Docket #0206 Date Filed: 05/07/2026

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	)	Chapter 11
ASCEND ELEMENTS, INC., *et al.*,[1]	)	Case No. 26-90440 (CML)
Debtors.	)	(Jointly Administered)

NOTICE OF DESIGNATION OF STALKING HORSE BIDDER, PROPOSED BID PROTECTIONS, AND OBJECTION DEADLINE

PLEASE TAKE NOTICE that, on April 9, 2026 (the "Petition Date"), the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") with the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Court").

PLEASE TAKE FURTHER NOTICE that, on April 10, 2026 the Debtors filed an *Emergency Motion for Entry of Orders(I)(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief; and (II)(A) Approving the Sale of the Debtors' Assets, (B) Approving the Assumption and Assignment of Certain Contracts, and (C) Granting Related Relief* [Dkt. No. 50] (the "Bid Procedures Motion").[2]

PLEASE TAKE NOTICE that, on April 17, 2026, the Court entered the *Order (A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief* [Docket No. 120] (the "Bid Procedures Order"), which approved the Bid Procedures and authorized the Debtors to conduct the sale process and designate a stalking horse bidder. *See* Bid Procedures Order ¶¶ 3, 6, 14.

PLEASE TAKE FURTHER NOTICE that, pursuant to paragraph 14 of the Bid Procedures Order, the Debtors have designated Newco,[3] a newly formed entity managed or controlled by Kinterra Capital Corp. ("Kinterra"), as the proposed stalking horse bidder (the "Stalking Horse Bidder") with respect to substantially all of the Debtors' assets, other than the excluded assets to be set forth in the Stalking Horse APA (the "Assets"). *See id.* ¶ 14.

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

[2] Capitalized terms not defined herein otherwise shall have the meanings ascribed to them in the Bid Procedures Motion or the Bid Procedures Order, as applicable.

[3] The Stalking Horse APA provides that holders of Senior Secured Convertible Notes and Junior Secured Convertible Notes will contribute their Notes to Newco, which will credit bid claims arising thereunder.

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PLEASE TAKE FURTHER NOTICE that, on May 6, 2026, the Debtors and the Stalking Horse Bidder entered into that certain *Asset Purchase Agreement*, dated as of May 6, 2026 (the "Stalking Horse APA"), a copy of which is attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that the material terms of the proposed Stalking Horse Bid and the Bid Protections are as follows:

- **Purchase Price.** A purchase price consisting of a credit bid equal to (a) all accrued obligations under the DIP Financing, (b) all accrued obligations under the Senior Secured Convertible Note and Warrant Purchase Agreement, and (c) $30 million of accrued obligations under the Subordinated Secured Convertible Note Purchase Agreement; provided that cure payments in excess of $2 million shall be paid in cash at closing by Newco and deemed an increase to the purchase price.
- **Assets Acquired.** The acquisition of substantially all of the Debtors' assets except as expressly set forth in the Stalking Horse APA.
- **Bid Protections.** Proposed bid protections consisting of (a) a $2,000,000 break-up fee, (b) reimbursement of reasonable and documented out-of-pocket expenses not to exceed $1,500,000, (c) an initial minimum overbid increment of $3,200,000, and (d) subsequent minimum overbid increments of $500,000 for whole-company bids or $250,000 for partial-company bids, in each case subject to Court approval and the terms of the Bid Procedures Order.

Stalking Horse Objection Deadline

PLEASE TAKE FURTHER NOTICE that any objection to the proposed designation of the Stalking Horse Bidder or the Bid Protections must be filed on or before May 11, 2026 at 12:00 p.m. (prevailing Central Time) (the "Stalking Horse Objection Deadline"). Any interested party making an objection must obtain a ruling from the Bankruptcy Court no later than May 12, 2026.

PLEASE TAKE FURTHER NOTICE that a proposed order approving the designation of the Stalking Horse Bidder and the Bid Protections is attached hereto as **Exhibit B** (the "Proposed Order"), which the Bankruptcy Court may enter upon expiration of the Stalking Horse Objection Deadline if no timely objection is filed. If no objection to the proposed designation of the Stalking Horse Bidder or the Bid Protections is timely filed and served on or before the Stalking Horse Objection Deadline, the Proposed Order shall be entered by the Bankruptcy Court without further notice or hearing; provided that, if an objection is timely filed, the failure of the objecting party to obtain a ruling by May 12, 2026 shall result in such objection being deemed overruled.

Additional Information

PLEASE TAKE FURTHER NOTICE that copies of this Notice, the Bid Procedures Order, and related documents are available (i) on the Debtors' case website maintained by their claims and noticing agent, Verita Global, at www.veritaglobal.net/ascend, or (ii) upon request to undersigned counsel.

PLEASE TAKE FURTHER NOTICE that, in accordance with the Bid Procedures Order, the following deadlines apply, and are subject to modification in accordance with the Bid Procedures:

- Stalking Horse Designation Deadline: **May 6, 2026 at 11:59 p.m. (prevailing Central Time)**;
- Assumption and Assignment Notice Deadline: **May 9, 2026**;
- Bid Deadline: **May 9, 2026 at 11:59 p.m. (prevailing Central Time)**;
- Auction (if any): **May 13, 2026 at 10:00 a.m. (prevailing Central Time);**[4] and
- Sale Hearing: **May 21, 2026 at 9:00 a.m. (prevailing Central Time)** before the Honorable Christopher M. Lopez, in Courtroom 402 of the United States Bankruptcy Court, 515 Rusk Street, Houston, Texas 77002.

[*Reminder of Page Intentionally Left Blank*]

[4] In accordance with the Bid Procedures, the Debtors have moved the date of the Auction from May 12th to May 13th at 10:00 a.m. and shall provide notice of any further change in date, time, or location of the Auction no later than 24 hours before the Auction.

Dated: May 7, 2026

Respectfully submitted,

NORTON ROSE FULBRIGHT US LLP

By: */s/ Ryan Manns*

Ryan Manns (SBT 24041391)
Maria Mokrzycka (SBT 24119994)
1550 Lamar, Suite 2000
Houston, TX 77010
Tel: (713) 651-5151
Email: ryann.manns@nortonrosefulbright.com
Email: maria.mokrzycka@nortonrosefulbright.com

Jason I. Blanchard (SBT 24130197)
Michael Berthiaume (SBT 24066039)
2200 Ross Avenue, Suite 3600
Dallas, TX 75201
Tel: (214) 855-8210
Email: jason.blanchard@nortonrosefulbright.com
Email: michael.berthiaume@nortonrosefulbright.com

Proposed Counsel to the Debtors and Debtors in Possession

Certificate of Service

I certify that on May 7, 2026, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas. Additionally, the foregoing document will be served as set forth in a forthcoming affidavit filed by the Debtors' claims agent.

/s/ Ryan Manns
Ryan Manns

Execution Version

ASSET PURCHASE AGREEMENT

DATED AS OF MAY 6, 2026

BY AND AMONG

BLUEGRASS INFRASTRUCTURE PARTNERS HOLDINGS, LLC,
AS PURCHASER,

AND

ASCEND ELEMENTS, INC.,
AS SELLER

TABLE OF CONTENTS

Page

ARTICLE I PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES....1
Section 1.1 Purchase and Sale of the Acquired Assets....1
Section 1.2 Excluded Assets....4
Section 1.3 Assumption of Certain Liabilities....6
Section 1.4 Excluded Liabilities....7
Section 1.5 Assumption/Rejection of Certain Acquired Assets....9

ARTICLE II CONSIDERATION; PAYMENT; CLOSING....14
Section 2.1 Consideration; Payment....14
Section 2.2 Closing....15
Section 2.3 Closing Deliveries by Seller....15
Section 2.4 Closing Deliveries by Purchaser....16
Section 2.5 Withholding....16

ARTICLE III REPRESENTATIONS AND WARRANTIES OF SELLER....16
Section 3.1 Organization and Qualification....17
Section 3.2 Organization and Qualification of the Acquired Entities....17
Section 3.3 Authorization of Agreement....17
Section 3.4 Conflicts; Consents....17
Section 3.5 Equity Interests of Acquired Entities....18
Section 3.6 Financial Statements....19
Section 3.7 Title to Properties....19
Section 3.8 Contracts....20
Section 3.9 No Litigation....21
Section 3.10 Permits; Compliance with Laws....21
Section 3.11 Environmental Matters....22
Section 3.12 Intellectual Property....23
Section 3.13 Information Systems; Data Privacy....25
Section 3.14 Tax Matters....26
Section 3.15 Employee Benefit Plans....27
Section 3.16 Employees....28
Section 3.17 Insurance; Support Obligations....29
Section 3.18 Brokers....29
Section 3.19 Government Contracts....29
SECTION 3.20 Inter-Company Transactions....31
Section 3.21 Title to Assets....32
Section 3.22 Sufficiency of Assets....32
Section 3.23 No Material Adverse Effect....32
Section 3.24 Absence of Changes....32
Section 3.25 CFIUS 32
Section 3.26 Public Subsidies....32
Section 3.27 No Other Representations or Warranties....33

ARTICLE IV REPRESENTATIONS AND WARRANTIES OF PURCHASER....33

TABLE OF CONTENTS

Page

Section 4.1 Organization and Qualification 33
Section 4.2 Authorization of Agreement 34
Section 4.3 Conflicts; Consents 34
Section 4.4 Financing 34
Section 4.5 Brokers 35
Section 4.6 No Litigation 35
Section 4.7 Investment Representation; Investigation 35
Section 4.8 Certain Arrangements 35
Section 4.9 No Other Representations or Warranties 35

ARTICLE V BANKRUPTCY COURT MATTERS 36
Section 5.1 Bankruptcy Actions 36
Section 5.2 Sale Order 38
Section 5.3 Approval 38

ARTICLE VI COVENANTS AND AGREEMENTS 38
Section 6.1 Conduct of the Business of Seller 38
Section 6.2 Access to Information 42
Section 6.3 Restricted Use of Confidential Information 44
Section 6.4 Employee Matters 44
Section 6.5 Regulatory Approvals 45
Section 6.6 Reasonable Efforts; Cooperation 46
Section 6.7 Further Assurances 47
Section 6.8 Insurance Matters 47
Section 6.9 Receipt of Misdirected Assets; Liabilities 48
Section 6.10 Acknowledgment by Purchaser 48
Section 6.11 Seller's Support Obligations 49
Section 6.12 Releases 50
Section 6.13 Polish Matters. 52
Section 6.14 Use of Names 53
Section 6.15 Hopkinsville Land Option 53
Section 6.16 Appeal of Tax Assessment for Hopkinsville Property 54

ARTICLE VII CONDITIONS TO CLOSING 54
Section 7.1 Conditions Precedent to the Obligations of Purchasers and Sellers 54
Section 7.2 Conditions Precedent to the Obligations of Purchaser 54
Section 7.3 Conditions Precedent to the Obligations of Seller 56
Section 7.4 Waiver of Conditions 57
Section 7.5 Notice of Alternative Transactions 57

ARTICLE VIII TERMINATION 58
Section 8.1 Termination of Agreement 58
Section 8.2 Effect of Termination 60

ARTICLE IX TAXES 61

TABLE OF CONTENTS

Page

Section 9.1 Transfer Taxes 61
Section 9.2 Allocation of Purchase Price....61
Section 9.3 Cooperation....62
Section 9.4 Tax Sharing Agreements....62
Section 9.5 Allocation of Taxes for Straddle Period 62
Section 9.6 Preparation of Tax Returns and Payment of Taxes 63
Section 9.7 Tax Treatment....63
Section 9.8 Other Tax Matters....64

ARTICLE X MISCELLANEOUS 64
Section 10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers 64
Section 10.2 Expenses 64
Section 10.3 Notices 65
Section 10.4 Binding Effect; Assignment....66
Section 10.5 Amendment and Waiver 66
Section 10.6 Third Party Beneficiaries 66
Section 10.7 Non-Recourse 66
Section 10.8 Severability 67
Section 10.9 Construction....67
Section 10.10 Schedules 67
Section 10.11 Complete Agreement 68
Section 10.12 Specific Performance....68
Section 10.13 Jurisdiction and Exclusive Venue....69
Section 10.14 Governing Law; Waiver of Jury Trial 69
Section 10.15 Counterparts and PDF....70
Section 10.16 Publicity....70
Section 10.17 Bulk Sales Laws....70

ARTICLE XI ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS 71
Section 11.1 Certain Definitions....71
Section 11.2 Index of Defined Terms....87
Section 11.3 Rules of Interpretation 87

INDEX OF EXHIBITS

Exhibit A FORM OF SALE ORDER

Exhibit B FORM OF INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of May 6, 2026 (the "Effective Date"), is made by and among Bluegrass Infrastructure Partners Holdings, LLC ("Purchaser") and Ascend Elements, Inc. ("Seller"). Purchaser and Seller are referred to herein individually as a "Party" and collectively as the "Parties."

WHEREAS, on April 9, 2026 (the "Petition Date"), Seller, together with certain of Seller's Subsidiaries and Affiliates, commenced voluntary cases under chapter 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the Southern District of Texas, Houston Division (the "Bankruptcy Court") (the "Chapter 11 Case");

WHEREAS, Purchaser desires to purchase, acquire and accept the Acquired Assets and assume the Assumed Liabilities from Seller, and Seller desires to sell, transfer, convey, assign, and deliver to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, inter alia, Sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement and subject to the entry and terms of the Sale Order;

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements set forth herein, intending to be legally bound hereby, the Purchaser and Seller hereby agree as follows.

