROUP, LLC, a
Delaware limited liability company

By: _____

Name:

Title:

CIRCLES MVNE PTE. LTD., a Singapore
private limited company

By: MakCheeKiong _____

Name: Mak Chee Kiong

Title: Authorised Signatory

Exhibit A

Form of Sale Order

[Attached.]

TOGUT, SEGAL & SEGAL LLP

Frank A. Oswald
 Brian F. Moore
 Amy M. Oden
 One Penn Plaza Suite 3335
 New York, New York 10119
 (212) 594-5000

KING & SPALDING LLP

Michael R. Handler
 1185 Avenue of the Americas
 New York, New York 10036
 (212) 556-2100

-and-

*Proposed Counsel to the Debtors and Debtors
 in Possession*

KING & SPALDING LLP

Thaddeus D. Wilson (*pro hac vice* pending)
 Leia Clement Shermohammed (*pro hac vice*
 pending)
 1180 Peachtree Street N.E.
 Atlanta, GA 30309-3521
 (404) 572-4600

*Proposed Special Counsel to the Debtors and
 Debtors in Possession*

**UNITED STATES BANKRUPTCY COURT
 SOUTHERN DISTRICT OF NEW YORK**

-----X
In re :
 : **CHAPTER 11**
PARETEUM CORPORATION, et al., : **Case No. 22-[_____] (___)**
 :
Debtors.¹ : **(Jointly Administered)**
 -----X

**[PROPOSED] ORDER (I) APPROVING ASSET PURCHASE AGREEMENT
 AMONG SELLERS AND BUYER; (II) AUTHORIZING SALE
 OF CERTAIN OF THE DEBTORS' ASSETS FREE AND CLEAR OF
 LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES; (III) AUTHORIZING
 ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND
 LEASES IN CONNECTION THEREWITH; AND (IV) GRANTING RELATED RELIEF**

¹ The Debtors in the Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, if applicable, are: Pareteum Corporation (7538); Pareteum North America Corp. (f/k/a Elephant Talk North America Corp.) (9623); Devicescape Holdings, Inc. (2909); iPass, Inc. (4598); iPass IP LLC (2550); Pareteum Europe B.V.; Artilium Group Ltd. (f/k/a Artilium PLC); Pareteum Asia Pte. Ltd.; and Pareteum N.V. (f/k/a Artilium N.V.). The Debtors' corporate headquarters is located at 1185 Avenue of the Americas, 2nd Floor, New York, NY 10036.

Upon the motion, dated May 15, 2022 (ECF No. [__]) (the “**Sale Motion**”)² of Pareteum Corporation and its debtor affiliates, as debtors and debtors in possession in the above-captioned Chapter 11 cases (collectively, the “**Debtors**”) seeking, among other things, entry of an order (the “**Sale Order**”), pursuant to Sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”) and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”) and Rules 6004-1 and 6006-1 of the Local Bankruptcy Rules for the United States Bankruptcy Court for the Southern District of New York (the “**Local Rules**”), (i) authorizing the sale of the Purchased Assets free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code, (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases of nonresidential real property of the Debtors in connection therewith; and (iii) granting related relief, all as more fully set forth in the Sale Motion; and the Court having entered this Court’s prior order, dated May ____, 2022 (ECF No. [__]) (the “**Bidding Procedures Order**”), approving competitive bidding procedures for the Purchased Assets (the “**Bidding Procedures**”) and granting certain related relief; and [_____] (the “**Buyer**”) having submitted the highest and best bid for the Purchased Assets, as reflected in that certain Asset Purchase Agreement, dated as of [__], 2022 by and among certain Debtors, as the Sellers, and [_____] , as the Buyer (as may be amended pursuant to the terms thereof and this Sale Order, the “**Purchase Agreement**”), a copy of which is annexed hereto as **Exhibit A**, pursuant to which the Debtors have agreed, among other things, to sell the Purchased Assets to the Buyer, including the Assumed Contracts that will be assumed and assigned to the Buyer, on the terms and conditions set forth in the Purchase Agreement (collectively, the

² Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the Purchase Agreement (as defined herein) or, if not defined in the Purchase Agreement, the meanings ascribed to them in the Sale Motion.

“**Sale Transaction**”); and the Court having conducted a hearing on the Sale Motion (the “**Sale Hearing**”) on June _____, 2022, at which time all interested parties were offered an opportunity to be heard with respect to the Sale Motion and the Bidding Procedures Order was approved; and the Court having reviewed and considered (a) the Sale Motion and the exhibits thereto, (b) the Purchase Agreement, (c) the Bidding Procedures Order (ECF No. [____]); (d) the Declaration of Glenn Tobias in Support of the Sale Motion (ECF No. [____]), and (e) the arguments and representations of counsel made, and the evidence proffered or adduced, at the Sale Hearing; and it appearing that due and proper notice of the Sale Motion, the Purchase Agreement, the Bidding Procedures Order, and the proposed form of this Sale Order (the “**Proposed Sale Order**”) having been provided in accordance with the Bidding Procedures Order; [and all objections to the Sale Motion with respect to the relief granted by this Sale Order having been withdrawn, resolved, or overruled as provided in this Sale Order]; and it appearing that the relief requested in the Sale Motion and granted herein is in the best interests of the Debtors, their estates and creditors, and all parties in interest in these Chapter 11 cases; and upon the record of the Sale Hearing and these Chapter 11 cases; and after due deliberation thereon; and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. **Fed. R. Bankr. P. 7052**. 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. 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. The Court’s findings shall also include any oral findings of fact and conclusions of law made by the Court during or at the conclusion of the Sale Hearing.

B. **Jurisdiction and Venue.** This Court has jurisdiction to decide the Sale Motion, and jurisdiction over the Sale Transaction and the property of the Debtors' estates, including the Purchased Assets, pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b). This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these Chapter 11 cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates.** The statutory and other legal predicates for the relief sought in the Sale Motion are Sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, 6006, 9007, and 9014, Local Rules 6004-1 and 6006-1, and the this District's Amended Guidelines for the Conduct of Asset Sales.

D. **Notice and Opportunity to Object.** As evidenced by the certificates of service filed with the Court, due, proper, timely, adequate, and sufficient notice of, and a fair and reasonable opportunity to object to and to be heard with respect to the Sale Motion, the Sale Hearing, the Sale Transaction, the sale of the Purchased Assets free and clear of any Interests or Claims (as defined herein), the Proposed Sale Order, and the assumption and assignment of the executory contracts and unexpired leases to be assumed and assigned to Buyer pursuant to this Sale Order, has been provided by the Debtors, as required by Sections 102(1), 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014 and in compliance with the Bidding Procedures Order, to all Persons entitled to such notice, including, but not limited to, the following: (i) all counterparties to the Assumed Contracts (the "**Counterparties**" and, each, a "**Counterparty**"), (ii) all other Sale Notice Parties (as defined in the Sale Motion); and (iii) all other persons and entities as directed by the Bankruptcy Court. Such notice was good, sufficient, and appropriate under the circumstances, and complied in all respects with the Bidding Procedures Order. No other or further notice of the foregoing is required. With respect to Persons in interest

whose identities could not be reasonably ascertained by the Debtors, publication of the Sale Notice in the national edition of *USA Today* and in the *New York Times* on June [___], 2022 (*see* Affidavit of Publication [Case No. ___ ECF No. [___]]) was sufficient and reasonably calculated to provide notice to such Persons under the circumstances.

E. **Disclosures**. The disclosures made by the Debtors in the Sale Motion, the Sale Notice, and related notices and documents filed with the Court concerning the Purchase Agreement, the Bidding Procedures Order, the hearing to consider approval of the Sale Motion, the Sale Transaction, and the Sale Hearing were good, complete, and adequate.

F. **Final Order**. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

G. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of the Sale Motion, the Purchase Agreement, and the Sale Transaction and in entering into the Purchase Agreement and related or ancillary agreements thereto (collectively, the “**Related Agreements**”). The Debtors’ entry into and performance under the Purchase Agreement and the Related Agreements (i) are a result of due deliberation by the Debtors and constitute a sound and reasonable exercise of the Debtors’ business judgment consistent with their fiduciary duties; (ii) provide value to and are beneficial to the Debtors’ estates, and are in the best interests of the Debtors and their stakeholders; and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale Transaction include, but are not limited to, the following: (a) the Purchase Agreement constitutes the highest and best offer received for the Purchased Assets; (b) the Purchase Agreement presents the best opportunity to maximize the value of the Purchased Assets on a going-concern basis and avoid decline and devaluation of the Purchased Assets; (c) unless the Sale Transaction and all of

the other transactions contemplated by the Purchase Agreement are concluded expeditiously, as provided for pursuant to the Purchase Agreement, recoveries to the Debtors' creditors may be materially diminished; (d) the value of the Debtors' estates will be maximized through the sale of the Purchased Assets pursuant to the Purchase Agreement; and (e) the Purchase Agreement presents the best opportunity for continued employment for a significant number of the Debtors' employees; and (f) the Purchase Agreement presents the best opportunity to maintain mobile service for the Debtors' customers.

H. **Compliance with Bidding Procedures.** The Bidding Procedures were substantively and procedurally fair to all parties. The Debtors, the Buyer, and their respective counsel and other advisors have complied with the Bidding Procedures and the Bidding Procedures Order in all material respects.

I. **Highest or Best Value.** The Debtors and their advisors engaged in a robust and extensive marketing and sale process over a period of over a year, both prior to the Commencement Date and through the postpetition sale process, pursuant to the Bidding Procedures and the Bidding Procedures Order. The Debtors conducted a fair and open sale process. The sale process, the Bidding Procedures were non-collusive, duly noticed, and provided a full, fair, and reasonable opportunity for any person or entity to make an offer to purchase the Purchased Assets. The process conducted by the Debtors and their advisors pursuant to the Bidding Procedures resulted in the highest or best value for the Purchased Assets for the Debtors and their estates, and any other available transaction would not have yielded as favorable an economic result for the Debtors' estates, creditors and other parties in interest.

J. **Fair Consideration.** The consideration to be paid by the Buyer under the Purchase Agreement (i) constitutes fair and reasonable consideration for the Purchased Assets, (ii) is the

highest and best offer for the Purchased Assets, (iii) will provide a greater recovery for the Debtors' estates and creditors than would be provided by any other practically available alternative, and (iv) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and other laws of the United States, any state, territory, possession, the District of Columbia, or any other applicable jurisdiction with laws substantially similar to the foregoing.

K. **No Successor or Other Derivative Liability.** By consummating the Sale Transaction pursuant to the Purchase Agreement: (i) Buyer is not a mere continuation of any Seller or any other Debtor or any Debtor's estate, and there is no continuity, no common identity, and no continuity of enterprise between Buyer and any Debtor; (ii) Buyer is not a successor to any Debtor or any Debtor's estate by reason of any theory of law or equity, and the Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of Buyer and the Debtors; and (iii) neither Buyer nor any of its successors, assigns, members, partners, principals, and shareholders (or equivalent) shall assume or in any way be responsible for any obligation or liability of any Debtor (or any Affiliates thereof) and/or any Debtor's estate, including any obligation under any collective bargaining agreement or labor practice agreement, except as expressly provided in the Purchase Agreement. The sale and transfer of the Purchased Assets to the Buyer, including the assumption by the Debtors and assignment, transfer, and/or sale to the Buyer of the Assumed Contracts, will not subject the Buyer to any liability (including any successor liability) with respect to the operation of the Debtors' business prior to the Closing or by reason of such transfer, except that, upon the Closing, the Buyer shall become liable for the applicable Assumed Liabilities.

L. **No Sub Rosa Plan.** The Sale Transaction neither impermissibly restructures the rights of the Debtors' creditors nor impermissibly dictates the terms of a liquidating plan of reorganization of the Debtors. The Sale Transaction does not constitute a *sub rosa* or *de facto* plan

of reorganization or liquidation as it does not propose to (i) impair or restructure existing debt of, or equity interests in, the Debtors, (ii) impair or circumvent voting rights with respect to any plan proposed by the Debtors, (iii) circumvent Chapter 11 safeguards, such as those set forth in Sections 1125 and 1129 of the Bankruptcy Code, or (iv) classify claims or equity interests or extend debt maturities.

M. **Good Faith; No Collusion.** The Debtors, the Buyer, and their respective counsel and advisors, have negotiated, proposed, and entered into the Purchase Agreement, the Related Agreements, and each of the transactions contemplated therein in good faith, without collusion and from arm's-length bargaining positions. The Buyer is a "good faith purchaser" and is acting in good faith within the meaning of Section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. The Buyer has proceeded in good faith in all respects. Specifically, (i) the Buyer recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets; (ii) the Buyer complied with the provisions of the Bidding Procedures Order; (iii) the Buyer's bid was subjected to competitive Bidding Procedures as set forth in the Bidding Procedures Order; (iv) the Buyer has not violated Section 363(n) of the Bankruptcy Code by any action or inaction; and (v) all payments to be made by the Buyer and all other material agreements or arrangements entered into by the Buyer and the Debtors in connection with the Sale Transaction have been disclosed and are appropriate. The sale price in respect of the Purchased Assets was not controlled by any agreement among potential bidders and neither the Debtors nor the Buyer have engaged in collusion or any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under Section 363(n) of the Bankruptcy Code. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under laws of the United States,

any state, territory, or possession, or the District of Columbia. The Buyer is not an “insider” or “affiliate” of any of the Debtors, as those terms are defined in Section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exists between the Buyer and the Debtors.

N. **Assumption and Assignment Notices.** As evidenced by the certificates of service filed with the Court, and in accordance with the provisions of the Bidding Procedures Order, the Debtors have served prior to the Sale Hearing Assumption and Assignment Notices, which provided notice of the Debtors’ intent to assume and assign the Assumed Contracts, including the Supplemental Contracts, and of the related proposed Cure Costs upon each Counterparty to the Assumed Contracts. The service of the Assumption and Assignment Notices was good, sufficient, and appropriate under the circumstances and no further notice need be given with respect to the Cure Costs for the assumption and assignment of the Assumed Contracts. All Counterparties have had a reasonable opportunity to object both to the Cure Costs listed on the applicable Assumption and Assignment Notice and to the assumption and assignment of the Assumed Contracts, including the Supplemental Contracts, to the Buyer. No defaults exist in the Debtors’ performance under the Assumed Contracts as of the date of this Sale Order other than the failure to pay the Cure Costs or defaults that are not required to be cured.

O. **Free and Clear Sale.** The Debtors may sell the Purchased Assets free and clear of all liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances, and other interests of any kind or nature whatsoever against the Debtors or the Purchased Assets, including, without limitation, any debts arising under or out of, in connection with, or in any way relating to, any acts or omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability

claims, environmental liabilities, employee pension or benefit plan claims, multiemployer benefit plan claims, retiree healthcare or life insurance claims, or claims for Taxes of or against the Debtors, any claims under, and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule or regulation of the United States, any state, territory, or possession, or the District of Columbia), whether arising prior to or subsequent to the commencement of these Chapter 11 cases, whether known or unknown, and whether imposed by agreement, understanding, law, equity, or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Purchased Assets, the operation of the Debtors' business before the effective time of the Closing pursuant to the Purchase Agreement, or the transfer of the Debtors' interests in the Purchased Assets to the Buyer, and all Excluded Liabilities (collectively, excluding any Assumed Liabilities, the "**Claims**"), because, in each case, one or more of the standards set forth in Section 363(f)(1)–(5) of the Bankruptcy Code have been satisfied; provided that nothing herein shall be deemed, or construed as, a ruling or determination by this Court that the Assumed Liabilities encumber the Purchased Assets. Without limiting the generality of the foregoing, "Claims" shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to: (i) any of the employee benefit plans, including any Claims related to unpaid contributions or current or potential withdrawal or termination liability; (ii) any of the Debtors' collective bargaining agreements; (iii) the Worker Adjustment and Retraining Notification Act of 1988; or (iv) any of the Debtors' current and former employees. Those holders of Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transaction or the Sale Motion are deemed to have consented pursuant to Section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object that have an interest in the Purchased

Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Claim pursuant to Section 363(f)(5) or fall within one or more of the other subSections of Section 363(f) of the Bankruptcy Code and, therefore, are adequately protected by having their Claims that constitute interests in the Purchased Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors.

P. **Buyer's Reliance on Free and Clear Sale.** The Buyer would not have entered into the Purchase Agreement and would not consummate the transactions contemplated thereby if the sale of the Purchased Assets was not free and clear of all Interests and Claims, or if the Buyer would, or in the future could, be liable for any such Interests or Claims, including, as applicable, certain liabilities related to the Business that will not be assumed by the Buyer, as described in the Purchase Agreement. A sale of the Purchased Assets other than one free and clear of all Interests and Claims would adversely impact the Debtors, their estates, and their creditors, and would yield substantially less value for the Debtors' estates, with less certainty than provided under the Sale Transaction.

Q. The total consideration to be provided under the Purchase Agreement reflects the Buyer's reliance on this Sale Order to provide it, pursuant to Sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Purchased Assets free and clear of all Interests and Claims (including, without limitation, any potential derivative, vicarious, transferee, or successor liability Interests or Claims).