ARTICLE I
PURCHASE AND SALE OF ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

Section 1.1 Purchase and Sale of the Acquired Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and subject to the entry into and terms of the Sale Order, at the Closing, Seller shall, and shall cause its Affiliates (as applicable) to, sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from Seller and its Affiliates (as applicable), all of Seller's and its Affiliates' (as applicable) right, title and interest in and to the Acquired Assets, free and clear of all Encumbrances other than (except with respect to the Equity Interests of the Acquired Entities) Permitted Encumbrances. "Acquired Assets" means all of the properties, rights, interests, and other assets held by Seller (or its Affiliates (other than the Acquired Entities), to the extent described below), whether tangible or intangible, real, personal, or mixed, wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP, including any such properties, rights, interests, and other assets acquired by Seller after the date hereof and prior to the Closing, and including Seller's right, title, and interest in and to the following assets of Seller, but excluding in all cases the Excluded Assets and subject to Section 1.5:

(a) all of the Equity Interests that Seller owns, directly or indirectly, in each of Battery Resourcers, LLC, a Massachusetts limited liability company; Ascend Elements UK, Ltd., a private limited company incorporated in England and Wales; Ascend Elements France, a joint

stock company incorporated under the laws of France; Ascend Elements Poland SP Z O.O., a limited liability company incorporated under the laws of Poland; Ascend Elements Poland Holdings SP. Z O.O., a limited liability company incorporated under the laws of Poland; AE Elemental sp. z o.o., a limited liability company incorporated under the laws of Poland; and Ascend Elements Poland 2 SP Z O.O., a limited liability company incorporated under the laws of Poland (collectively, the "Acquired Entities");

(b) the Contracts listed on Schedule 1.1(b) to which Seller or any of its Affiliates is a party and that supports, facilitates, is involved in or relates to the Business or the other Acquired Assets or any Assumed Liabilities in any way, including (i) confidentiality agreements with prospective purchasers of the Acquired Assets or the Assumed Liabilities or any portion thereof and (ii) agreements between Seller or any of its Affiliates (other than the Acquired Entities), on the one hand, and any current or former employee of Seller or any of its Affiliates (other than the Acquired Entities) or its or their predecessors-in-interest, on the other hand, pursuant to which any such employee assigns or agrees to assign, or to maintain the confidentiality of, any Intellectual Property (collectively, the "Assigned Contracts");

(c) all accounts receivable, notes receivable, negotiable instruments and chattel paper owing from Persons (other than the Acquired Entities), together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto;

(d) all Documents (excluding any information to the extent prohibited from being transferred pursuant to this Agreement by applicable Law);

(e) (i) the Leased Real Property listed on Schedule 1.1(e)(i) (the "Acquired Leased Real Property" and each Lease related to such Acquired Leased Real Property, an "Acquired Lease") and (ii) the Owned Real Property listed on Schedule 1.1(e)(ii) (the "Acquired Owned Real Property");

(f) all tangible assets (including Equipment), including the tangible assets of Seller located at any Acquired Leased Real Property or Acquired Owned Real Property and any tangible assets on order to be delivered to Seller or any of its Subsidiaries and the personal property located at the Covington Facility (as defined in the Disclosure Schedule), the Hopkinsville Property (as defined in the Disclosure Schedule) or the Massachusetts Facility, except any assets or property acquired directly from the proceeds originating from grants to Seller by any U.S. or foreign government body or entity, or otherwise included in Seller or any of its Subsidiaries' (except the Acquired Entities) cost-share under such a grant, including, without limitation, the DOE, to the extent the consent, or a release of interests or Encumbrances in a manner acceptable to Purchaser, of the relevant government body or entity has not been obtained prior to Closing in connection with the transactions contemplated hereby;

(g) except as set forth in Section 1.2(g), all rights against third parties (including customers, suppliers, vendors, merchants, manufacturers and counterparties to any Assigned Contract) other than with respect to Excluded Assets or Excluded Liabilities, including Causes of Action, claims, counterclaims, defenses, suits, litigation, credits, rebates (including any vendor or supplier rebates), demands, allowances, refunds (other than Tax refunds described in Section 1.2(h)), Causes of Action, rights of set off, rights of recovery, rights of recoupment or

rights under or with respect to express or implied guarantees, warranties, representations, covenants or indemnities made by such third parties, and other similar rights, in each case, whether direct or derivative, unknown, liquidated or unliquidated, contingent or otherwise, in each case, including with respect to any of the Acquired Assets or Assumed Liabilities;

(h) all of the rights, interests and benefits (if any) accruing under all (A) pollution or contractor's pollution insurance policies (the "Environmental Insurance Policies") and (B) Permits, Governmental Authorizations and Environmental Credits, and all pending applications therefor;

(i) all Intellectual Property owned or purported to be owned by Seller or any of its Affiliates (other than the Acquired Entities) used or held for use in the Business, including (A) all rights to collect royalties fees, income, payments and other proceeds now or hereafter due or payable to Seller or any of its Affiliates in connection with any such Intellectual Property, (B) all rights to sue and recover for past, present and future infringements, dilutions, misappropriations of, or other conflicts with, any such Intellectual Property (regardless of whether or not such claims and causes of action have been asserted by Seller or any of its Affiliates), and (C) any and all corresponding rights that, now or hereafter, may be secured throughout the world, including the Intellectual Property set forth on Schedule 1.1(i) (collectively, the "Seller Intellectual Property") (for avoidance of doubt, with respect to the intent-to-use applications filed with the United States Patent and Trademark Office pursuant to 15 USC Section 1051(b) included in the Seller Intellectual Property (an "Intent-To-Use Trademark"), the Parties acknowledge and agree that (i) the applicable Purchaser is the successor-in-interest to the business of Seller and its Affiliates or portion thereof to which such Intent-To-Use Trademarks pertain and that such business is ongoing and existing); (ii) a copy of all embodiments of the Seller Intellectual Property in the possession of Seller and its Affiliates, including all Documents to Seller Intellectual Property and all data related thereto; and (iii) all rights to any Intellectual Property pursuant to any Assigned Contract;

(j) all IT Assets of Seller and its Affiliates, including all Documents related thereto;

(k) all Inventory and supplies of Seller except for the Inventory and supplies listed on Schedule 1.1(k);

(l) all goodwill (including all goodwill associated with the Seller Intellectual Property), payment intangibles and general intangible assets and rights of Seller;

(m) the Critical Vendor Avoidance Claims;

(n) all deposits, escrows, cash collateral, prepayments and similar amounts (including maintenance deposits, and security deposits for rent, electricity, Internet, telephone, or otherwise), and any and all prepaid or deferred charges and expenses (including all lease and rental payments);

(o) the Hopkinsville land option contemplated by Section 6.15 (to the extent acquired by Seller or any of its Affiliates prior to the Closing); and

(p) all assets, rights, interests, contracts, land use rights, permits, and facilities of Seller and its Affiliates relating to AE Elemental sp. z.o.o., including all assets associated with the AE Elemental sp. z.o.o. facility and any related real property and equipment, in each case to the extent not held directly by an Acquired Entity.

Section 1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Seller be deemed to sell, transfer, assign, convey or deliver, and Seller shall retain all right, title and interest to, in and under the following properties, rights, interests and other assets of Seller (collectively, the "Excluded Assets"), subject to Section 1.5:

(a) all Equity Interests of Seller or any of its respective Subsidiaries, in all cases, other than Equity Interests of the Acquired Entities (Seller and its Subsidiaries (other than the Acquired Entities), collectively, the "Excluded Entities");

(b) (i) all Cash and Cash Equivalents (excluding, for the avoidance of doubt any amounts described in Section 1.1(n)), (ii) all bank accounts, and (iii) any retainers or similar amounts paid to Advisors or other professional service providers;

(c) all Excluded Contracts;

(d) all Documents (including information stored on the computer systems, data networks or servers of Seller or any Acquired Entity) (A) to the extent they relate solely to any of the Excluded Assets or Excluded Liabilities, (B) that are Seller's minute books, Organizational Documents, stock certificates or other Equity Interests instruments, stock registers and such other books and records of any Excluded Entity pertaining to the ownership, organization or existence of such Excluded Entity, Tax Returns (and any related work papers), corporate seal, checkbooks, canceled checks, employee and personnel files and records of the Business Employees who do not become Transferred Employees (other than as described in Section 1.1(b)(ii)), or (C) that contain, and solely to the extent they contain, Personal Information and are governed under applicable data privacy Laws that prohibit the transfer or sale of Personal Information; provided that, with respect to the foregoing clause (A), (B) and (C), Purchaser shall have the right to make copies of, and have access to, any relevant portions of such Documents to the extent not prohibited by Applicable Law;

(e) (i) all bids and expressions of interest received from third parties with respect to the acquisition of any Excluded Entity's businesses or assets (including any bids and expressions of interest unrelated to the sale process undertaken by the Seller in connection with this Agreement), (ii) all privileged materials, documents and records of any Excluded Entity, including any privileged materials, documents and records that are in the possession of any Acquired Entity, and (iii) any other files or records to the extent relating exclusively to any Excluded Assets or Excluded Liabilities;

(f) other than the Environmental Insurance Policies, all current and prior insurance policies of Seller or any of its Subsidiaries, including all director and officer insurance policies, and, subject to Section 6.8, all rights and benefits of any nature of Seller or any of its Subsidiaries with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries, and the sponsorship of, and all rights,

interests and assets associated with, any benefit or compensation plan, program, policy, contract, or arrangement of Seller or any of its Subsidiaries and the Employee Benefit Plans;

(g) (i) Seller's claims, Causes of Action or other rights of Seller expressly set forth under this Agreement, including the Purchase Price, or any agreement, certificate, instrument, or other document executed and delivered between Seller or its Affiliates, on the one hand, and Purchaser or any member of the Purchaser Group, on the other hand, in connection with the Transactions, or any other agreement between Seller or its Affiliates, on the one hand, and Purchaser or any member of the Purchaser Group, on the other hand, entered into on or after the date hereof and (ii) except for those claims and Causes of Action which relate to an Acquired Asset acquired by Purchaser under this Agreement, all other claims and Causes of Action of Seller and its Affiliates, including without limitation: (A) Avoidance Actions, other than Critical Vendor Avoidance Claims, (B) commercial tort claims, (C) claims, Causes of Action or other rights of Seller against current or former directors or officers of Seller, other than claims and Causes of Action against any individual identified by Purchaser in writing on or before the Closing Date as an individual who will be retained by Purchaser or its Affiliates (including the Acquired Entities) in a management capacity following the Closing, and (D) any and all claims and Causes of Action of Seller or its Affiliates that do not relate to the ownership, use, function or value of the Business or any of the Acquired Assets;

(h) all Tax refunds, Tax attributes and Tax assets of Seller allocable to the Pre-Closing Tax Period other than (i) any such Tax refunds, attributes or assets that transfer by operation of Law, (ii) any such Tax refunds, attributes or assets that are Acquired Assets and (iii) for the avoidance of doubt, any grants or credits that are earned or otherwise paid to Purchaser or an Affiliate thereof in a Post-Closing Tax Period;

(i) all demands, credits, statements, allowances, refunds, rebates (including any vendor or supplier rebates), rights (including under or with respect to express or implied guarantees, warranties, representations, covenants and indemnities), claims, counterclaims, defenses, credits, Causes of Action, rights of set off, rights of recovery or rights of recoupment relating to or arising against suppliers, vendors, merchants, manufacturers and counterparties to any Contract that is not an Assigned Contract to the extent arising out of or relating to events occurring on or prior to the Closing Date, and in all cases, solely with regard to other categories of Excluded Assets set forth in the other clauses of this Section 1.2 or Excluded Liabilities;

(j) any property acquired using proceeds from grants to Seller or any of its Subsidiaries (other than an Acquired Entity), by any U.S. or foreign government body or entity, or otherwise included as part of Seller or any of its Subsidiaries' (except the Acquired Entities) cost-share under such a grant, including, without limitation, the DOE, to the extent the consent or a release of all interests in such property in a manner acceptable to Purchaser, of the relevant government body or entity has not been obtained prior to Closing in connection with the transactions contemplated hereby; and

(k) the sponsorship of, and all rights, interests and assets associated with, the Employee Benefit Plans of Seller or its Affiliates, including for the avoidance of doubt all director and officer insurance policies, and all rights and benefits of any nature of Seller or its Affiliates

with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries.

Section 1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and subject to the entry and terms of the Sale Order, effective as of the Closing, in addition to the payment of the Purchase Price in accordance with Section 2.1, Purchaser shall irrevocably assume from Seller (or with respect to Taxes, if applicable, from Seller's applicable Affiliate), and from and after the Closing, pay, perform, discharge, or otherwise satisfy in accordance with their respective terms, and Seller (or with respect to Taxes, if applicable, a Seller's applicable Affiliate) shall irrevocably transfer, assign, convey, and deliver to Purchaser, only the following Liabilities (which shall exclude any such Liabilities which are Liabilities for Taxes except as set forth in clause (c)), without duplication and only to the extent not paid on or prior to the Closing (collectively, the "Assumed Liabilities"), subject to Section 1.5:

(a) all Liabilities and obligations of Seller under the Assigned Contracts that become due from and after the Closing and only to the extent arising out of facts, circumstances, conditions or events that are first in existence after the Closing (excluding (i) any Liabilities arising from or relating to any breaches under such Assigned Contract, or any facts, circumstances, conditions or events that are in existence, on or prior to the Closing, and (ii) for the avoidance of doubt, any Seller Cure Costs);

(b) any Liabilities relating to any remediation at the Acquired Leased Real Property or the Owned Real Property first occurring following the Closing and required under Environmental Laws because of any Release of Hazardous Materials first occurring after the Closing (the "Assumed Environmental Liabilities");

(c) all Liabilities for property Taxes allocable to the 2025 and 2026 tax years and any Post-Closing Tax Period, in each case solely with respect to any Acquired Leased Real Property or Acquired Owned Real Property, and Transfer Taxes payable by Purchaser pursuant to Section 9.1, and, subject to the foregoing in this subsection (c), all Liabilities for other Taxes with respect to the Acquired Entities for any taxable period (or portion thereof) beginning after the Closing Date and allocated pursuant to Section 9.5;

(d) all cure costs required to be paid pursuant to Section 365(b) of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts (the "Cure Costs") in excess of $2 million (the portion of the Cure Costs in excess of $2 million in the aggregate, the "Purchaser Cure Costs"); provided, however, that any Cure Costs in an amount not to exceed $2 million in the aggregate shall constitute Excluded Liabilities (such Cure Costs that are less than $2 million, the "Seller Cure Costs") and for the avoidance of doubt, the parties intent is that if, for example, the aggregate amount of the Cure Costs is $3 million, then (x) $2 million of the Cure Costs shall constitute Excluded Liabilities and Seller Cure Costs, and (y) $1 million of the Cure Costs shall constitute Assumed Liabilities and Purchaser Cure Costs;

(e) subject to the satisfaction of the conditions precedent to Purchaser's obligations to consummate the Closing set forth in Section 7.2(i), all obligations under (i) the City of Hopkinsville Mortgage and the Hopkinsville Grant Agreement recorded on the Hopkinsville

Property, and (ii) the KY Seller Mortgage and Assignment of Leases recorded on the Hopkinsville Property; and

(f) all Liabilities relating to amounts required to be paid, or actions required to be taken or not to be taken, by Purchaser under this Agreement.

Section 1.4 Excluded Liabilities. Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of Seller or any Subsidiary of Seller (including the Acquired Entities), other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the "Excluded Liabilities"). Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following Liabilities of Seller and its Subsidiaries:

(a) all Liabilities of Seller arising under the WARN Act, ERISA or other Laws relating to the engagement or employment, or termination of such employment or engagement, any current or former Business Employees or Business Service Providers (including any Transferred Employees), and including any current, threatened or potential claims for compensation benefits or other relief, in each such case, to the extent related to such engagement or employment, or termination of such employment or engagement, whether arising prior to, on or after the Closing Date;

(b) Liabilities at any time arising under, pursuant to or in connection with any Employee Benefit Plans (whether arising prior to, on or after the Closing Date) and all Liabilities for compliance with the requirements of section 4980B of the Tax Code and the rules and regulations thereunder with respect to all individuals who are "M&A qualified beneficiaries" (as such term is defined in 26 C.F.R. § 54.4980B-9);

(c) all Liabilities arising under, pursuant to or in connection with Environmental Laws, including such Liabilities (x) that are dischargeable, or capable of being sold free and clear, pursuant to Section 363 of the Bankruptcy Code, (y) that are otherwise dischargeable pursuant to Section 1141 of the Bankruptcy Code, and (z) from which the Acquired Assets are otherwise released as of the Closing pursuant to an Order of the Bankruptcy Court, in each case other than the Assumed Environmental Liabilities;

(d) any Liability of Seller, or otherwise imposed on the Acquired Assets or with respect to the Business, in respect of any Tax, including without limitation (i) any Liability of Seller for the Taxes of any other Person under Treasury Regulation Section 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by Contract or otherwise, (ii) 50% of Transfer Taxes, but excluding property Taxes to the extent constituting Assumed Liabilities pursuant to Section 1.3(c);

(e) all Liabilities relating to Transferred Employees that arise on or prior to the Closing Date or that relate to facts, matters, circumstances, conditions or events in existence on or prior to the Closing;

(f) any Liability of Seller or any of its Affiliates or any of their respective predecessors associated with any and all indebtedness, including any guarantees of third party obligations and reimbursement obligations to guarantors of Seller's or any of its Affiliates' or any of their respective predecessors' obligations, and including any guarantee obligations or imputed Liability through veil piercing or similar theories or Laws incurred by or through Seller or any of its Affiliates or their respective predecessors;

(g) all Liability of Seller, any of its Affiliates or any of their respective predecessors associated with payments for the purchase of goods for the period prior to Closing, including but not limited to customer deposits and prepaid amounts;

(h) all Liabilities of Seller or any of its Affiliates or any of their respective predecessors to their respective equity holders with respect to dividends, distributions in liquidation, redemptions of interests, option payments or otherwise;

(i) all Liabilities outstanding as of and arising after the Closing for any Contract for delivery of or returns of products previously sold to customers, whether or not any customer has provided a deposit for the sale, except for under any Assigned Contract;

(j) all Liabilities of Sellers or of any of its predecessors arising out of any Contract, Permit, or claim that is not transferred to Purchaser hereunder;

(k) all Liabilities arising prior to, on or after the Closing Date, or that relates to facts, matters, circumstances, conditions or events in existence on or prior to the Closing with respect to any former or current Business Employees and any former or current Business Service Providers who do not receive a Transfer Offer or who otherwise fail to become employed or engaged by Purchaser or its Affiliates immediately following the Closing Date (including due to refusing to accept a Transfer Offer);

(l) all Liabilities of Seller, its Affiliates or any of its or their predecessors arising out of any alleged infringement, misappropriation or other violation of any third party's Intellectual Property on or prior to the Closing Date, including Liabilities arising under those items set forth on Schedule 3.12(c);

(m) all Liabilities arising from any False Claims Act matters, including any matters disclosed on Schedule 3.19(d)(iv);

(n) any Liabilities related to any Government Contract that is not being assumed by Purchaser;

(o) all other Liabilities owed to the U.S. Government or any other Governmental Body that are not expressly included in the Assumed Liabilities; and

(p) all Seller Cure Costs.

Section 1.5 Assumption/Rejection of Certain Acquired Assets.

(a) Assumption and Assignment of Contracts. Seller shall provide notice of the motion seeking entry of the Sale Order to all parties to any executory Contracts or unexpired Leases to which a Seller is a party that are Assigned Contracts, and take all other actions reasonably necessary to cause such Contracts to be assumed by Seller and assigned to Purchaser pursuant to Section 365 of the Bankruptcy Code to the extent that such Contracts are Assigned Contracts at Closing. The Sale Order shall provide that as of and conditioned upon the occurrence of the Closing, Seller shall assign or cause to be assigned to Purchaser, as applicable, the Assigned Contracts, each of which shall be identified by the name or appropriate description and date of the Assigned Contract (if available), the counterparty to the Assigned Contract and the address of such counterparty for notice purposes, all included in a notice filed with the Bankruptcy Court. Such notice to Assigned Contract counterparties shall also set forth Seller's good faith estimate of the amounts necessary to cure any defaults under each of the Assigned Contracts, as determined by Seller based on its books and records or as otherwise determined by the Bankruptcy Court, and summarizing the procedures for objecting thereto. At the Closing, or as soon as reasonably practicable thereafter, Seller shall, pursuant to the Sale Order, and the Assignment and Assumption Agreement(s), assume and assign to Purchaser (the consideration for which is included in the Purchase Price) and Purchaser shall accept and assume all Assigned Contracts that may be assigned by Seller to Purchaser pursuant to Sections 363 and 365 of the Bankruptcy Code, subject to adjustment pursuant to Section 1.5(b). Subject to entry of the Sale Order, at or prior to Closing (or, in the case of any Contract that is to be assigned following the Closing pursuant to Section 1.5(d)(iii), on or prior to the date of such assignment), (i) Purchaser shall pay, or cause to be paid, the Purchaser Cure Costs and the Seller shall pay, or cause to be paid, the Seller Cure Costs, (ii) following satisfaction of clause (i), Seller shall assign such Assigned Contracts to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code and this Agreement, and (iii) following satisfaction of clause (ii), Purchaser shall in due course and in accordance with its respective terms pay and fully satisfy, discharge and perform all of the obligations under each Assigned Contract.

(b) Excluding or Adding Acquired Assets Prior to Closing. The Parties acknowledge and agree that at the Closing, Purchaser intends to acquire all assets required to operate the Business except for Excluded Assets expressly set forth in clauses (b)(i), (d), (e), (g), (h), and (k) of Section 1.2, and to assume solely the Assumed Liabilities. The Parties agree to cooperate in good faith to take all actions necessary or advisable to transfer all such assets to Purchaser and for Purchaser to assume only such Liabilities (and exclude all other Liabilities), effective as of the Closing and for no additional consideration, so that the intention of the Parties as set forth in the preceding sentence is effectuated. Without limiting the generality of the foregoing and subject to the last sentence of this Section 1.5(b) and Section 1.5(c), Purchaser shall have the right to notify Seller in one or more writings (any such notice, a "Designation Notice") of (A) any Acquired Asset (including any Assigned Contract or Equity Interests of any Acquired Entity) or Equity Interests of Subsidiaries to be acquired directly or indirectly ("Specified Equity Interests") that it does not wish to assume or acquire, (B) any Equity Interests of an Excluded Entity, any Contract to which Seller or any of its Affiliates or any Excluded Entity is a party or otherwise relating to any assets or properties of Seller or any of its Affiliates, or any other Excluded Asset, that it wishes to add as an Acquired Asset except for Excluded Assets expressly set forth in

clauses (b)(i), (d), (e), (g), (h), and (k) of Section 1.2, (C) any Assumed Liability (subject to the last sentence of this Section 1.5(b)) that it reasonably determines is inconsistent with the first sentence of this Section 1.5(b)) or (D) the corresponding addition of a Person as a Seller, as a party to this Agreement, if applicable, resulting from the changes set forth in clauses (A), (B) or (C), in any case of clauses (A), (B), (C) or (D), at any time and from time to time up to the time of the Closing, (i) any such previously considered Acquired Asset or Specified Equity Interests that Purchaser no longer wishes to assume or acquire shall be automatically deemed removed as an Acquired Asset or Acquired Entity hereunder (and removed from any applicable Schedules related to such Acquired Asset or Acquired Entity) and, notwithstanding anything to the contrary herein, automatically deemed added as an Excluded Asset hereunder (and added to the applicable Schedules related to the Excluded Assets) and any Liabilities with respect to such Acquired Asset or Acquired Entity shall automatically be deemed to be added as Excluded Liabilities hereunder (and added to the applicable Schedules related to the Excluded Liabilities), in each case, without any adjustment to the Purchase Price as a result of such exclusion or change in designation, (ii) any such previously considered Excluded Asset (including any Contracts) that such Purchaser wishes to assume or acquire as an Acquired Asset shall be automatically deemed added as an Acquired Asset hereunder (and added to the applicable Schedules related to Acquired Assets) and, notwithstanding anything to the contrary herein, automatically deemed removed as an Excluded Asset hereunder (and removed from the applicable Schedules related to Excluded Assets), and sold and assigned by Seller and/or the applicable Excluded Entities to Purchaser and accepted and assumed by Purchaser as an Acquired Asset (and added to the applicable Schedules related to Acquired Assets, including Schedule 1.1(b)), in each case, without any adjustment to the Purchase Price as a result of such assumption, acquisition or change in designation, (iii) any such previously considered Assumed Liability (subject to the last sentence of this Section 1.5(b)) that Purchaser reasonably and in good faith determines is inconsistent with the first sentence of this Section 1.5(b) shall be automatically deemed removed as an Assumed Liability hereunder (and removed from the applicable Schedules related to Assumed Liabilities) and, notwithstanding anything to the contrary herein (subject to the last sentence of this Section 1.5(b)), automatically deemed added as an Excluded Liability hereunder (and added to the applicable Schedules related to Excluded Liabilities), in each case, without any adjustment to the Purchase Price as a result of such exclusion or change in designation; and (iv) any such Person that is selling such previously considered Excluded Asset that Purchaser wishes to assume as an Acquired Asset who is not a party to this Agreement shall be joined as a party to this Agreement pursuant to a joinder agreement in form and substance reasonably acceptable to Purchaser. For the avoidance of doubt, a Designation Notice may provide that all Contracts used in the Business, other than certain specified Contracts (if applicable), are designated as Assigned Contracts without reference to any of the specific Contracts that constitute the Assigned Contracts. Purchaser shall be solely responsible for the payment, performance, and discharge when due of the Liabilities under the Assigned Contracts arising or that are otherwise payable from the time of and after the Closing (or, in the case of an Assigned Contract that is transferred after the Closing, from the time of and after such transfer), except for any Seller Cure Costs. Any action of Purchaser permitted under this Section 1.5(b) shall be made in Purchaser's sole and absolute discretion. Seller shall cooperate (and shall cause its Affiliates to cooperate) with Purchaser and use reasonable best efforts, at Seller's expense, to take all actions necessary or advisable to effectuate any election made by Purchaser under this Section 1.5, including by (i) filing any necessary motions or notices with the Bankruptcy Court, (ii) executing any documents or instruments reasonably requested by Purchaser, and (iii) seeking

any required Bankruptcy Court approvals in connection therewith. Notwithstanding anything herein to the contrary, in no event shall Purchaser have the right to notify Seller in writing that any Assumed Liability that is expressly set forth in Section 1.3(a) through Section 1.3(c) (other than those relating to an Assigned Contract that is to be removed in accordance with this Section 1.5 or any Seller Cure Costs) is inconsistent with the first sentence of this Section 1.5(b), or otherwise seek to remove, limit or otherwise modify the Assumed Liabilities as set forth in Section 1.3, which the Parties agree are to remain Assumed Liabilities in any event notwithstanding any modifications made pursuant to this Section 1.5. Notwithstanding the foregoing, in no event shall Purchaser have a right to add an Acquired Asset if such asset is otherwise restricted pursuant to the Chapter 11 Cases. Notwithstanding anything to the contrary set forth in this Agreement, to the extent (A) the structure of any of the Transactions is changed pursuant to this Section 1.5(b) or Section 1.5(c), including in the event Seller becomes an Acquired Entity, or as otherwise required by applicable Law, and (B) either (I) Purchaser is required to assume any Liabilities as a result of such change in structure other than those specifically enumerated as Assumed Liabilities in Section 1.3 or (II) Purchaser is required to forego acquiring the Equity Interests in an Acquired Entity (directly or indirectly and without acquiring such Acquired Entity's assets), then the Purchase Price will be equitably adjusted to reflect the additional Liabilities that Purchaser is assuming or the exclusion of the Equity Interests in such Acquired Entity, based on a good faith determination of the value of any such Liability or Equity Interests.