R. **Assumption and Assignment of Assumed Contracts.** The assumption and assignment of the Assumed Contracts are integral to the Purchase Agreement, are in the best

interests of the Debtors and their estates, and represent the valid and reasonable exercise of the Debtors' sound business judgment. Specifically, the assumption and assignment of the Assumed Contracts (i) is necessary to sell the Purchased Assets to the Buyer, (ii) allows the Debtors to sell their business to the Buyer as a going concern, (iii) limits the losses suffered by counterparties to the Assumed Contracts, and (iv) maximizes the recoveries to other creditors of the Debtors by avoiding claims against the Debtors' estates that would arise from the Debtors' rejection of the Assumed Contracts. Any Counterparty to any Transferred Contract, including any Supplemental Contract, that has not actually filed with the Court an objection to such assumption or to such assignment as of the date specified in the Bidding Procedures Order (as such date may have been modified or extended in accordance with the terms of the Bidding Procedures Order) is deemed to have consented to such assumption and assignment.

S. **Adequate Assurance of Future Performance.** Counterparties to Assumed Contracts, including the Supplemental Contracts, were provided with notice and adequate assurance of future performance for the Buyer (*see* Affidavit of Service (ECF No. [__])) and were required to file any objections to Buyer's ability to provide adequate assurance of future performance as contemplated under Sections 365(b)(1)(C) and 365(f)(1) of the Bankruptcy Code ("**Adequate Assurance Objections**"), by established deadlines. Counterparties to Assumed Contracts, including the Supplemental Contracts, that failed to timely file an Adequate Assurance Objection are forever barred from objecting to the assumption and assignment of such Assumed Contracts. Based on evidence adduced at the hearing and based on the record in these Chapter 11 cases, to the extent necessary, the Debtors have satisfied the requirements of Section 365 of the Bankruptcy Code, including Sections 365(b)(1)(A), 365(b)(1)(B), 365(b)(1)(C), and 365(f) of the Bankruptcy Code, in connection with the sale and assumption and assignment of the Assumed

Contracts to the extent provided under the Purchase Agreement and (i) Buyer will cure, in accordance with the terms set forth in this Sale Order and the Purchase Agreement, any default existing prior to the date of the assumption the applicable Transferred Contract, within the meaning of Section 365(b)(1)(A) of the Bankruptcy Code; (ii) Sellers have provided compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof under any of the Assumed Contracts, within the meaning of Section 365(b)(1)(B) of the Bankruptcy Code; (iii) Buyer has provided adequate assurance of future performance of and under the Assumed Contracts, within the meaning of Sections 365(b)(1) and 365(f)(2) of the Bankruptcy Code based on the Buyer Declaration and the other evidence adduced at the Sale Hearing. With respect to each of the Assumed Contracts, the Debtors have met all applicable requirements of Section 365(b) of the Bankruptcy Code. Accordingly, the Assumed Contracts may be assumed by the Debtors and assigned to the Buyer as provided under the Purchase Agreement. The assumption and assignment of each Transferred Contract is approved notwithstanding any provision in such Transferred Contract or other restrictions prohibiting its assignment or transfer. The applicable Assumption and Assignment Notice(s) provided by the Debtors is also sufficient to advise the non-Debtor counterparties to the Assumed Contracts that, pursuant to the Purchase Agreement, the Buyer's decision on which executory contracts and unexpired leases will be assumed and assigned may not be made until immediately prior to the Closing.

T. **Validity of Transfer.** As of the Closing and payment of the Purchase Price, the transfer of the Purchased Assets to the Buyer will be a legal, valid, and effective transfer of the Purchased Assets, and will vest the Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Claims. The consummation of the Sale Transaction 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 complied with in respect of the Sale Transaction.

U. The Debtors (i) have full corporate or limited liability company (as applicable) power and authority to execute the Purchase Agreement, the Related Agreements, all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary corporate action of the Debtors, (ii) have all of the corporate or limited liability company (as applicable) power and authority necessary to consummate the transactions contemplated by the Purchase Agreement and the Related Agreements; and (iii) upon entry of this Sale Order, other than any consents identified in the Purchase Agreement (including with respect to antitrust matters), need no consent or approval from any other Person to consummate the Sale Transaction.

V. **Purchased Assets are Property of the Estates.** The Purchased Assets constitute property of, and good title is vested in, the Debtors' estates within the meaning of Section 541(a) of the Bankruptcy Code. The Debtors are the sole and rightful owners of the Purchased Assets with all right, title, and interest to transfer and convey the Purchased Assets to the Buyer, and no other Person has any ownership right, title, or interests therein.

W. **Valid and Binding Contract.** The Purchase Agreement is a valid and binding contract between the Debtors and the Buyer and shall be enforceable pursuant to its terms. The Purchase Agreement, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtors and any Chapter 7

or Chapter 11 trustee appointed in these Chapter 11 cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

X. Other than claims arising under the Purchase Agreement, the Debtors agree and acknowledge that they have no claims against the Buyer.

Y. **Waiver of Bankruptcy Rules 6004(h) and 6006(d)**. Based on the record at the Sale Hearing, and for the reasons stated on the record at the Sale Hearing, the sale of the Purchased Assets must be approved and consummated promptly in order to preserve the value of the Purchased Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtors and the Buyer intend to close the Sale Transaction as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and good, sufficient, and sound business purposes and justifications for the immediate approval and consummation of the Sale Transaction as contemplated by the Purchase Agreement. Accordingly, there is cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regards to the transactions contemplated by this Sale Order.

Z. **Personally Identifiable Information**. As contemplated in the Purchase Agreement, and subject to the terms of this Sale Order, the sale to the Buyer under the Purchase Agreement of any personally identifiable information (as such term is defined in section 101(41A) of the Bankruptcy Code) (“**PII**”) is consistent with the privacy policy of the Debtors in effect on the date of commencement of these Chapter 11 cases (the “**Privacy Policy**”). Moreover, the Buyer has agreed to adhere to the Privacy Policy. The contemplated transaction satisfies the requirements of Section 363(b)(1) with respect to PII.

AA. **Single Integrated Transaction**. The Purchase Agreement and Sale Transaction must be approved and the Closing must occur to preserve the value of the Debtors’ assets. Entry

of this Sale Order approving the Purchase Agreement and all provisions thereof is a necessary condition precedent to Buyer consummating the Sale Transaction. The transactions contemplated by the Purchase Agreement are inextricably linked technically and economically and collectively constitute a single, integrated transaction.

BB. **Legal and Factual Bases**. The legal and factual bases set forth in the Sale Motion and at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS ORDERED THAT:

1. **Sale Motion is Granted**. The Sale Motion and the relief requested therein (to the extent not previously granted by this Court pursuant to the Bidding Procedures Order or otherwise) is granted and approved as set forth herein.

2. **Objections Overruled**. All objections (except for Cure Objections, if any, that have been adjourned, solely to the extent such objections relate to any asserted cure or adequate assurance obligations pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code), if any, to the Sale Motion or the relief requested therein that have not been withdrawn with prejudice, waived, or settled as announced to the Court at the Sale Hearing or by stipulation filed with the Court, and all reservations of rights included therein, are hereby overruled on the merits with prejudice.

3. **Notice**. Notice of the Sale Motion, the Bidding Procedures, the Sale Hearing, the Sale Transaction, the sale of the Purchased Assets free and clear of any Interests or Claims, the assumption and assignment of the Assumed Contracts, and the Proposed Sale Order was adequate, reasonable, appropriate, and equitable under the circumstances and complied in all respects with Section 102(1) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and all applicable Local Bankruptcy Rules.

4. **Fair Purchase Price.** The consideration provided by the Buyer pursuant to the Purchase Agreement (a) is fair and adequate; (b) 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 (including the Uniform Fraudulent Transfer Act, the Uniform Fraudulent Conveyance Act, and similar laws); and (c) will provide an equal or greater recovery for the Debtors' creditors than would be provided by any other reasonably practicable available alternative.

5. **Approval of Purchase Agreement.** The Purchase Agreement and all transactions contemplated therein (including, but not limited to, all Related Agreements contemplated thereby), and all of the terms and conditions thereof, are hereby approved as a valid exercise of the Debtors' business judgment. Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, the Debtors are authorized to perform under and make all payments required by the Purchase Agreement and all Related Agreements as and when due thereunder without further order of the Court. The failure specifically to include any particular provision of the Purchase Agreement in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Purchase Agreement (including, but not limited to, all Related Agreements contemplated thereby) be authorized and approved in its entirety.

Sale and Transfer of Purchased Assets

6. Pursuant to Sections 105(a), 363(b), and 365 of the Bankruptcy Code, the Debtors, acting by and through their existing agents, representatives and officers, are authorized and empowered, without further order of the Court, to take any and all actions necessary or appropriate to: (i) consummate and close the Sale Transaction pursuant to and in accordance with the terms and conditions of the Purchase Agreement; (ii) transfer and assign all right, title, and interest in and to all Purchased Assets, property, licenses, and rights to be conveyed in accordance with the

terms and conditions of the Purchase Agreement; and (iii) execute and deliver, perform under, consummate, and implement the Purchase Agreement and all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement and the Sale Transaction, including any Related Agreements, or as may be reasonably necessary or appropriate to the performance of the obligations as contemplated by the Purchase Agreement and such other ancillary documents. The Purchased Assets shall be transferred to the Buyer, and upon the Closing, such transfer shall (a) be valid, legal, binding, and effective; and (b) vest the Buyer with all right, title, and interest of the Debtors in and to the Purchased Assets.