(c) Cure Costs.

(i) At the Closing, Purchaser shall pay all Purchaser Cure Costs and assume, and thereafter in due course and in accordance with its respective terms, pay and fully satisfy, discharge and perform all of the applicable Assumed Liabilities under each Assigned Contract pursuant to Section 365(b) of the Bankruptcy Code and subject to the terms and conditions hereof. If Purchaser does not pay all Purchaser Cure Costs associated with the assignment and assumption of an Assigned Contract or fails to provide adequate assurance of future performance as required by the Bankruptcy Court, (x) such Contract(s) shall not be an Assigned Contract(s) and such Contract(s) shall be automatically deemed removed from Schedule 1.1(b) without any adjustment to the Purchase Price, subject to any procedures set forth in the Bidding Procedures Order and (y) Purchaser is and shall remain obligated to timely consummate the Closing (including paying the Purchase Price in full at Closing) and comply with its obligations under this Agreement and any Ancillary Document and shall not have the right to terminate this Agreement as a result of the failure to assume and assign any such Contract. Notwithstanding anything to the contrary herein, Seller shall not be required to pay or assume any Purchaser Cure Costs or provide any assurances, and Seller shall not be obligated to assume and assign any Contract with respect to which Purchaser fails to pay the full Purchaser Cure Costs or fails to satisfy the party to the proposed Assigned Contract and the Bankruptcy Court as to adequate assurance of future performance.

(ii) To the extent a counterparty to a Contract objects or otherwise challenges the Purchaser Cure Costs determined by Seller and asserts a different monetary amount that must be paid and/or nonmonetary obligations that otherwise

must be satisfied, including pursuant to Section 365(b)(1)(A) and (B) of the Bankruptcy Code, in order for Purchaser to assume such Contract to this Agreement (any such Contract, a "Disputed Contract"), and such objection or challenge has not been resolved prior to the Closing, then Purchaser shall provide written notice prior to the Closing Date (or such earlier date on which the Bankruptcy Code or Bankruptcy Court otherwise would require a determination to assume or reject any such Contract) either (x) electing to remove any such Disputed Contract from Schedule 1.1(b), in which case the Contract will be an Excluded Contract and not assigned to Purchaser or (y) requesting an extension of the period of time following the Closing to resolve any such dispute (such period, an "Extension Period"); provided that any such extension period shall be no longer than ninety (90) days following the Closing Date (or such shorter period of time as required in order to wind-down or liquidate Seller); provided, further, that Seller's obligations to provide such Extension Period is subject to Purchaser's ongoing compliance with Purchaser's obligations pursuant to the final sentence of this Section 1.5(c)(ii). If Purchaser does not deliver written notice agreeing to assume such Disputed Contract and pay all Purchaser Cure Costs associated with such Disputed Contract prior to the expiration of the Extension Period or such dispute is not resolved by the expiration of the Extension Period, such Disputed Contract shall automatically be deemed an Excluded Contract. Purchaser shall be responsible for and reimburse Seller for any reasonable and documented out-of-pocket costs and expenses of Seller arising following the Closing during any Extension Period, including any such incremental costs or expenses (A) that arise out of Seller's extension and continuation of the Bankruptcy Cases solely to the extent that such extension and continuation are attributable to the Extension Period and (B) are incurred as a result of the Seller's performance of its obligations under Section 1.5(c)(ii).

(d) Non-Assignment.

(i) Notwithstanding anything to the contrary in this Agreement, a Contract shall not be an Assigned Contract hereunder and shall not be assigned to, or assumed by, Purchaser to the extent that such Contract is rejected by Seller or its Affiliates or terminated by Seller, its Affiliates or any other party thereto, in either case subject to Purchaser's prior written consent in its sole discretion, or terminates or expires by its terms without the right of renewal, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assumption.

(ii) Notwithstanding anything to the contrary in this Agreement, if (A) an Acquired Asset requires a Consent or Governmental Authorization (other than, and in addition to and determined after giving effect to any order of the Bankruptcy Court, including the Sale Order) in order to permit the assignment, sale, or transfer to Purchaser of Seller's right, title and interest in and to such asset, (B) no Order of the Bankruptcy Court, including the Sale Order, is then in effect that precludes satisfaction of such requirement, and (C) such Consent or Governmental Authorization has not been obtained prior to such time as such right,

title and interest is to be assigned, sold, or transferred by Purchaser as an Acquired Asset hereunder, such asset shall not be an Acquired Asset hereunder and shall not be assigned, sold, or transferred to, or received by, Purchaser until either (1) such an Order is in effect or (2) such Consent or Governmental Authorization has been obtained.

(iii) If any Acquired Asset is deemed not to be assigned, sold, or, transferred pursuant to Section 1.5(d)(i) or Section 1.5(d)(ii) or cannot otherwise be assigned, sold or transferred to Purchaser for any other reason outside of Purchaser's control (including if such assignment, sale or transfer would be a violation of Law), the Closing shall nonetheless take place subject to the terms and conditions set forth in this Agreement. In such event and notwithstanding anything to the contrary set forth in this Agreement, the Purchase Price shall be equitably adjusted to reflect the Acquired Assets that are not transferred at Closing based on a good faith determination of the value of any such Acquired Asset. Thereafter, through the earliest of (A) such time as such Consent or Governmental Authorization is obtained or such restriction prohibiting the assignment, sale or transfer of such Acquired Asset is removed, (B) such time as such an Order is in effect, (C) in the case of an Assigned Contract, the expiration of the term of such Contract in accordance with its current term or the execution of a replacement Contract by Purchaser or its Affiliate, and (D) the closing of the Chapter 11 Cases or dissolution of the Seller, Seller and Purchaser shall (and Seller shall cause its Affiliates to) (1) use reasonable best efforts to secure such Consent or Governmental Authorization or Order or otherwise remove such restrictions prohibiting the transfer of such Acquired Assets as promptly as practicable after the Closing and (2) cooperate in good faith in any lawful and commercially reasonable arrangement by Purchaser and Seller and its Affiliates, including subcontracting, licensing, or sublicensing to Purchaser any or all of Seller's or its Affiliates' rights and obligations with respect to any such Acquired Asset, under which (x) Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits with respect to which Consent or Governmental Authorization has not been obtained, and (y) Purchaser shall assume and discharge any related obligation with respect to such Acquired Asset. Upon the effectiveness of such Order or satisfying any requisite Consent or Governmental Authorization requirement applicable to, or otherwise removing such restrictions prohibiting the transfer of, such Acquired Assets after the Closing, the Seller shall transfer (or shall cause its Affiliates to transfer) to Purchaser and Purchaser shall accept Seller's or its Affiliates' (as applicable) right, title, and interest in and to such Acquired Asset to Purchaser, and Purchaser shall pay to Seller the portion of the Purchase Price that was withheld in respect of such Acquired Assets, in each case, in accordance with the terms of this Agreement, the Sale Order, and the Bankruptcy Code.

(iv) Notwithstanding anything in this Agreement to the contrary, (A) the provisions of Section 1.5(d)(ii) shall not apply to any Consent or Governmental Authorization required under the HSR Act, if applicable, and any Foreign

Competition Laws, which Consent or Governmental Authorization shall be governed by Section 6.5 and (B) neither Seller nor Purchaser will be obligated to pay any consideration to any third party from whom Consent or Governmental Authorization is requested (other than in a *de minimis* amount) or to initiate any litigation to obtain any such Consent or Governmental Authorization.

(v) The Parties shall reasonably cooperate to effect any transfers or other arrangements described in this Section 1.5 in a manner that is mutually Tax efficient for the Parties and their respective Affiliates, including by treating any Seller (or applicable Affiliate thereof) initially in possession of any payment referenced in this Section 1.5 after the Closing as holding such payment as an agent or nominee for the Purchaser for income and other applicable Tax purposes to the extent permitted by applicable Law.

(vi) Notwithstanding anything in this Agreement to the contrary, neither Seller nor Purchaser shall be obligated to pay any fees or other consideration to obtain any third party consent for the transfer of Acquired Assets under this Section 1.5(d), except for (A) Purchaser Cure Costs which shall be paid by Purchaser and filing fees and other ordinary administrative or other charges provided for in the Assigned Contracts which shall be paid by Purchaser to the third party from whom such approval, consent or waiver is requested and (B) Seller Cure Costs which shall be paid by Seller.

ARTICLE II
CONSIDERATION; PAYMENT; CLOSING

Section 2.1 Consideration; Payment.

(a) Subject to any adjustment pursuant to Section 1.5(b) and Section 1.5(d)(iii), the aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) the assumption of Assumed Liabilities, *plus* (ii) all principal amount of the Term Loans (under and as defined in the DIP Financing Agreement) including any interest, Initial Funding Fee or Subsequent Funding Fee (each under and as defined in the DIP Financing Agreement) paid-in-kind, then outstanding at Closing under the DIP Financing Agreement (subject to adjustments under the DIP Financing Agreement), and any other accrued and unpaid fees and expenses (other than expenses and indemnities payable to the DIP Lender or fees and expenses of their advisors arising out of or related to these chapter 11 cases (including the DIP Financing Agreement)) and interest at the time of Closing (the "DIP Credit Bid Amount") *plus* (iii) the aggregate principal amount of the Senior CLNs, any interest thereon then outstanding as of the Closing, and any other accrued and unpaid fees and expenses in respect thereof as of Closing under the Senior CLNs (the "Senior CLNs Credit Bid Amount") *plus* (iv) $30,000,000 of the aggregate principal amount of the Junior CLNs, any interest thereon then outstanding as of the Closing, and any other accrued and unpaid fees and expenses in respect thereof as of Closing under the Junior CLNs (the "Junior CLNs Credit Bid Amount").

(b) In accordance with Section 2.1(a), Purchaser shall (i) satisfy the Purchase Price at the Closing as to the DIP Credit Bid Amount by discharging Seller, and Seller shall be

deemed to be discharged, from the Obligations (as defined in the DIP Financing Agreement) under the DIP Financing Agreement in an aggregate amount equal to the DIP Credit Bid Amount, (ii) satisfy the Purchase Price at the Closing as to the Senior CLNs Credit Bid Amount by discharging Seller, and Seller shall be deemed to be discharged from, all obligations under the Senior CLNs, (iii) satisfy the Purchase Price at the Closing as to the Junior CLNs Credit Bid Amount by discharging Seller, and Seller shall be deemed to be discharged from, $30,000,000 of the obligations under the Junior CLNs, and (iv) pay all Purchaser Cure Costs.

Section 2.2 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities in accordance with this Agreement (the "Closing") will take place by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at a location mutually agreeable to Seller and Purchaser) at 10:00 a.m. Eastern Time on the second (2nd) Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Section 7.1, Section 7.2 and Section 7.3 (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions at the Closing), or at such other place and time, and by such other method, as the Parties may agree in writing. The date on which the Closing actually occurs is referred to herein as the "Closing Date".

Section 2.3 Closing Deliveries by Seller. At or prior to the Closing, Seller shall deliver to Purchaser:

(a) a bill of sale and assignment and assumption agreement in customary form to be mutually agreed by Purchaser and Seller and its applicable Affiliates (the "Assignment and Assumption Agreement") duly executed by Seller;

(b) an Intellectual Property assignment agreement, substantially in the form attached hereto as Exhibit B, duly executed by Seller and its Affiliates (other than Acquired Entities) that own any Acquired Intellectual Property;

(c) instruments of transfer of the Equity Interests of the Acquired Entities, in each case, in customary form to be mutually agreed by Purchaser and Seller, duly executed by Seller;

(d) with respect to each Assigned Contract constituting an Acquired Lease, an assignment and assumption agreement conveying such Acquired Lease to Purchaser, in each case in customary form reasonably approved by Purchaser (each, a "Lease Assignment Agreement"), duly executed by Seller and its applicable Affiliates;

(e) an IRS Form W-9 executed by Seller or Seller's regarded owner for U.S. federal income Tax purposes; provided that Purchaser's sole remedy for the failure to provide any such form shall be to withhold any required amount under applicable Tax Law;

(f) proprietary information and inventions assignment agreements in form and substance acceptable to Purchaser from each of the individuals set forth in Schedule 2.3(f) ("Required Invention Assignments");

(g) an endorsement to each Environmental Insurance Policy naming Purchaser the first named insured under each such policy;

(h) an assignment agreement to effect the transfer of the rights and obligations under Seller's agreement with Pennyrile Power;

(i) if requested by Purchaser, an assignment of each Government Authorization in the form required by the applicable Governmental Body; and

(j) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Seller certifying that the conditions set forth in Sections 7.2(a), 7.2(b) and 7.2(c) have been satisfied.