7. All Persons that are currently in possession of any or all of the Purchased Assets are hereby directed to surrender possession of such Purchased Assets to the Buyer at Closing. To the extent required by the Purchase Agreement, the Debtors agree to exercise commercially reasonable efforts to assist the Buyer in assuring that all Persons that are presently, or on the Closing Date may be, in possession of any or all of such Purchased Assets will surrender possession of the Purchased Assets to either (a) the Debtors before the Closing Date, or (b) the Buyer on or after the Closing Date.

8. All Persons are prohibited from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Purchased Assets to the Buyer in accordance with the Purchase Agreement and this Sale Order; provided that the foregoing restriction shall not prevent any party from appealing this Sale Order in accordance with applicable law or opposing any appeal of this Sale Order.

9. Each and every any federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental

entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement.

10. To the maximum extent available under applicable law, and to the extent provided for under the Purchase Agreement, the Buyer shall be authorized, as of the Closing Date, to operate under any license, permit, registration, application, and governmental authorization or approval of the Debtors with respect to the Purchased Assets for a reasonable period of time pending Buyer's obtaining of any licenses, permits, registrations, applications, and/or governmental authorizations or approvals in its own name. To the maximum extent available under applicable law, and to the extent provided for under the Purchase Agreement, all such licenses, permits, registrations, applications, and governmental authorizations and approvals are deemed to have been transferred to the Buyer as of the Closing Date and shall remain in place for the Buyer's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures. To the extent provided by section 525 of the Bankruptcy Code, no governmental unit may revoke or suspend any grant, permit, or license relating to the operation of the Purchased Assets sold, transferred, assigned, or conveyed to Buyer on account of the filing or pendency of these Chapter 11 cases or the consummation of the Sale Transaction.

11. On the Closing Date, this Sale Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in and to all of the Purchased Assets to the Buyer.

Transfer of Assets Free and Clear

12. Pursuant to Sections 105(a), 363(b), 363(f), 365(b), and 365(f) of the Bankruptcy Code, upon the Closing Date and pursuant to and except as otherwise set forth in the Purchase

Agreement, the Purchased Assets shall be transferred to Buyer free and clear of all encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), interests, and liens, including the Excluded Liabilities, mortgages, restrictions, hypothecations, charges, indentures, loan agreements, instruments, collective bargaining agreements, leases, licenses, options, deeds of trust, security interests, possessory interests (including those under section 365(h) of the Bankruptcy Code), other interests, conditional sale or other title retention agreements, pledges, and other liens (including mechanics', materialman's, and other consensual and non-consensual liens and statutory liens), judgments, demands, encumbrances, rights of first refusal, offsets, contracts, recoupment, rights of recovery, claims for reimbursement, contribution, indemnity, exoneration, products liability, alter-ego, environmental, or tax, decrees of any court or foreign or domestic governmental entity, or charges of any kind or nature, if any, including any restriction on the use, voting, transfer, receipt of income or other exercise of any attributes of ownership, debts arising in any way in connection with any agreements, acts, or failures to act, including any pension liabilities, retiree medical benefit liabilities, liabilities related to the Employee Retirement Income Security Act of 1974, as amended ("**ERISA**"), liabilities related to the Internal Revenue Code, or any other liability relating to Debtors' current and former employees, including any liabilities under any collective bargaining agreement or labor practice agreement, retiree healthcare or life insurance claims or claims for Taxes of or against the Debtors (except as otherwise provided for in the Purchase Agreement), and any derivative, vicarious, transferee or successor liability claims, rights or causes of action (whether in law or in equity, under any law, statute, rule, or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior to or subsequent to the Commencement Date, of the Debtors or any of the Debtors' predecessors or Affiliates, claims, whether known or unknown, choate or inchoate, filed or unfiled,

scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or nonmaterial, disputed or undisputed, whether arising prior to or subsequent to the commencement of these bankruptcy cases, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under doctrines of successor liability (other than Assumed Liabilities and Permitted Liens) (collectively, the **“Interests or Claims”**), with all such Interests or Claims to attach to the cash proceeds of the Sale Transaction in the order of their priority, with the same validity, force, and effect that they now have as against the Purchased Assets, subject to any claims and defenses the Debtors may possess with respect thereto. Without limiting the generality of the foregoing, “Interests or Claims” shall include any and all liabilities or obligations whatsoever arising under or out of, in connection with, or in any way relating to (in each case, other than Assumed Liabilities and Permitted Liens) (a) any labor agreements or any of the employee benefit plans, including any Interests or Claims related to unpaid contributions or current or potential withdrawal or termination liability; (b) any of the Debtors’ collective bargaining agreements; (c) the Worker Adjustment and Retraining Notification Act of 1988, as amended, or other comparable state or local law; and (d) any of the Debtors’ current and former employees.

13. Those holders of Interests or Claims who did not object (or who ultimately withdrew their objections, if any) to the Sale Transaction are deemed to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Interests or Claims who did object that have an interest in the Purchased Assets could be compelled in a legal or equitable proceeding to accept money satisfaction of such Interest or Claim pursuant to section 363(f)(5) or fall within one or more of the other subSections of section 363(f) of the Bankruptcy Code and are therefore

adequately protected by having their Interests or Claims that constitute interests in the Purchased Assets, if any, attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. Nothing herein shall be deemed or construed as a ruling or determination by this Court that the Assumed Liabilities encumber the Purchased Assets.

14. Except to the extent included in Assumed Liabilities or Permitted Liens, or to enforce the Purchase Agreement, all persons and entities (and their respective successors and assigns), including all lenders, debt security holders, equity security holders, governmental, tax, and regulatory authorities, governmental units, lenders, parties to executory contracts and unexpired leases, contract Counterparties, customers, licensors, litigation claimants, employees and former employees, dealers and sale representatives, pension plans, labor unions, trade creditors, and any other creditors holding Interests or Claims against the Debtors or the Purchased Assets (whether known or unknown, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, asserted or unasserted, whether arising prior to or subsequent to the commencement of these Chapter 11 cases, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Debtors, the transfer of the Purchased Assets to Buyer, or the Purchased Assets or the Debtors' businesses prior to the Closing Date, hereby are forever barred, estopped, and permanently enjoined from asserting any Interests or Claims relating to the Purchased Assets or the transfer of the Purchased Assets against Buyer or its successors, designees, assigns, or property, or the Purchased Assets transferred to Buyer, including, without limitation, taking any of the following actions with respect to or based on any Interest or Claim relating to the Purchased Assets

or the transfer of the Purchased Assets to Buyer (other than Assumed Liabilities): (a) commencing or continuing in any manner any action or other proceeding against Buyer or its successors or assigns, assets or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Buyer or its successors or assigns, assets, or properties; (c) creating, perfecting, or enforcing any Interest or Claims against Buyer, its successors or assigns, assets or properties; (d) asserting an Interest or Claims as a setoff, right of subrogation, or recoupment of any kind against any obligation due Buyer or its successors or assigns; (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Sale Order or the agreements or actions contemplated or taken in respect thereof; or (f) interfering with, preventing, restricting, prohibiting, or otherwise enjoining the consummation of the Sale Transaction. No such persons or entities shall assert or pursue against Buyer or its successors or assigns any such Interest or Claim.

15. This Sale Order (a) shall be effective as a determination that, as of the Closing, all Interests or Claims have been unconditionally released, discharged, and terminated as to the Buyer and the Purchased Assets, and that the conveyances and transfers described herein have been effected; and (b) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of federal, state, county, and local officials, and all other Persons 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 that reflect that the Buyer is the assignee and owner of the Purchased Assets free and clear of all Interests or Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as “**Recording Officers**”). All

Recording Officers are authorized and specifically directed to strike recorded encumbrances, claims, liens, and other interests against the Purchased Assets recorded prior to the date of this Sale Order. A certified copy of this Sale Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens, and other interests against the Purchased Assets recorded prior to the date of this Sale Order. All Recording Officers are hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the Purchase Agreement and Related Agreements.

16. As of and after the Closing, (a) each of the Debtors' creditors is hereby authorized and directed to execute such documents and take all other actions as may be necessary to release its Interests or Claims in the Purchased Assets (if any) as such Interests or Claims may have been recorded or may otherwise exist; and (b) any Purchased Asset that may be subject to a statutory or mechanic's lien shall be turned over and such liens shall attach to the proceeds of the Sale Transaction in the same priority they currently enjoy with respect to the Purchased Asset.