Section 2.4 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) Seller:

(a) the Assignment and Assumption Agreement, duly executed by Purchaser;

(b) instruments of transfer of the Equity Interests of the Acquired Entities, in each case, in customary form, duly executed by Purchaser;

(c) the Lease Assignment Agreements, duly executed by Purchaser; and

(d) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser, certifying that the conditions set forth in 7.3(a) and 7.3(b) have been satisfied.

Section 2.5 Withholding. Purchaser shall be entitled to deduct and withhold any Taxes from any amounts otherwise payable pursuant to this Agreement, as Purchaser is required to deduct and withhold under any applicable Tax law; provided, that if Purchaser believes any such deduction or withholding of Tax (other than any deduction or withholding resulting from Seller's failure to satisfy its obligations under Section 2.3(e)) is required, Purchaser shall use commercially reasonable efforts to provide notice to Seller prior to making such deduction or withholding and shall reasonably cooperate with Seller to reduce or eliminate the requirement to deduct and withhold Tax. Such withheld amounts that are paid to the appropriate taxing authority shall be treated for all purposes of this Agreement as having been paid to the applicable Seller in respect of whom such deduction or withholding was made.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLER

Seller represents and warrants, excepting those matters reflected in a disclosure schedule attached to this Agreement (the "Disclosure Schedule"), which shall be subject to amendment by Purchaser pursuant to Section 1.5, and subject to Section 10.10, the following to Purchaser as of the date hereof and as of the Closing Date.

Section 3.1 **Organization and Qualification**. Seller is a corporation duly incorporated, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation and has all the requisite corporate power and authority to own or lease all of its properties and assets and to carry on its business as it is now being conducted. Seller has made available to Purchaser complete and correct copies of its respective constitutive documents and the constitutive documents of the Acquired Entities, in each case as amended. Seller is duly licensed or qualified to do business under the Laws of each jurisdiction in which the nature of the business conducted by it makes such licensing or qualification necessary, except where failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.2 **Organization and Qualification of the Acquired Entities**. Each Acquired Entity is a corporation or limited liability company, as applicable, duly incorporated or organized, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation or formation. Each Acquired Entity is duly licensed or qualified to do business under the Laws of each jurisdiction in which the nature of the business conducted by it makes such licensing or qualification necessary, except where failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect.

Section 3.3 **Authorization of Agreement**. Subject to requisite Bankruptcy Court approvals:

(a) Seller has all necessary power and authority to execute and deliver this Agreement and the other Transaction Agreements to which Seller is a party and to perform its obligations hereunder and thereunder and to consummate the Transactions;

(b) the execution, delivery and performance by Seller of this Agreement and the other Transaction Agreements to which Seller is a party, and the consummation by Seller of the Transactions, have been duly authorized by all requisite corporate action or limited liability company action on the part of Seller, as applicable and no other organizational proceedings on Seller's part are necessary to authorize the execution, delivery and performance by Seller of this Agreement or the other Transaction Agreements and the consummation by it of the Transactions; and

(c) this Agreement and the other Transaction Agreements to which Seller is a party have been, or will be, duly executed and delivered by Seller and, assuming due authorization, execution and delivery hereof and thereof by Purchaser and Seller, as applicable, constitutes, or will constitute, legal, valid and binding obligations of Seller, enforceable against Seller in accordance with its and their terms, except that such enforceability (i) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (ii) is subject to general principles of equity, whether considered in a proceeding at law or in equity (collectively, the "Enforceability Exceptions").

Section 3.4 **Conflicts; Consents**.

(a) Assuming that (a) requisite Bankruptcy Court approvals are obtained, including the Sale Order, (b) the notices, authorizations, approvals, Orders, Permits, or Consents set forth on Schedule 3.4 are made, given or obtained (as applicable), and (c) the requirements of the HSR Act, any applicable antitrust, competition, foreign direct investment or "FDI", or merger control Laws promulgated by any Governmental Body ("Competition Laws") are complied with, neither the execution and delivery by Seller of this Agreement or the other Transaction Agreements, nor the consummation by Seller of the Transactions contemplated by such Transaction Agreements, nor performance or compliance by Seller with any of the terms or provisions hereof or thereof, will (i) conflict with or violate any provision of the Organizational Documents of Seller or any Acquired Entity, (ii) subject to the entry of the Sale Order, violate any Law or Order to which Seller, Seller's applicable Affiliates or any Acquired Entity is subject, (iii) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, acceleration, vesting or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of any Material Contract, Permit or Acquired Lease or accelerate Seller's or any Acquired Entity's obligations under any such Material Contract, Permit or Acquired Lease, or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any Acquired Assets, except, in the case of clauses (iii) and (iv), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(b) Except as set forth on Schedule 3.4(b), Seller is not required to file, seek or obtain any notice, Governmental Authorization, approval, Order, Permit or Consent of or with any Governmental Body in connection with the execution, delivery and performance by Seller of this Agreement or the consummation by Seller of the Transactions, except (i) any filings required to be made under the HSR Act, if applicable, or (ii) where failure to obtain such Consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially impair the ability of Seller to consummate the Transactions.

Section 3.5 Equity Interests of Acquired Entities.

(a) Except as set forth on Schedule 3.5(a), Seller does not currently own or control, directly or indirectly, any interest in any other corporation, partnership, trust, joint venture, limited liability company, association, or other business entity or contract treated as a partnership, including for U.S. federal income tax purposes. The subsidiaries of Seller set forth on Schedule 3.5 (the "Subsidiaries") are duly formed, validly existing and in good standing under the laws of their jurisdiction of organization and have all requisite corporate power and authority to carry on their business as now conducted and as presently proposed to be conducted. Except as set forth on Schedule 3.5(a), (i) all of the Subsidiaries are wholly owned, directly, by Seller free and clear of all Encumbrances and (ii) the Sellers own all Equity Interests in the Acquired Entities, free and clear of all Encumbrances. Except as set forth on Schedule 3.5, Seller is not a participant in any joint venture, partnership or similar arrangement or contract treated as a partnership, including for U.S. federal income tax purposes.

(b) All of the Equity Interests of the Acquired Entities have been duly authorized, validly issued and are fully paid and non-assessable and held free and clear of any

Encumbrances (other than Encumbrances arising under applicable securities Laws), and the Equity Interests of the Acquired Entities are not subject to, and were not issued in violation of, any preemptive or similar right. Except as set forth on Schedule 3.5(b), there are no (i) subscriptions, calls, options, warrants, rights or other securities convertible into or exchangeable or exercisable for Equity Interests of the Acquired Entities, or any other Contracts to which any Acquired Entity is a party or by which any Acquired Entity is bound obligating such Acquired Entity to issue or sell any Equity Interests in, or debt securities of, such Acquired Entity, (ii) equity equivalents, equity appreciation rights, phantom equity ownership interests or similar rights in the Acquired Entities or (iii) outstanding contractual obligations of the Acquired Entities to repurchase, redeem or otherwise acquire any Equity Interests of any Acquired Entity. There are no outstanding bonds, debentures, notes or other indebtedness of the Acquired Entities having the right to vote (or convertible into, or exchangeable for, securities having the right to vote) on any matter for which the Acquired Entities' equityholders may vote.

(c) No Subsidiary of Seller is a guarantor under, has granted Encumbrances to secure, or is otherwise an obligor under any debt securities, notes or other debt for borrowed money.

Section 3.6 Financial Statements.

(a) Seller has provided true, correct and complete copies of the (i) the audited consolidated balance sheets, statements of operations, statements of stockholders' equity and statements of cash flows of Seller and its Subsidiaries as of and for the fiscal years ended December 31, 2024 (the "Audited Financial Statements"); and (ii) the internally prepared unaudited consolidated balance sheet (the "Latest Balance Sheet"), statement of operations, statement of stockholders' equity and statement of cash flows of Seller and its Subsidiaries as of and for the fiscal year ended December 31, 2025 and for the three-month period ending on March 31, 2026 (the "Unaudited Financial Statements") to Purchaser, copies of which are attached in Schedule 3.6(a).

(b) The Financial Statements (i) present fairly in all material respects the consolidated financial position of Seller and its Subsidiaries as of and for the dates and periods designated therein and the results of operations and cash flows for the periods designated therein, (ii) except as set forth on Schedule 3.6(b), have been prepared in accordance with GAAP applied on a consistent basis during the periods involved (except as may be indicated in the notes thereto and, in the case of unaudited Financial Statements, subject to (x) normal and recurring year-end audit adjustments, (y) the absence of notes and (z) any other immaterial and non-recurring adjustments described therein, including in any notes thereto (not material in amount) and fairly present in all material respects the consolidated financial position of Seller and its consolidated Subsidiaries as of the dates thereof and the consolidated results of their operations and cash flows for the periods shown, except as may be indicated in the notes thereto.

Section 3.7 Title to Properties.

(a) Schedule 3.7(a) sets forth a list of the real property owned by Seller or any of the Acquired Entities (including any real property acquired by Seller or any of the Acquired Entities after the date hereof and prior to the Closing, the "Owned Real Property"). Except as set

forth on Schedule 3.7(a), neither Seller nor any of the Acquired Entities is a party to any agreement or option to purchase any real property or interest therein. Seller or the Acquired Entity, as applicable, owns good and valid fee simple title to the Owned Real Property, free and clear of all Encumbrances (other than Permitted Encumbrances). Neither Seller nor any Acquired Entity has executed any lease, license, or other Contract permitting any Person, and to the Knowledge of Seller, no Person otherwise has, the right to occupy or use all or any portion of the Owned Real Property.

(b) Schedule 3.7(b) sets forth a list of all real property used in the Business that is leased, subleased, licensed or otherwise occupied by a Seller and/or an Acquired Entity (the "Leased Real Property"). One or more of Seller or the Acquired Entities has a good and valid leasehold interest in the Leased Real Property, free and clear of all Encumbrances (other than Permitted Encumbrances), other than those of the lessors of such Leased Real Property.

Section 3.8 Contracts.

(a) Schedule 3.8 sets forth a list of each Material Contract, as of the date of this Agreement. "Material Contract" means (x) any material Contract to which Seller, any of its Affiliates or any Acquired Entity is a party or any material Contract relating to any Acquired Assets or Assumed Liabilities entered into prior to, on or after the date hereof, (y) Contracts listed on any Cure Schedule delivered pursuant to Section 1.5, which need not be listed in Schedule 3.8, and (z) any Contract to which Seller, any of its Affiliates or any Acquired Entity is a party, or relating to any Acquired Assets or Assumed Liabilities, other than with respect to this clause (z) purchase orders or similar instruments and any Employee Benefit Plan, in each case, that involves:

(i) obligations (contingent or otherwise) of, or payments to, the Company or any Acquired Entity in excess of $500,000 in the aggregate;

(ii) the license of, covenant not to sue with respect to, or other right to use, any patent, copyright, trademark, trade secret or other Intellectual Property, in each case whether granted to or from the Seller or any Acquired Entity;

(iii) the Acquired Leased Real Property;

(iv) any Labor Contracts; and

(v) any commitment or agreement to enter into any of the foregoing.

(b) True, correct and complete copies of all Material Contracts, including all material amendments, supplements and modifications thereto, have previously been made available to Purchaser or Purchaser's Advisors. Subject to requisite Bankruptcy Court approvals, and assumption by Seller or an Acquired Entity of the applicable Contract in accordance with Applicable Law and except (i) as a result of the commencement of the Chapter 11 Cases, or (ii) as set forth in Schedule 3.8(b), (A) each Material Contract is valid and binding on Seller, its Affiliates or the Acquired Entity that is a party thereto and, to the Knowledge of Seller, each other party thereto, and is in full force and effect, subject to the Enforceability Exceptions, (B) Seller, its Affiliates or the Acquired Entity that is a party thereto, and, to the Knowledge of Seller, any other

party thereto, have performed all obligations required to be performed by it under each Material Contract, (C) none of Seller, any of its Affiliates or any Acquired Entity has received any notice (or to the Knowledge of Seller, oral notice) of the existence of any breach or default on the part of Seller and the Acquired Entities under any Material Contract, (D) there are no events or conditions that constitute, or, after notice or lapse of time or both, will constitute a default on the part of Seller, any of its Affiliates or an Acquired Entity, or to the Knowledge of Seller, any counterparty under such Material Contract and (E) Seller and the Acquired Entities have not received any written notice (or to the Knowledge of Seller, oral notice) from any Person that such Person intends to terminate, or not renew, any Material Contract, except in each case of clauses (A) through (E), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.9 No Litigation. Except as set forth on Schedule 3.9, there are no Actions pending or, to the Knowledge of Seller, threatened (whether or not in writing), against or affecting Seller or any Acquired Entities, the Acquired Assets or the Assumed Liabilities that would reasonably be expected to have a Material Adverse Effect on Seller's performance of its obligations under this Agreement or the Transaction Documents or the consummation of the Transactions, or that would otherwise be material, individually or in the aggregate, to the Business, the Acquired Assets or the Assumed Liabilities.