17. Following the Closing, no holder of any Interest or Claim shall interfere with the Purchaser's title to or quiet use and enjoyment of the Purchased Assets based on or related to any such Interest or Claim or based on any actions the Debtors may take in these Chapter 11 cases.

No Successor or Other Derivative Liability

18. Buyer and its successors and assigns, members, partners, principals, and shareholders (or equivalent) are not and shall not be deemed or considered to (a) be a legal successor, or otherwise be deemed a successor to any of the Debtors or their estates; (b) have, *de facto* or otherwise, merged with or into any of the Debtors or their estates; (c) have a common identity with the Debtors; (d) have a continuity of enterprise with the Debtors; or (e) be a continuation or substantial continuation, or be holding itself out as a mere continuation, of any of

the Debtors or their respective estates, businesses, or operations, in each case, by any law or equity, and the Buyer has neither assumed nor is it in any way responsible for any liability or obligation of the Debtors or the Debtors' estates, except with respect to the Assumed Liabilities. Except as expressly set forth in the Purchase Agreement, the Buyer and its respective successors and assigns, members, partners, principals and shareholders (or equivalent) shall have no (i) liability or responsibility for any Claim against the Debtors; (ii) liability or responsibility with respect to any Interests or Claims or Excluded Liability and shall not be required to satisfy the same in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly; or (iii) successor, transferee, or vicarious liability of any kind or character, including, without limitation, under any theory of foreign, federal, state, or local antitrust, environmental, successor, tax, ERISA, assignee or transferee liability, labor, product liability, employment, *de facto* merger, substantial continuity, or other law, rule, regulation, or doctrine, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated, with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, without limitation, liabilities on account of any Taxes or other Governmental Authority fees, contributions, or surcharges, in each case, arising, accruing, or payable under, out of, in connection with, or in any way relating to, the operation of the Purchased Assets prior to the Closing Date or arising based on actions of the Debtors or their Affiliates taken after the Closing Date

19. Notwithstanding any provision of this Order to the contrary, the Debtors' Privacy Policy shall remain in effect, and Buyer will continue to adhere to the terms and provisions of such policy.

20. Without limiting the effect or scope of the foregoing, as of the Closing (except as expressly set forth in the Purchase Agreement), the Buyer and its affiliates, members, successors, and assigns shall have no liability for any Interest, Claim, or Excluded Liabilities, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether fixed or contingent, whether derivatively, vicariously, as a transferee or successor or otherwise, of any kind, nature, or character whatsoever, by reason of any theory of law or equity, including, without limitation, Interests or Claims arising under (a) any employment or labor agreements, including without limitation, any Affected Labor Agreement or the termination thereof; (b) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of or related to any of the Debtors or any Debtor's affiliates or predecessors or any current or former employees of any of the foregoing, including, without limitation, the Employee Benefit Plans and any participation or other agreements related to the Employee Benefit Plans, or the termination of any of the foregoing; (c) the Debtors' business operations or the cessation thereof; (d) any litigation involving one or more of the Debtors; and (e) any employee, workers' compensation, occupational disease, or unemployment or temporary disability related law, including, without limitation, claims that might otherwise arise under or pursuant to (i) ERISA, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, as amended, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Notification Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, (x) the Multiemployer Pension Plan Amendments Act of 1980, (xi) state and local discrimination laws, (xii) state and local unemployment compensation

laws or any other similar state and local laws, (xiii) state workers' compensation laws, (xiv) any other state, local, or federal employee benefit laws, regulations, or rules relating to, wages, benefits, employment, or termination of employment with any of the Debtors or their predecessors; (xv) any antitrust laws; (xvi) any product liability or similar laws, whether state, federal, or otherwise; (xvii) any environmental laws, rules, or regulations, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or similar state statutes; (xviii) any bulk sales or similar laws; (xix) any federal, state, or local tax statutes, regulations, or ordinances, including, without limitation, the Internal Revenue Code; and (xx) any common law doctrine of *de facto* merger or successor or transferee liability, successor-in-interest liability theory, or any other theory of or related to successor liability, in each case whether known or unknown as of the Closing, now existing or hereafter arising, whether asserted or unasserted, fixed or contingent, liquidated or unliquidated with respect to the Debtors or any obligations of the Debtors arising prior to the Closing Date, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to, the operation of the Purchased Assets prior to each applicable Closing Date or arising based on actions of the Debtors taken after each applicable Closing Date.

Assumption and Assignment of Assumed Contracts

21. Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, and subject to and conditioned upon the occurrence of the Closing Date, Sellers' assumption and assignment to Buyer, and Buyer's assumption on the terms set forth in the Purchase Agreement of the Assumed Contracts (including, for the avoidance of doubt, any Supplemental Contracts included on a Supplemental Assumption and Assignment Notice) is hereby approved in its entirety, and the requirements of section 365 of the Bankruptcy Code with respect thereto are hereby deemed satisfied, subject to resolution of pending objections as provided in the Bidding Procedures Order.

22. Subject to and condition upon the occurrence of the Closing Date, the Debtors are hereby authorized, in accordance with Sections 105(a), 363, and 365 of the Bankruptcy Code, to assume and assign the Assumed Contracts to the Buyer free and clear of all Interests and Claims (including all Excluded Liabilities), and to execute and deliver to the Buyer such documents or other instruments as may be necessary to assign and transfer the Assumed Contracts to the Buyer as provided in the Purchase Agreement.

23. Upon the Closing, the Buyer shall be fully and irrevocably vested with all right, title, and interest of the Debtors in and to the Assumed Contracts and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assumed Contracts. The Buyer acknowledges and agrees that from and after the Closing, subject to and in accordance with the Purchase Agreement, it shall comply with the terms of each assumed and assigned Transferred Contract in their entirety, including any indemnification obligations expressly contained in such Transferred Contract that could arise as a result of events or omissions that occur from and after the Closing, unless any such provisions are not enforceable pursuant to the terms of this Sale Order. The assumption by the Debtors and assignment to the Buyer of a Transferred Contract shall not be, or result in, a default under any such Transferred Contract or constitute a termination of any such Transferred Contract.

24. Buyer has provided adequate assurance of future performance for the Assumed Contracts within the meaning of Sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code.

25. All Cure Costs shall be determined in accordance with the Bidding Procedures Order and paid in cash by the Buyer in accordance with the terms of the Purchase Agreement after the Closing. Notwithstanding any provision of this Order to the contrary, objections not resolved by the Closing date shall be resolved as set forth in the Bidding Procedures Order. Notwithstanding

the existence of an objection as of the Closing date, if the Buyer maintains a cash reserve in the lesser amount of (1) the amount asserted by an objecting Counterparty to be the correct Cure Cost, or (2) an amount set by this Court, then the affected Contract or Lease shall be provisionally assumed and assigned to the Buyer pending resolution of the objection through agreement of the parties or by Court order.

26. Payment of the Cure Costs by the Buyer shall (a) be in full satisfaction and cure of any and all defaults under the Assumed Contracts, whether monetary or non-monetary, and (b) compensate the Counterparties for any actual pecuniary loss resulting from such defaults. Each Counterparty shall be forever barred, estopped, and permanently enjoined from asserting against the Debtors or the Buyer, their respective affiliates, successors, or assigns, or the property of any of them, any assignment fee, rent acceleration, rent increase on account of assignment, default, breach, claim, pecuniary loss, or condition to assignment arising under or related to the Assumed Contracts, existing as of the date that such Assumed Contracts are assumed or arising by reason of the Closing. Nothing in this Sale Order shall affect the rights of the Buyer, to the extent such rights are provided in the Purchase Agreement, to add or remove any Assumed Contracts to or from the list of Assumed Contracts set forth in the Purchase Agreement up to 14 days after the Closing in accordance with the terms thereof.

27. The Cure Costs for the Assumed Contracts, including the Supplemental Contracts, for which no timely Cure Objection was filed are hereby fixed at the amounts set forth on the applicable Assumption and Assignment Notices, and Counterparties to such Assumed Contracts are forever bound by such Cure Costs. Pursuant to Sections 365(b)(1)(A) and (B) of the Bankruptcy Code, Sellers or the Buyer shall pay to the applicable Counterparty the Cure Costs relating to any Assumed Contracts for which no timely Cure Objection was filed on the Closing

Date in accordance with the Purchase Agreement. Upon payment of such Cure Costs as provided for herein, the Counterparties to such Assumed Contracts are hereby enjoined from taking any action against the Debtors and the Debtors' estates (and any respective successor entity), the Buyer or the Purchased Assets with respect to any Claim for cure.