Section 3.10 Permits; Compliance with Laws.

(a) Except as set forth on Schedule 3.10, (i) Seller (with respect to the Business and the Acquired Assets) and each Acquired Entity is, and has been since January 1, 2023, in compliance in all material respects with all Applicable Laws and applicable Orders with respect to the Business, the Acquired Assets and the Assumed Liabilities, and (ii) Seller and the Acquired Entities hold all licenses, identification numbers, registrations, franchises, permits, variances, certificates, approvals and authorizations from Governmental Bodies necessary for the lawful conduct of the Business as currently conducted, in each case, except as would not, individually or in the aggregate, reasonably be expected to be material, individually or in the aggregate, to the Business, the Acquired Assets or the Assumed Liabilities (collectively, "Permits"). Each of the Permits is in full force and effect, there is no ongoing proceeding that could adversely modify or terminate such Permit, and no approval of any Governmental Body is needed to transfer any such Permit to Purchaser.

(b) Seller and each Acquired Entity and each of their respective directors, officers and employees acting in such capacity and, to the Knowledge of Seller, each of its and their other agents acting on its or their behalf, is, and has been, since April 24, 2019 with respect to Sanctions and for the last five (5) years with respect to International Trade Laws, in compliance with applicable Sanctions and International Trade Laws. Without limiting any of the foregoing, neither Seller nor any Acquired Entity, nor any of their respective directors, officers, or employees, nor, to the Knowledge of Seller, any other Person acting on behalf of Seller or any Acquired Entity (i) is a Sanctioned Person, (ii) is subject to debarment or any list-based designations under any International Trade Laws, or (iii) has engaged in any business or dealings, directly or indirectly, with or involving a Sanctioned Country or a Sanctioned Person, or otherwise in violation of applicable Sanctions or International Trade Laws.

(c) Seller and each Acquired Entity and each of their respective directors, officers, employees, agents and, to the Knowledge of Seller, any other Person acting on behalf of the Seller (with respect to the Business) or any Acquired Entity is, and for the past five (5) years has been and has acted, in compliance with Anti-Corruption Laws. Without limiting any of the foregoing, neither Seller nor any Acquired Entity, nor any of their respective directors, officers, employees, agents, nor, to the Knowledge of Seller, any other Person acting on behalf of Seller (with respect to the Business) or any Acquired Entity has paid, offered, promised, or authorized the payment of money or anything of value, directly or indirectly, to any Government Official, any political party, or any other Person for the purpose of improperly influencing any act or decision or to secure any improper advantage.

(d) Neither Seller nor any Acquired Entity has received from any Governmental Body or any other Person any written or verbal notice of any violation, alleged violation, or any suspected violation of any Sanctions, Anti-Corruption Law or International Trade Law, or conducted any internal investigation with respect to, or made any voluntary or involuntary disclosure to a Governmental Body, or been the subject of any investigation by a Governmental Body concerning, any actual, suspected, or alleged violation of any Sanctions, Anti-Corruption Law or International Trade Law. Seller and each Acquired Entity has maintained books and records that, in reasonable detail, accurately and fairly reflect their transactions and dispositions of assets, and Seller and each Acquired Entity has implemented and maintained effective policies, procedures, and internal controls that promote compliance with all applicable Sanctions, Anti-Corruption Laws and International Trade Laws.

Section 3.11 Environmental Matters.

Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business:

(a) Seller and the Acquired Entities are, and have been since January 1, 2023 (or earlier, if Liability remains), in compliance with all applicable Environmental Laws, in each case with respect to the conduct of the Business or the occupancy or operation of the Leased Real Property or Owned Real Property.

(b) Since January 1, 2023 (or earlier if unresolved), none of Seller or the Acquired Entities has received any written, or to the Knowledge of Seller oral, notice, report, or other information alleging that Seller or any Acquired Entity is in material violation of or materially liable under, any Environmental Law.

(c) Seller and the Acquired Entities possess and are, and since January 1, 2023 (or earlier, if Liability remains), have been, in compliance with all Permits required under applicable Environmental Laws for the operation of the Business or to occupy the Leased Real Property.

(d) There is no Action under or pursuant to any Environmental Law that is pending or, to the Knowledge of Seller, threatened against Seller (with respect to the Business) or any Acquired Entity.

(e) Seller (with respect to the Business) and the Acquired Entities are not subject to any Order imposed by any Governmental Body pursuant to Environmental Laws under which there are material uncompleted, outstanding or unresolved obligations on the part of Seller or any Acquired Entity.

(f) Neither Seller (with respect to the Business) nor the Acquired Entities have assumed, undertaken, or provided any indemnification with respect to any material Liability of any Person arising under any Environmental Law or otherwise assumed any material Liability under Environmental Law via operation of Law.

(g) There has been no Release, disposal or transportation of, contamination by, or exposure of any Person to any Hazardous Materials at, from, or to any location, in each case for which Seller (with respect to the Business) or the Acquired Entities are or could be materially liable under any Environmental Law.

(h) Seller has made available to Purchaser true, correct and complete copies of all material environmental or health and safety reports, studies, records, audits and Permits relating to Seller's or its affiliates' or predecessors', past or current businesses, operations or assets that are within Seller's possession or under their control.

Section 3.12 Intellectual Property.

(a) Section 3.12(a)Schedule 3.12(a) contains a complete and accurate list of all (i) Registered Acquired Intellectual Property and (ii) patents and patent applications that are owned by third parties and exclusively licensed to Seller ("Exclusively Licensed Patents"), and specifies, where applicable, the jurisdiction in which such Registered Acquired Intellectual Property or Exclusively Licensed Patent has been registered or in which an application for such registration has been filed, including the respective registration or application number and the name of the owner. Seller and its Affiliates exclusively own, beneficially and of record, all of the Acquired Intellectual Property, free and clear of all Encumbrances (other than Permitted Encumbrances). All of the material Acquired Intellectual Property is subsisting, and to the Knowledge of Seller, valid and enforceable.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, (i) Seller and its Affiliates own or have sufficient rights to use all Intellectual Property necessary to or used in the conduct of the Business as currently conducted by Seller and its Affiliates, and (ii) Seller and its Affiliates take and have taken commercially reasonable steps to maintain the confidentiality of all trade secrets and other material non-public confidential Acquired Intellectual Property owned by the Company or its Affiliates or otherwise held by the Company or its Affiliates subject to an obligation of confidentiality and there have been no unauthorized uses or disclosures of any such material confidential Acquired Intellectual Property; provided that nothing in this Section 3.12(b) shall be interpreted or construed as a representation or warranty with respect to whether there is any infringement, misappropriation, or violation of any Intellectual Property, which is the subject of Section 3.12(d). Seller or one of the Acquired Entities is in possession of documentation of all trade secrets that is sufficient in all material respects to permit a person of ordinary skill in the relevant industry to exploit such trade secrets to conduct the Business.

(c) No Actions are pending or, to the Knowledge of Seller, threatened in a writing received by Seller or any of its Affiliates against Seller or any of its Affiliates, and since January 1, 2023, except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, Seller and its Affiliates have not received any written notice or claim, (i) challenging the ownership, scope, validity, enforceability or use by Seller or any of its Affiliates of any Acquired Intellectual Property or (ii) alleging that Seller or any of its Affiliates in connection with the Business, or any Acquired Entity, is infringing, misappropriating or otherwise violating the Intellectual Property of any Person.

(d) To the Knowledge of Seller, since January 1, 2023, no Person has infringed, misappropriated or otherwise violated the rights of Seller or its Affiliates with respect to any Acquired Intellectual Property. The operation of the Business by Seller and its Affiliates, and the Acquired Entities, has not violated, misappropriated or infringed the Intellectual Property of any other Person, except, in each case, as would not, individually or in the aggregate, reasonably be expected to be material to the Business.

(e) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the consummation of the Transactions will not result in the grant of any right or license to any third party of any Acquired Intellectual Property, or the loss of any rights to any Intellectual Property necessary to, or used in, the conduct of the Business as currently conducted by Seller and its Affiliates.

(f) Each Person who is or was involved in the creation or development of any portion of any Acquired Intellectual Property has executed a valid and enforceable written agreement with Seller or its Affiliates that assigns to Seller or its Affiliates all rights, title and interest in, to and under any and all such Intellectual Property ("IP Assignment Agreement"), and all Intellectual Property in such Person's contribution is owned exclusively by Seller or one of its Affiliates. No current or former shareholder, officer, director, or employee of Seller or its Affiliates (i) has any claim, right (whether or not currently exercisable), or ownership interest in any Acquired Intellectual Property or has excluded any Intellectual Property from their IP Assignment Agreement, or (ii) has been named as an inventor on any patent owned by, or pending patent application by, the Seller any Affiliate thereof for any device, process, design or invention of any kind now used by Seller or its Affiliates in the furtherance of their respective businesses, except for inventions that have been assigned to Seller or its Affiliates. To the Knowledge of Seller, no employee of Seller or its Affiliates is in breach of any IP Assignment Agreement.

(g) Seller or one of the Acquired Entities is in possession of a complete copy of all source code included in the Acquired Intellectual Property. No source code included in the Acquired Intellectual Property has been delivered, licensed or made available to any escrow agent or other Person who is not, as of the date of this Agreement, an employee of Seller or its Affiliates, and Seller and its Affiliates have no duty or obligation (whether present, contingent, or otherwise) to deliver, license, or make available such source code to any escrow agent or other Person. No event has occurred, and no circumstance or condition exists, that (with or without notice or lapse of time) will, or could reasonably be expected to, result in the delivery, license or disclosure of any source code included in the Acquired Intellectual Property to any other Person who is not, as of the date of this Agreement, an employee of Seller or its Affiliates.

(h) No Open Source Software has been incorporated into or combined with any software included in the Acquired Intellectual Property in such a way that would require any such software to be (i) disclosed or distributed in source code form, (ii) licensed for the purpose of making derivative works, or (iii) redistributable at no charge.

(i) No funding, facilities or personnel of a Governmental Body, or university, college, other educational institution or research center was used in the development of any of the Acquired Intellectual Property. No officer, employee or independent contractor of Seller or its Affiliates who was involved in, or who contributed to, the creation or development of any of the Acquired Intellectual Property has performed services for a Governmental Body, or university, college or other educational institution or research center, during a period of time during which such person was also performing services for Seller or its Affiliates in a manner that may give rise to any Intellectual Property ownership or use claims by such Governmental Body, university, college or other educational institution or research center with respect to any of the Acquired Intellectual Property. No Governmental Body has rights in any Acquired Intellectual Property except for Limited Rights in technical data and/or Restricted Rights in computer software (as each term is defined in 2 CFR Part 200 or 2 CFR Part 910, Appendix A to Subpart D), or other applicable similar rights pursuant to Government Contract clauses that are prescribed under applicable Laws. No prime contractor or subcontractor at any tier under any Government Contract has been granted or otherwise is entitled to any rights in any Acquired Intellectual Property pursuant to the terms of such Government Contract. Neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or any Acquired Entity is a party, has conceived or first actually reduced to practice any "invention" (as that term is defined in 2 CFR Part 910, Appendix A to Subpart D or 37 CFR 401.14) in performance of any Government Contract.

Section 3.13 Information Systems; Data Privacy.

(a) The IT Assets (i) are adequate and sufficient in all material respects for the conduct of the Business, and (ii) to the Knowledge of Seller, do not contain any virus, malware, trojan horse, worm, back door, time bomb, drop dead device or other program, routine, instruction, device, code, contaminant, logic or effect designed or intended to disable, disrupt, erase, enable any Person to access without authorization, or otherwise affect the functionality of, any such IT Assets (collectively, "Malicious Code"). In the last two (2) years, the IT Assets have not malfunctioned or failed in a manner that has materially disrupted the conduct of the Business, except as the result of a root cause that has been remediated in all material respects as of the date hereof. Seller and the Acquired Entities have at all times implemented and maintained, and have required all third parties processing Personal Information on behalf of Seller or the Acquired Entities (collectively, "Data Partners") to implement and maintain, commercially reasonable physical, technical, and administrative security measures designed to ensure the confidentiality and security of the IT Assets and all Personal Information and other confidential information stored or contained therein or transmitted thereby or otherwise processed by or on behalf of the Company. To the Knowledge of Seller, there has been no security breach involving the IT Assets which has resulted in unauthorized access to, or use, disclosure, deletion, modification, corruption or encryption of, any material data or information of the Business contained therein or processed thereby, or which resulted in third-party control over any material portion of the IT Assets used by the Business.

(b) With respect to the access, storage, use, modification, transfer, disclosure, destruction, or any other processing of Personal Information collected or maintained by or on behalf of Seller (with respect to the Business) or any Acquired Entity, Seller and the Acquired Entities are and have since January 1, 2023 been in material compliance with the Privacy Requirements.