28. To the extent not resolved prior to entry of this Sale Order, the Debtors or the Buyer shall maintain a cash reserve for any timely Cure Objection (the "**Cure Cost Reserve**") filed with respect to a Transferred Contract, including any Supplemental Contract, equal to the lesser of (a) the amount the objecting Counterparty has asserted to be required to cure the asserted defaults under the applicable Transferred Contract, and (b) such other cash reserve amount as may be ordered by the Court, until a Cure Cost amount is agreed to by the parties or determined by the Court. The resolution of Cure Objections for Assumed Contracts shall be adjourned to a date undetermined until scheduled for hearing by the Debtors on at least twenty (20) days' notice to the Counterparty. Upon resolution of a Cure Objection, the Cure Cost Reserve shall be reduced as appropriate, and such available cash shall be applied to the Obligations in accordance with the terms of the DIP Orders.

29. Pursuant to Sections 365(f)(1) and (3), the Assumed Contracts shall be transferred to, and remain in full force and effect for the benefit of, the Buyer in accordance with their respective terms, including all obligations of the Buyer as the assignee of the Assumed Contracts, notwithstanding any provision in any Transferred Contract or under applicable law (including, without limitation, those of the type described in Sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer.

30. Pursuant to Sections 105(a), 363, and 365 of the Bankruptcy Code, all Counterparties are forever barred and permanently enjoined from raising or asserting against the

Debtors and the Debtors' estates (and any respective successor entity) or the Buyer any defaults, cross-defaults, breach, claim, pecuniary loss, rent accelerations, escalations, rent increase, assignment fees, increases or any other fees charged to the Buyer or the Debtors existing as of the date of assumption of the Assumed Contracts or as a result of the assumption or assignment of the Assumed Contracts on the Closing Date. For the avoidance of doubt, and without limiting the generality of the foregoing, any provision in a Transferred Contract, any other document, or under applicable law that prohibits, restricts or otherwise impairs assignment of the Assumed Contracts or the Buyer's ability to operate the Purchased Assets is hereby void and of no force or effect, including any provision that (a) requires any or all of the proceeds from the assignment of such Transferred Contract be paid to or shared with the applicable Counterparty or distributed in a manner inconsistent with the terms of the Purchase Agreement, an agreement between the Debtors and the Buyer to assume and assign the Transferred Contract, or the intent of the Debtors and the Buyer with respect to the distribution of such proceeds; (b) terminates any extension option rights or any other rights of the Buyer under such Transferred Contract; (c) cross-defaults to or from any other lease or executory contract that is not a Transferred Contract; (d) restricts the Buyer's operation of the Purchased Assets; or (e) requires a Counterparty's consent prior to assignment of the Transferred Contract to the Buyer.

31. Upon the Debtors' assignment of Assumed Contracts to the Buyer under the provisions of this Sale Order, no default shall exist under any Assumed Contracts, and no Counterparty to any Assumed Contracts shall be permitted to declare a default by any Debtor or the Buyer 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 relevant Transferred Contract. Any provision in a Transferred Contract, other document, or under applicable law that prohibits or

conditions the assignment or sublease of such Transferred Contract (including without limitation, the granting of a lien therein) or allows the relevant Counterparty to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force or effect. The failure of the Debtors or the Buyer to enforce at any time one or more terms or conditions of any Transferred Contract shall not be a waiver of such terms or conditions, or of the Debtors' and the Buyer's rights to enforce every term and condition of the Transferred Contract. Any party having the right to consent to the assumption or assignment of any Assumed Contracts that failed to object to such assumption or assignment is deemed to have consented to such assumption and assignment as required by section 365(c) of the Bankruptcy Code.

32. **Statutory Mootness.** The transactions contemplated by the Purchase Agreement and Related Agreements are undertaken by the Buyer without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Purchased Assets or the assignment of Assumed Contracts to the Buyer, free and clear of Interests or Claims, unless such authorization is duly stayed before the Closing Date pending such appeal. The Buyer is a good faith purchaser of the Purchased Assets and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code. The Debtors and the Buyer will be acting in good faith if they proceed to consummate the Sale Transaction at any time after entry of this Sale Order.

33. **No Avoidance of Purchase Agreement.** Neither the Debtors nor the Buyer has engaged in any conduct that would cause or permit the Purchase Agreement or Related Agreements to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code.

Accordingly, the Purchase Agreement, Related Agreements, and the Sale Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Purchase Agreement, Related Agreements, or the Sale Transaction.

34. **Waiver of Bankruptcy Rules 6004(h), 6006(d), and 7062.** Notwithstanding the provisions of Bankruptcy Rules 6004(h), 6006(d), 7062, or any applicable provisions of the Local Rules, this Sale Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale Transaction and the Debtors and the Buyer may close the Sale Transaction as soon as practicable. Any party objecting to this Sale Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing Date, or risk its appeal being foreclosed as moot.

35. **Personally Identifiable Information.** The Buyer is directed to adhere to the Debtors' policies disclosed to individuals prohibiting the transfer of personally identifiable information concerning individuals to persons unaffiliated with the Debtors, as such policies existed on the Petition Date, to the extent not modified subsequently in accordance with those policies.

36. **Binding Effect of Sale Order.** The terms and provisions of the Purchase Agreement and this Sale Order shall be binding in all respects upon the Debtors, their estates, and their creditors, all holders of equity interests in the Debtors, all holders of any Interests or Claims (whether known or unknown) against any Debtor, any holders of Interests or Claims against, or on all or any portion of, the Purchased Assets, all Counterparties (including any collective bargaining

agreement or labor agreement), Buyer and all successors and assigns of Buyer, leaseholders, governmental units, and any trustees, examiners, or other fiduciary under any section of the Bankruptcy Code, if any, subsequently appointed in any of these Chapter 11 cases or upon a conversion to Chapter 7 under the Bankruptcy Code of these Chapter 11 cases. The terms and provisions of the Purchase Agreement and this Sale Order shall inure to the benefit of the Debtors, their estates and their creditors, the Buyer, and its respective affiliates, successors, and assigns.

37. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Sale Order, the Purchase Agreement, or any documents executed in connection therewith, the provisions contained in this Sale Order, the Purchase Agreement, any documents executed in connection therewith shall govern, in that order. Nothing contained in any Chapter 11 plan hereinafter confirmed in these Chapter 11 cases, any order confirming such plan, or in any other order of any type or kind entered in these Chapter 11 cases (including, without limitation, any order entered after any conversion of any or all of these Chapter 11 cases to cases under Chapter 7 of the Bankruptcy Code) or in any related proceeding shall alter or derogate from the provisions of the Purchase Agreement or the terms of this Sale Order. For the avoidance of doubt, nothing herein shall modify, alter, impair, or otherwise affect any of the provisions of the DIP Order or the DIP Documents, or the rights or remedies of the DIP Agent or the DIP Lenders under the DIP Documents (each as defined in the DIP Order) except with respect to the Purchased Assets.

38. **Modification of Purchase Agreement.** The Purchase Agreement, the Related Agreements, and any other related agreements, documents, or other instruments executed in connection therewith, may be modified, amended, or supplemented by the parties thereto, in a writing signed by each party, and in accordance with the terms thereof, without further order of the Court; provided that any such modification, amendment, or supplement shall not materially

change the terms of the Purchase Agreement, Related Agreements, or any documents or other instruments executed in connection therewith. The Debtors shall provide the Consultation Parties with prior notice of any such modification, amendment, or supplement of the Purchase Agreement, and shall consult with the Consultation Parties with respect thereto. For the avoidance of doubt, all material modifications, amendments, or supplements that have a material or an adverse effect on the Debtors' estates or their creditors shall require Court approval and the reasonable consent of the DIP Agents (acting at the direction of the DIP Lenders).

39. **Bulk Sales; Taxes.** No bulk sales law, bulk transfer law, or similar law of any state or other jurisdiction (including those relating to Taxes other than Transfer Taxes) shall apply in any way to the transactions contemplated by the Purchase Agreement, the Related Agreements, the Sale Motion, or this Sale Order. Except as otherwise expressly provided in the Purchase Agreement, all obligations of the Debtors relating to Taxes, whether arising under any law, by the Purchase Agreement, or otherwise, shall be the obligation of the Debtors.

40. **Transferred Contract Prorations.** To the extent not previously paid by the Debtors, upon the Closing, the Buyer shall become responsible for any accruing but unbilled charges relating to year-end reconciliations under the Assumed Contracts that are billed to the Buyer by the applicable Counterparty subsequent to the Closing.

41. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, interpret, enforce, and implement the terms and provisions of this Sale Order and the Purchase Agreement, all amendments thereto, and any waivers and consents thereunder (and of each of the agreements executed in connection therewith) to adjudicate disputes related to this Sale Order or the Purchase Agreement (and such other related agreements, documents, or other instruments) and to enforce the injunctions set forth herein.

Dated: _____, 2022
New York, New York

UNITED STATES BANKRUPTCY JUDGE

Exhibit A

APPROVED PURCHASE AGREEMENT

Annex II

Form of Bill of Sale

[Attached.]

BILL OF SALE

This Bill of Sale (the “Bill of Sale”) is entered into this [_____], 2022, by and among Pareteum Corporation, a Delaware corporation (“Parent”), Pareteum North America Corp., a Delaware corporation (“Pareteum NA”), Devicescape Holdings, Inc., a Delaware corporation (“Devicescape”), iPass, Inc., a Delaware corporation (“iPass”), iPass IP LLC, a Delaware corporation (“iPass IP”), Pareteum Europe B.V., a Netherlands private limited company (“Pareteum Europe” and, together with Parent, Pareteum NA, Devicescape, iPass, and iPass IP, collectively, the “Borrower Sellers”), Artilium Group Ltd., an England, UK, private limited company (“Artilium Group”), Pareteum B.V., a Netherlands private limited company (“BV”), Pareteum N.V., a Belgian private limited company (“NV”), and Pareteum Asia Pte. Ltd., a Singapore private limited company (“Pareteum Asia” and, together with the Artilium Group, BV, NV and the Borrower Sellers, each a “Seller” and, collectively, the “Sellers”), and [**Circles MVNE Pte. Ltd., a Singapore private limited company (“Purchaser”)] [**Channel Ventures Group, LLC, a Delaware limited liability company (“Purchaser”)]**. Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the APA (as hereinafter defined).**

WHEREAS, the Sellers, [**Circles MVNE Pte, Ltd., a Singapore private limited company**] [**Channel Ventures Group, LLC, a Delaware limited liability company**] and the Purchaser, entered into that certain Asset Purchase Agreement, dated as of May 15, 2022 (the “APA”) which provides, among other things, for the assignment by the Sellers to the Purchaser the [Circles] [CVG] Purchased Assets.

NOW, THEREFORE, in consideration of the mutual promises contained in the APA, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Sellers and the Purchaser, and subject to the terms and conditions of the APA:

1. Each Seller hereby assigns, transfers and conveys to the Purchaser all of its right, title and interest in and to the [**Circles**] [CVG] Purchased Assets.

2. This Bill of Sale shall be binding upon, and inure to the benefit of, the parties and their respective successors and permitted assigns.

3. Nothing in this Bill of Sale, express or implied, is intended to or shall be construed to modify, expand or limit in any way the terms, representations and warranties or covenants contained in the APA. To the extent that any provision of this Bill of Sale conflicts or is inconsistent with the terms of the APA, the APA shall govern.

4. This Bill of Sale shall be governed by and construed in accordance with the laws of the State of New York (without application of principles of conflict of laws). In connection with any controversy arising out of or related to this Bill of Sale, each Seller and Purchaser hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Court declines or may not accept jurisdiction over a particular matter, the United States District Court for the Southern District of New York, or if, and only if, the United States District Court for the Southern District of New York declines or may not accept jurisdiction over a particular matter, the courts of the State of New York. Each of the Sellers and Purchaser

irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts. EACH OF THE PARTIES HERETO 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 BILL OF SALE OR THE TRANSACTIONS CONTEMPLATED HEREBY.

5. This Bill of Sale may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures transmitted by facsimile or electronic mail shall be deemed originals for purposes of this Bill of Sale.

[Signature Page Follows]

The Parties have each caused its authorized representative to execute this Bill of Sale as of the day and year first above written.

SELLERS:

PARETEUM CORPORATION, a
Delaware corporation

By: _____
Name: _____
Title: _____

PARETEUM NORTH AMERICA CORP., a
Delaware corporation

By: _____
Name: _____
Title: _____

DEVICESCAPE HOLDINGS, INC., a Delaware
corporation

By: _____
Name: _____
Title: _____

IPASS, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

IPASS IP LLC, a Delaware corporation

By: _____
Name: _____
Title: _____

PARETEUM EUROPE B.V., a Netherlands private limited company

By: _____
Name: _____
Title: _____

ARTILIUM GROUP LTD., a United Kingdom private limited company

By: _____
Name: _____
Title: _____

PURCHASER:

[CHANNEL VENTURES GROUP, LLC, a Delaware limited liability company

**By: _____
Name: _____
Title: _____]**

[CIRCLES MVNE PTE. LTD., a [Singapore private limited company

**By: _____
Name: _____
Title: _____]**

Annex IV

Form of Intellectual Property Assignment Agreement

[Attached.]

INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (the “Assignment”) is made as of May 15, 2022 (the “Effective Date”), between Pareteum Corporation, a Delaware corporation (“Parent”), Pareteum North America Corp., a Delaware corporation (“Pareteum NA”), Devicescape Holdings, Inc., a Delaware corporation (“Devicescape”), iPass, Inc., a Delaware corporation (“iPass”), iPass IP LLC, a Delaware corporation (“iPass IP”), Pareteum Europe B.V., a Netherlands private limited company (“Pareteum Europe” and, together with Parent, Pareteum NA, Devicescape, iPass, and iPass IP, collectively, the “Borrower Sellers”), Artilium Group Ltd., an England, UK, private limited company (“Artilium Group”), Pareteum B.V., a Netherlands private limited company (“BV”), Pareteum N.V., a Belgian private limited company (“NV”), and Pareteum Asia Pte. Ltd., a Singapore private limited company (“Pareteum Asia” and, together with the Artilium Group, BV, NV and the Borrower Sellers, each an “Assignor” and, collectively, the “Assignors”), and [Circles MVNE Pte. Ltd., a Singapore private limited company (“Assignee”)] [Channel Ventures Group, LLC, a Delaware limited liability company (“Assignee”)] (each a “Party” and, collectively, the “Parties”). Capitalized terms used herein but not defined herein shall have the meanings ascribed to such terms in the APA (as hereinafter defined).

WHEREAS, Assignee, Assignor, and the other parties signatory thereto, have entered into that certain Asset Purchase Agreement, dated as of the date hereof (the “Purchase Agreement”), pursuant to which, among other things, Assignors have agreed to sell to Assignee, and Assignee has agreed to purchase from Assignor, substantially all of the assets primarily used or held for use by Assignor in the conduct of the [MVNE Business] [Non-MVNE Business], and Assignee proposes to assume certain of the liabilities and obligations of Assignor, in each case, on the terms and subject to the conditions set forth in the Purchase Agreement;

WHEREAS, it is a condition to the Closing of the Purchase Agreement that Assignor enters into this Assignment to transfer to Assignee certain Intellectual Property related to the [MVNE][Non-MVNE] Business, including the Intellectual Property Assets as listed on the attached Schedule A (the “Assigned Intellectual Property”);

WHEREAS, pursuant to the Purchase Agreement, Assignee desires to purchase or acquire all Assignor’s right, title and interest in and to the Assigned Intellectual Property.

NOW, THEREFORE, in consideration of, among other things, the payment by Assignee of the Purchase Price and in further consideration of the mutual covenants and agreements contained in the Purchase Agreement, the receipt and sufficiency of which are hereby acknowledged, Assignors and Assignee agree as follows:

1. Assignment. Assignor hereby assigns to Assignee (a) all of Assignor’s right, title, and interest in and to the Assigned Intellectual Property, together with any and all goodwill associated therewith; (b) any and all rights to pursue and recover under legal actions and rights and remedies at law or in equity for past, current and future infringements, misappropriations, dilutions or other violations of the Assigned Intellectual Property, including the right to sue for, collect, and retain all damages, profits, proceeds, and all other remedies associated therewith; and (c) any and all income, royalties, damages, and payments hereafter due or payable with respect to the Assigned

Intellectual Property, for Assignee's own use and enjoyment and for the use and enjoyment of Assignee's successors, assigns, or other legal representatives as fully and entirely as the same would have been enjoyed by Assignor if this Assignment has not been made.

2. Cooperation. Assignor and Assignee shall use their commercially reasonable efforts to (i) take all actions necessary or appropriate to consummate the transactions contemplated by this Assignment and (ii) from time to time, execute and deliver such other documents, certificates, agreements and other writings, and take such other actions as may be reasonably necessary in order to consummate or evidence or implement expeditiously the transactions contemplated by this Assignment; provided, that, as between the Parties, Assignee shall be responsible for the preparation of such documents and other instruments that may be necessary to record and/or perfect Assignee's right, title and interest in and to the Assigned Intellectual Property (including, without limitation, with any applicable governmental authorities or Internet domain name registrars), and for any and all costs, expenses and fees associated therewith.

3. Relationship with the Purchase Agreement. This Assignment is intended to evidence the consummation of the transactions contemplated by the Purchase Agreement. This Assignment is made without representation or warranty except as provided in and by the Purchase Agreement. This Assignment is in all respects subject to the provisions of the Purchase Agreement and is not intended in any way to supersede, limit or qualify any provision of the Purchase Agreement.

4. Section Headings. The section headings contained in this Assignment are solely for the purpose of reference, are not part of the agreement of the parties hereto and shall not in any way affect the meaning or interpretation of this Assignment.