(c) Neither Seller nor any Acquired Entity, nor, to the Knowledge of Seller, any Data Partner with regard to its processing of Personal Information on behalf of Seller or any Acquired Entity, since January 1, 2023, (i) has received any notice from any Governmental Body or Person alleging a violation of any Privacy Requirements by such Seller or Acquired Entity; (ii) has been required to notify any Governmental Body, affected individuals or other Persons of a violation of any Privacy Requirements; (iii) has been notified, or has been required by applicable Privacy Requirements to notify, any Governmental Body, Person or other party of any Security Breach, (iv) has experienced any material Security Breaches; or (v) has been the subject of any notice, claim, Action, suit, proceeding, arbitration, complaint, charge, or to the Knowledge of Seller investigation, or any pending or threatened Action from any Governmental Body or any other Person regarding any violation of, or failure to comply with, the Privacy Requirements or any Security Breach.

Section 3.14 Tax Matters.

(a) No Acquired Entity has been a member of an affiliated, combined, consolidated or unitary Tax group and no Acquired Entity has any liability for Taxes of any Person (other than an Acquired Entity) arising from the application of Treasury Regulations Section 1.1502-6 or any analogous provision of state, local or non-U.S. Law applicable to the Acquired Entities, or as a transferee or successor or by Contract (other than a Contract entered into in the ordinary course of business the principal subject matter of which is not Taxes.

(b) No Acquired Entity has ever been classified as an association taxable as a corporation for U.S. federal or applicable state income tax purposes.

(c) Each Acquired Entity is treated as an entity that is disregarded as separate from its owner for U.S. federal income tax purposes.

(d) Seller (or its applicable Affiliate) has prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file obtained in the Ordinary Course) all Tax Returns with respect to the Acquired Assets required to be filed by it. Each Acquired Entity has prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file obtained in the Ordinary Course) all Tax Returns required to be filed by it. All such Tax Returns (taking into account all amendments thereto) are true, complete and accurate in all material respects.

(e) Except as set forth on Schedule 3.14(e), all Taxes with respect to the Acquired Assets owed by Seller that are due (whether or not shown on any Tax Return) have been timely paid in full, except to the extent the nonpayment thereof is permitted or required by the Bankruptcy Code. All income and other material Taxes with respect to the Acquired Entities that are due (whether or not shown on any Tax Return) have been timely paid in full, except to the

extent the nonpayment thereof is permitted or required by the Bankruptcy Code or have been adequately reserved against in accordance with GAAP.

(f) There are no Encumbrances for Taxes on any of the Acquired Assets or assets of the Acquired Entities other than Permitted Encumbrances.

(g) No written claim has been made in a jurisdiction where any Acquired Entity or Seller (with respect to the Acquired Assets), as applicable, does not file Tax Returns that such Acquired Entity or Seller (with respect to the Acquired Assets) is subject to taxation in that jurisdiction.

(h) No Acquired Entity is a party to, is bound by, or has any obligation under, any Tax indemnity agreement, Tax sharing agreement, Tax allocation agreement or similar agreement that will be in effect after Closing, in each case, other than pursuant to customary provisions of a credit agreement, other commercial agreement not principally relating to Taxes. There are no Liabilities for Taxes of Seller or its Affiliates or the Acquired Entities that could result in Liability to Purchaser or any of its Affiliates as a transferee or successor or otherwise attach to any of the Assets.

(i) Neither Seller nor any Acquired Entity has waived any statute of limitations in respect of Taxes with respect to the Acquired Assets or Taxes of the Acquired Entities or agreed to any extension of time with respect to an assessment or deficiency for Taxes with respect to the Acquired Assets or Taxes of the Acquired Entities (in each case, other than pursuant to extensions of time to file Tax Returns obtained in the Ordinary Course or in response to a request by a taxing authority in connection with an audit or similar proceeding), in each case, which waiver or extension is currently in force and would have effect after the Closing Date.

Section 3.15 Employee Benefit Plans.

(a) Schedule 3.15(a) sets forth a complete and correct list of each Employee Benefit Plan. For purposes of this Agreement, "Employee Benefit Plan" means each "employee benefit plan" within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), each other deferred compensation, bonus or incentive compensation, pension, retiree medical, disability or life insurance plan, program, Contract, agreement or arrangement, each employment, severance, change-of-control and each other employee benefit or compensation plan, program, Contract, agreement or arrangement, in each case that is maintained, sponsored, administered or contributed or required to be contributed to by Seller or any of its Subsidiaries for the benefit of Business Employees or former Business Employees; provided that the term "Employee Benefit Plan" shall not include any statutory benefit plan to which Sellers or any of its Subsidiaries or any Acquired Entity is required to participate in or comply with that is sponsored or administered by a Governmental Body (such as Social Security) or any "multiemployer plan" as defined in Section 3(37) of ERISA. Seller has made available to Purchaser or Purchaser's Advisors a true and complete copy of the current plan document for each material Employee Benefit Plan. Notwithstanding anything to the contrary in the foregoing, Schedule 3.15 shall exclude any at-will employment agreements, offer letters or similar Contracts that may be terminated upon notice of 30 days or less without material Liability to Seller. No Acquired Entity has any Liability, whether actual or contingent, with respect to any Employee Benefit Plan.

(b) No Employee Benefit Plan is, and none of Seller, the Acquired Entities or any ERISA Affiliate thereof contributes to, at any time contributed to or has any Liability or obligation, whether fixed or contingent, with respect to: (i) a multiemployer plan, as defined in Section 3(37) of ERISA; (ii) a single employer plan or other pension plan that is subject to Title IV of ERISA or Section 302 or 303 of ERISA or Section 412 or 430 of the Tax Code; (iii) a multiple employer plan (within the meaning of Section 413(c) of the Tax Code); (iv) a multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA); or (v) voluntary employee benefit association under Section 501(a)(9) of the Tax Code or any "funded welfare plan" within the meaning of Section 419 of the Tax Code. No Liability under Title IV of ERISA has been or could be incurred by Seller, the Acquired Entities or any of their ERISA Affiliates.

(c) Neither the execution and delivery of this Agreement, nor the consummation of the Transactions, either alone or in combination with another event (whether contingent or otherwise), will result in the payment of any amount that would not be deductible by reason of Section 280G of the Tax Code or be subject to the sanctions imposed under Section 4999 of the Tax Code. None of the Acquired Entities has any obligation to provide any tax gross up, tax equalization or other similar Tax-related payment or benefit with respect to any Taxes, including Taxes arising under Section 409A, Section 280G or Section 4999 of the Tax Code.

(d) None of the Acquired Entities currently or have ever employed any individuals.

Section 3.16 Employees.

(a) Seller has made available a complete list of each Business Employee, and for each such Business Employee as of the date hereof, true and correct information as to the following: (i) name; (ii) job title; (iii) employing entity; (iv) date of hire; (v) rate of base compensation (hourly wage rate or annual salary, as applicable); (vi) entitlements to severance pay; (vii) target annual bonus and other incentive-based compensation; (viii) status as active or inactive and, if applicable, the reason for leave status and anticipated return date (if known); (ix) primary work location (including address, city and state); (x) exempt or non-exempt status under the Fair Labor Standards Act or similar Applicable Law; and (xi) visa or other work permit status (if applicable). All Business Employees are employed at will and may be terminated at any time, with or without cause, excluding notice that may be due under the WARN Act.

(b) Seller has made available a complete list of each Business Service Provider as of the date hereof, and, for each of the foregoing, their: (i) name; (ii) engaging entity; (iii) initial date of engagement; (iv) the rate of compensation; (v) location where services are provided; (vi) a description of services provided; and (vii) the approximate average number of hours of work they perform each week.

(c) Since January 1, 2023, Seller and all Acquired Entities have complied in all material respects with all Laws related to equal employment opportunity and with other Laws related to labor and employment practices including, but not limited to, those related to immigration, wages, hours, worker classification and collective bargaining.

(d) Neither Seller nor any Acquired Entity is bound by or subject to any written or oral, express or implied, contract, commitment or arrangement with any labor union, and no labor union has requested or, to the Knowledge of Seller, has sought to represent any of the Business Employees. There is no strike or other labor dispute involving Seller or any Acquired Entity pending, or to the Knowledge of Seller, threatened, which could have a Material Adverse Effect, nor is Seller aware of any labor organization activity involving any Business Employees.

(e) Neither Seller nor any Acquired Entity is delinquent in payments to any Business Employee for any wages, salaries, commissions, bonuses, or other direct compensation for any service performed for it to the date hereof or amounts required to be reimbursed to such Business Employees. Seller and each Acquired Entity has complied in all material respects with all applicable state and federal equal employment opportunity Laws and with other Laws related to employment, including those related to wages, hours, worker classification and collective bargaining. Seller and each applicable Acquired Entity has withheld and paid to the appropriate Governmental Body or is holding for payment not yet due to such Governmental Body all amounts required to be withheld from Business Employees and is not liable for any arrears of wages, taxes, penalties or other sums for failure to comply with any of the foregoing.

Section 3.17 Insurance; Support Obligations. Seller has in full force and effect insurance policies (the "Business Insurance Policies") as would be reasonable and customary for companies like Seller.

(b) True, correct and complete copies of the Business Insurance Policies have been made available to Purchaser.

(c) All premiums due and payable under the Business Insurance Policies have been paid when due, and there have been no material defaults under any such Insurance Policy by the Seller or any of its Subsidiaries in the past year.

(d) All financial assurances, including letters of credit, sureties, bonds, or similar arrangements supporting the operation, monitoring, closure, remediation, reclamation, or post-closure obligations relating to or with respect to the Acquired Assets over the last five (5) years are set forth in Schedule 3.17(d).

Section 3.18 Brokers. Except as set forth on Schedule 3.18, the fees and expenses of which will be paid by Seller, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the Transactions based upon arrangements made by or on behalf of Seller or its Affiliates.

Section 3.19 Government Contracts.

(a) Except as set forth on Schedule 3.19(a), neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or an Acquired Entity is a party, is party to any current Government Contract.

(b) No "Assigned Contract" constitutes a Government Contract.

(c) Neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or an Acquired Entity is a party, has submitted any Government Bid, for which no award has yet been made, and which, if awarded, could result in a Government Contract.

(d) With respect to each Government Contract and any proposals or bids submitted for any Government Contract, during the past six (6) years:

(i) neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or any Acquired Entity is a party, nor any of their Principals (as that term is defined by 48 C.F.R. § 2.101), employees, or, to the Knowledge of the Sellers, other Persons acting on their behalf, is or has been suspended or debarred, proposed for debarment or suspension, declared ineligible or determined non-responsible from holding, performing or bidding on any Government Contract, and no proceeding regarding suspension, debarment, ineligibility or non-responsibility has been commenced or threatened in writing;

(ii) no Governmental Body, prime contractor or subcontractor has notified in writing (nor to the Knowledge of the Sellers, orally) the Seller, any Acquired Entity, or any joint venture to which the Seller or any Acquired Entity is a party, of any material breach or material violation of any applicable Law relating to such Government Contract;

(iii) neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or an Acquired Entity is a party, has received any written (or, to the Knowledge of the Seller's, oral) notice of (A) termination for default or cause, cure notice, or show cause notice relating to such Government Contract, (B) any audit (other than routine audits in the ordinary course of business) or investigation by any Governmental Body relating to such Government Contract, or (C) any other material claim or other material dispute relating to such Government Contract;

(iv) except as set forth on Schedule 3.19(d)(iv), neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or any Acquired Entity is party, has conducted any internal investigation or made any voluntary or mandatory disclosure to any Governmental Body, with respect to any misstatement, overpayment, or actual, alleged or potential material violation of law relating to such Government Contract;

(v) neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or any Acquired Entity is a party, has received any written civil investigative demand or subpoena relating to any Government Contract;

(vi) except as set forth on Schedule 3.19(d)(iv), the Seller, the Acquired Entities, and any joint venture to which the Seller or any Acquired Entity is a party, has complied, in all material respects, with all laws applicable to such Government Contracts and the terms and conditions of (including all representations and certifications relating to) such Government Contract;

(vii) each representation and certification made by the Seller, the Acquired Entities, and any joint venture to which the Seller or any Acquired Entity is a party, or

incorporated into any Government Contract or related bid, offer, or proposal regarding size status or other preferential status (such as small business, veteran-owned small business, service-disabled veteran-owned small business, woman-owned, HUBZone, minority-owned, etc.) was current and accurate as of the date given in all material respects;

(viii) except as set forth on Schedule 3.19(d)(iv), all invoices and claims for payment, reimbursement or adjustment submitted by the Seller, any Acquired Entity, or any joint venture to which the Seller or any Acquired Entity is a party, were current, accurate and complete in all respects as of their submission dates, and no Governmental Body, prime contractor or higher tier subcontractor has disallowed, withheld or set off, or threatened in writing or orally to disallow, withhold or set off, any amount due to the Seller, any Acquired Entity, or any joint venture to which the Seller or any of its Subsidiaries under any Government Contract; and

(ix) except as set forth on Schedule 3.19(d)(iv), all costs, fees, profit and other charges and expenses of any nature that have been charged prior to Closing to any cost reimbursable or flexibly priced type Government Contract, and all sums invoiced prior to Closing under any type of Government Contract, were properly chargeable or invoiced to such Government Contract, were charged or invoiced in amounts consistent with the requirements of such Government Contract and applicable Law, and there will be no material refunds, reimbursements or adjustments including, without limitation, any cost disallowances.