5. Counterparts. This Assignment may be executed in two or more counterparts, each of which shall be deemed to be an original but all of which shall together constitute one and the same instrument. Facsimile and/or PDF signatures shall be deemed original signatures.

6. Entire Agreement. This Assignment, together with the Purchase Agreement, contains the entire agreement of the parties hereto, and no representations, inducements, promises or agreements, oral or otherwise, between the parties not in writing signed by the parties shall be of any force or effect.

7. Severability. If any term or provision of this Assignment or any application thereof shall be invalid or unenforceable, the remainder of this Assignment and any other application of such term shall not be affected thereby.

8. Governing Law, Forum. This Assignment shall be governed by and construed in accordance with the laws of the State of New York (without application of principles of conflict of laws). In connection with any controversy arising out of or related to this Assignment, each Assignor and Assignee hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Court declines or may not accept jurisdiction over a particular matter, the United States District Court for the Southern District of New York, or if, and only if, the United States District Court for the Southern District of New York declines or may not accept jurisdiction over a particular matter, the courts of the State of New York. Each of the Assignors and Assignee irrevocably consents to service of process out of

the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Assignment brought in the aforementioned courts. EACH OF THE PARTIES HERETO 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 ASSIGNMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9. Attorney's Fees. The prevailing Party in any action, claim or lawsuit brought pursuant to this Assignment is entitled to payment of all reasonable attorney's fees and costs expended by such prevailing Party in association with such action, claim or lawsuit.

10. Authorization. Assignee and Assignor each represent and warrant to the other that they have the corporate power and authority to execute and perform this Assignment, that all necessary consents and approvals from the board of directors or others have been obtained, that the parties executing this Assignment on their behalf have been duly authorized to do so.

[Signature Page Follows]

IN WITNESS WHEREOF, Assignors and Assignee caused this Assignment to be duly executed as of the date first written above.

ASSIGNORS:

PARETEUM CORPORATION, a
Delaware corporation

By: _____
Name:
Title:

PARETEUM NORTH AMERICA CORP., a
Delaware corporation

By: _____
Name:
Title:

DEVICESCAPE HOLDINGS, INC., a
Delaware corporation

By: _____
Name:
Title:

IPASS, INC., a Delaware corporation

By: _____
Name:
Title:

IPASS IP LLC, a Delaware corporation

By: _____
Name:
Title:

PARETEUM EUROPE B.V., a Netherlands
private limited company

By: _____

Name:

Title:

ARTILIUM GROUP LTD., a United
Kingdom private limited company

By: _____

Name:

Title:

ASSIGNEE

[CHANNEL VENTURES GROUP, LLC, a
Delaware limited liability company

By: _____
Name:
Title:]

[CIRCLES MVNE PTE. LTD., a [Singapore
private limited company]

By: _____
Name:
Title:]

Schedule A

Assigned Trademarks

Schedule B

Assigned Domain Names

Annex V

Form of Assumption Agreement

[Attached.]

ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) effective as of [_____], 2022 is entered into by and among Pareteum Corporation, a Delaware corporation (“Parent”), Pareteum North America Corp., a Delaware corporation (“Pareteum NA”), Devicescape Holdings, Inc., a Delaware corporation (“Devicescape”), iPass, Inc., a Delaware corporation (“iPass”), iPass IP LLC, a Delaware corporation (“iPass IP”), Pareteum Europe B.V., a Netherlands private limited company (“Pareteum Europe” and, together with Parent, Pareteum NA, Devicescape, iPass, and iPass IP, collectively, the “Borrower Sellers”), Artilium Group Ltd., an England, UK, private limited company (“Artilium Group”), Pareteum B.V., a Netherlands private limited company (“BV”), Pareteum N.V., a Belgian private limited company (“NV”), and Pareteum Asia Pte. Ltd., a Singapore private limited company (“Pareteum Asia” and, together with the Artilium Group, BV, NV and the Borrower Sellers, each an “Assignor” and, collectively, the “Assignors”), and [Circles MVNE Pte. Ltd., a Singapore private limited company (“Assignee”)] [Channel Ventures Group, LLC, a Delaware limited liability company (“Assignee”)].

RECITALS

WHEREAS, Assignors, [Circles MVNE Pte, Ltd., a Singapore private limited company] [Channel Ventures Group, LLC, a Delaware limited liability company] and Assignee, entered into that certain Asset Purchase Agreement, dated as of May 15, 2022 (the “APA”) which provides, among other things, for the assignment by Assignors to Assignee of the [Circles] [CVG] Assumed Contracts and the assumption by Assignee of the [Circles] [CVG] Assumed Liabilities;

WHEREAS, Assignors now desire to assign, transfer and convey all right, title and interest under the [Circles] [CVG] Assumed Contracts and the [Circles] [CVG] Assumed Liabilities of Assignors to Assignee, and Assignee desires to accept and assume the [Circles] [CVG] Assumed Contracts and the [Circles] [CVG] Assumed Liabilities of Assignors, all on the terms and conditions set forth herein.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledge, the parties agree as follows:

1. Definitions. Capitalized terms used herein and not otherwise defined herein shall have the respective meanings given to them in the APA.

2. Assignment and Assumption. Assignors hereby assign, transfer and convey to Assignee, as of the Closing and Assignee hereby accepts and assumes, as of the Closing, all duties and obligations of Assignors under the [Circles] [CVG] Assumed Contracts to which Assignors are a party and the [Circles] [CVG] Assumed Liabilities owed by Assignors, and further agrees to keep, observe, and perform all of the terms, covenants, agreements, conditions, and obligations of the [Circles] [CVG] Assumed Contracts and the [Circles] [CVG] Assumed Liabilities of Assignors from and after the Closing.

3. Excluded Liabilities. Assignors and Assignee expressly acknowledge and agree that Assignors are not transferring to Assignee any right, title, and interest in and to the Excluded Assets or the Excluded Liabilities.

4. Terms of the Agreement. Assignors and Assignee acknowledge and agree that the representations, warranties, covenants and agreements contained in the APA shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. Notwithstanding anything to the contrary herein, this Agreement is subject to the APA, and it shall not give rise to any recourse or remedy against Assignors (or their Affiliates) except to the extent set forth in the APA. In the event of any conflict or inconsistency between the terms of the APA and the terms hereof, the terms of the APA shall govern.

5. Further Assurances. Assignors further agree to execute and deliver to Assignee such further instruments of transfer and conveyance and related documents, with respect to the [Circles] [CVG] Assumed Contracts to which Assignors are a party and the [Circles] [CVG] Assumed Liabilities owed by Assignors, as Assignee shall reasonably request (all at Assignee's expense), to vest in Assignee and its successors and assigns the [Circles] [CVG] Assumed Contracts and the [Circles] [CVG] Assumed Liabilities of Assignors.

6. Counterparts. This Agreement may be executed in counterpart copies, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Facsimile and/or electronic transmission of any signed original document and/or retransmission of any signed facsimile and/or electronic transmission will be deemed the same as delivery of an original.

7. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of New York (without application of principles of conflict of laws). In connection with any controversy arising out of or related to this Agreement, each Seller and Purchaser hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court, or if, and only if, the Bankruptcy Court declines or may not accept jurisdiction over a particular matter, the United States District Court for the Southern District of New York, or if, and only if, the United States District Court for the Southern District of New York declines or may not accept jurisdiction over a particular matter, the courts of the State of New York. Each of the Assignors and Assignee irrevocably consents to service of process out of the aforementioned courts and waives any objection which it may now or hereafter have to the laying of venue of any action or proceeding arising out of or in connection with this Agreement brought in the aforementioned courts. EACH OF THE PARTIES HERETO 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.

8. Successors and Assigns. This Agreement shall be binding upon, inure to the benefit of and be enforceable by, Assignors and Assignee and their respective permitted successors and assigns.

9. Headings. The headings of this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Assignment and Assumption Agreement under seal as of the day and year first above written.

ASSIGNORS:

PARETEUM CORPORATION, a
Delaware corporation

By: _____
Name: _____
Title: _____

PARETEUM NORTH AMERICA CORP., a
Delaware corporation

By: _____
Name: _____
Title: _____

DEVICESCAPE HOLDINGS, INC., a Delaware
corporation

By: _____
Name: _____
Title: _____

IPASS, INC., a Delaware corporation

By: _____
Name: _____
Title: _____

IPASS IP LLC, a Delaware corporation

By: _____
Name: _____
Title: _____

PARETEUM EUROPE B.V., a Netherlands private limited company

By: _____
Name: _____
Title: _____

ARTILIUM GROUP LTD., a United Kingdom private limited company

By: _____
Name: _____
Title: _____

ASSIGNEE:

[CHANNEL VENTURES GROUP, LLC, a Delaware limited liability company

**By: _____
Name: _____
Title: _____]**

[CIRCLES MVNE PTE. LTD., a [Singapore private limited company

**By: _____
Name: _____
Title: _____]**