(e) Neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or any Acquired Entity is a party holds a facility security clearance as defined in the National Industrial Security Program Operating Manual (32 C.F.R. pt 117) and neither the Seller, nor any Acquired Entity, nor any joint venture to which the Seller or any Acquired Entity is a party needs a facility security clearance or needs its employees to hold personal security clearance(s) to perform any Government Contract.

(f) Except as set forth on Schedule 3.19(f), none of the execution, delivery, or performance of this Agreement will require: (i) the novation or (ii) assignment of any current Government Contract, or (iii) consent of any counterparty to any current Government Contract; or (iv) any notice, disclosure or approval of any foreign ownership, control, or influence ("FOCI").

(g) Except as set forth on Schedule 3.19(g), no Governmental Body has acquired any property interest in any real property or asset, including Equipment, held by the Seller, any Acquired Entity, or any Joint Venture to which the Seller or any Acquired Entity is a party, under any Government Contract.

Section 3.20 Inter-Company Transactions. A true, correct and complete list and description of all Contracts (including any amendments, supplements, restatements or modifications thereto) between Seller or any Excluded Entity, on the one hand, and an Acquired Entity, on the other, relating to the Acquired Assets, Assumed Liabilities or the Business, is set forth on Schedule 3.20, and true, correct and complete copies of such Contracts have been made available to Purchaser. No officer, director, employee or equityholder of Seller, nor any Affiliate thereof (other than an Acquired Entity) nor, to the Knowledge of Seller, any member of any such

Person's immediate family: (a) has any interest in any Acquired Asset other than an indirect interest as an equityholder of Seller or (b) is party to any Contract with Seller or any of its Subsidiaries (in each case, other than services provided by, and payments made to, and other compensation provided to, employees, officers and directors (or equivalent) in the Ordinary Course, and agreements related to the acquisition or disposition of any Equity Interests of Seller).

Section 3.21 Title to Assets. Subject to any Permitted Encumbrances, Seller has good and valid title to, and the right to use and sell without limitation, free and clear of all interests and Encumbrances subject to section 363 of the Bankruptcy Code, the tangible Acquired Assets except to the extent the failure to have such title or right to use would not be expected to be material to the Business. At the Closing, pursuant to the Sale Order, Seller will convey such good and valid title to or rights to use all of the tangible Acquired Assets, free and clear of all Encumbrances (other than Permitted Encumbrances that will be released at the Closing Date) to Purchaser. The tangible Acquired Assets are (to the extent applicable) in good operating condition (ordinary wear and tear excepted) and are adequate for the uses to which they are being put, and none of such tangible Acquired Assets is in need of maintenance or repairs except for ordinary, routine maintenance and repairs.

Section 3.22 Sufficiency of Assets. The Acquired Assets constitute all of the assets and properties (tangible and intangible) necessary for the conduct of, and such assets and properties will be sufficient for Purchaser to conduct, the Business in the manner in which it was being conducted immediately prior to the Closing and since the Petition Date, other than the Excluded Assets. None of Seller or any of its Affiliates or any other Person owns, whether directly or indirectly through another Person, any other property or assets that are used in or related to the Business, other than the Excluded Assets.

Section 3.23 No Material Adverse Effect. Since the Balance Sheet Date through the date of this Agreement, except as set forth on Schedule 3.23, no Material Adverse Effect has occurred.

Section 3.24 Absence of Changes. Except as set forth on Schedule 3.24, and except as expressly contemplated by this Agreement, since the Balance Sheet Date, Seller (i) has, in all material respects, conducted the Business and operated the Acquired Assets and properties in the Ordinary Course and (ii) have not taken any action that would require the consent of Purchaser pursuant to Section 6.1 if such action had been taken during the Interim Period.

Section 3.25 CFIUS. Neither Seller nor any Acquired Entity engages in (a) the design, fabrication, development, testing, production, or manufacture of one or more "critical technologies" within the meaning the DPA; (b) the ownership, operation, maintenance, supply, manufacture, or servicing of "covered investment critical infrastructure" within the meaning of the DPA (where such activities are covered by column 2 of Appendix A to 31 C.F.R. Part 800); or (c) the maintenance or collection, directly or indirectly, of "sensitive personal data" of U.S. citizens within the meaning of the DPA.

Section 3.26 Public Subsidies. Except as set forth on Schedule 3.26 (i) no Acquired Entity is expected to return or repay any subsidy, grant, aid, benefit or other public funds in whatever form from any governmental, national or supra-national authority or agency ("**Public**

Subsidies"), and (ii) each Acquired Entity complied in all material aspects with the terms of the received Public Subsidies, in particular no Acquired Entity (A) has submitted false statements or documents during the process of obtaining the Public Subsidy as well as after the Public Subsidy has been obtained, (B) has failed to notify the relevant authority of any substantial modification to any project financed from the Public Subsidies, where such notification was required under Applicable Law or agreement concerning the Public Subsidies for any Acquired Entity; (C) has failed to execute any amendment to any agreement concerning the Public Subsidies, including any amendment required to transfer such Public Subsidy to another member of the group holding the asset necessary for the implementation of the project financed by such Public Subsidy, where such amendment was required under Applicable Law or the terms of such agreement.

Section 3.27 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules) and the Transaction Agreements (in each case, in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement and the Transaction Agreements) (the "Express Representations") (it being understood that the Purchaser Group has relied only on the Express Representations for purposes of the Transactions), no Seller nor any other Person on behalf of any Seller makes any express or implied representation or warranty with respect to any Seller, the Acquired Assets, or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in (x) any presentations or other materials prepared by Moelis, the "Information Presentation", (y) that certain virtual data room administered by Datasite (the "Dataroom"), or (z) in the Projections to Purchasers on behalf of Seller Parties). Without limiting the foregoing, no Seller nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser Group, or Purchaser Group's use of or reliance on or discussions with respect to, any such information, statements, disclosures, documents, projections, forecasts, or other material in expectation of the Transactions, except for any Express Representations. Notwithstanding anything to the contrary herein, the foregoing shall not limit any Express Representations or claims or remedies in respect of Fraud.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Seller as follows.

Section 4.1 Organization and Qualification. Purchaser is a limited liability company duly formed, validly existing, and in good standing under the Laws of the State of Delaware and has all requisite power and authority necessary to carry on its business as it is now being conducted, except (other than with respect to Purchaser's due formation and valid existence) as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on such Purchaser's ability to consummate the Transactions. Purchaser is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or used by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified, or in good standing would not, individually or in the

aggregate, reasonably be expected to prevent or adversely affect such Purchaser's ability to consummate the Transactions.

Section 4.2 Authorization of Agreement. Purchaser has all necessary organizational power and authority to execute and deliver this Agreement and the Transaction Agreements and to perform its obligations in this Agreement and to consummate the Transactions. The execution, delivery, and performance by Purchaser of this Agreement, and the consummation by Purchaser of the Transactions, subject to requisite Bankruptcy Court approvals, have been duly authorized by all requisite corporate or similar organizational action and no other corporate or similar organizational proceedings on Purchaser's part are necessary to authorize the execution, delivery, and performance by Purchaser of this Agreement and the consummation by it of the Transactions. Subject to requisite Bankruptcy Court approvals, this Agreement has been duly executed and delivered by Purchaser and, assuming due authorization, execution, and delivery of this Agreement by the other Parties, constitutes a legal, valid, and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions.

Section 4.3 Conflicts; Consents.

(a) Assuming that (i) the Sale Order and all other requisite Bankruptcy Court approvals are obtained, and (ii) the requirements of any Competition Laws are complied with, neither the execution and delivery by Purchaser of this Agreement, nor the consummation by Purchaser of the Transactions, nor performance or compliance by Purchaser with any of the terms or provisions hereof, will (A) conflict with or violate any provision of Purchaser's Organizational Documents, (B) violate any Law or Order to which Purchaser is subject, (C) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under, (x) give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit under, (y) any of the terms or provisions of any loan or credit agreement or other material Contract to which Purchaser is a party, or (z) accelerate Purchaser's obligations under any such Contract, or (D) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of Purchaser or any of its Subsidiaries, except, in the case of clauses (A) through (D), as would not, individually or in the aggregate, reasonably be expected to prevent or materially impair, alter, or delay Purchaser's ability to consummate the Transactions.

(b) Except as set forth on Schedule 4.3(a), Purchaser is not required to file, seek or obtain any notice, Governmental Authorization, approval, Order, Permit or Consent of or with any Governmental Body in connection with the execution, delivery and performance by Purchaser of this Agreement or the consummation by Purchaser of the Transactions, except (i) any filings required to be made under the HSR Act, if applicable, or (ii) where failure to obtain such Consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially impair the ability of Purchaser to consummate the Transactions.

Section 4.4 Financing. Purchaser will have at the Closing sufficient funds in an aggregate amount necessary to pay all amounts payable under this Agreement, including the Purchase Price, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other Transactions, including the payment of the Purchase

Price and all fees, expenses of, and other amounts required to be paid by, Purchaser in connection with the Transactions and to the actual knowledge of Purchaser, there is no circumstance or condition that would reasonably be expected to prevent the availability of such funds or otherwise impair such capability at the Closing. Purchaser affirms that it is not a condition to Closing or to any of its obligations under this Agreement that Purchaser obtain financing for the Transactions. Purchaser is and shall be capable at the Closing of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts and the related Assumed Liabilities.

Section 4.5 **Brokers**. Except for Goldman Sachs, all of whose fees and expenses will be paid by Purchaser or an Affiliate thereof, there is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that might be entitled to any success fee or commission in connection with the Transactions.

Section 4.6 **No Litigation**. There are no Actions pending or, to Purchaser's actual knowledge, threatened against or affecting Purchaser that will or would reasonably be expected to materially and adversely affect Purchaser's performance of its obligations under this Agreement or the consummation of the Transactions.

Section 4.7 **Investment Representation; Investigation**. The Purchaser is acquiring, the Equity Interests of the Acquired Entities for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities Laws. Purchaser is an "accredited investor" within the meaning of Regulation D promulgated pursuant to the Securities Act. Purchaser is capable of evaluating the merits and risks of the Transactions and is able to bear the substantial economic risk of such investment for an indefinite period of time. Purchaser has been afforded access to the books and records, facilities and personnel of the Acquired Entities for purposes of conducting a due diligence investigation and has conducted a due diligence investigation of the Acquired Entities.

Section 4.8 **Certain Arrangements**. As of the date hereof, except for arrangements among any holders of bonds, indentures, notes or similar instruments of Seller or an Affiliate thereof, there are no Contracts, undertakings, commitments, agreements or obligations, whether written or oral, between any member of the Purchaser Group, on the one hand, and any member of the management of Seller or its board of directors (or applicable governing body of any Affiliate of Seller), any holder of equity or debt securities of Seller, or any lender or creditor of Seller or any Affiliate of Seller, or any third party on the other hand, (a) relating in any way to the acquisition of the Acquired Assets or the Transactions (including any joint bidding, exclusivity or similar arrangement with any third party) or (b) that would be reasonably likely to prevent, restrict, impede or adversely affect the ability of Seller or any of their Affiliates to entertain, negotiate or participate in any such Transactions.

Section 4.9 **No Other Representations or Warranties**. Except for the representations and warranties expressly contained in this Article IV and the Transaction Agreements (in each case, in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement and the Transaction Agreements (the "Express Purchaser Representations")), it is understood that Seller has relied only on the Express Purchaser Representations for purposes of

the Transactions. Seller is not relying on and will not rely on the accuracy or completeness of any other express or implied representation or warranty with respect to Purchaser, the Excluded Assets, or the Excluded Liabilities, or with respect to any other information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person to Seller on behalf of the Purchaser Group. Seller acknowledges that neither Purchaser nor any other Person on behalf of Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to Seller by Purchaser. Without limiting the foregoing, neither Purchaser nor any other Person will have or be subject to any Liability whatsoever to Seller resulting from the distribution to Seller, or Seller's use of or reliance on, any such information, statements, disclosures, documents, projections, forecasts, or other material provided in expectation of the Transactions, except for any Express Purchaser Representations. Notwithstanding anything to the contrary herein, the foregoing shall not limit any Express Purchaser Representations or claims or remedies in respect of Fraud.

ARTICLE V
BANKRUPTCY COURT MATTERS

Section 5.1 Bankruptcy Actions.

(a) Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the Sale Order. Any Bidding Procedures Order filed with the Bankruptcy Court will be subject to the following bid protections: (a) any initial overbid in connection with an Alternative Transaction (i) must exceed the Purchase Price by at least $500,000 (the "Minimum Overbid Increment") and (ii) must provide for payment in full of the Break-Up Fee and Expense Reimbursement upon Closing of the Alternative Transaction; (b) subsequent bids must be in increments of at least (i) $500,000 in the case of bids for the acquisition of all or substantially all of the Acquired Assets (a "Whole Company Bid") and (ii) $250,000 in the case of bids for less than all or substantially all of the Acquired Assets (a "Partial Bid"), provided, that in the case of any Partial Bid, Seller shall have the right, in its sole and absolute discretion, to accept or reject such bid notwithstanding such bid's compliance or non-compliance with the applicable overbid increment; and (c) Purchaser shall have the right, but not the obligation, to exceed any higher or better bid as set forth in an Alternative Transaction. Seller shall promptly provide Purchaser with written notice of the terms and conditions of any Alternative Transaction pursuant to Section 7.5.

(b) The bidding procedures to be employed with respect to this Agreement shall be the Bidding Procedures reflected in the Bidding Procedures Order, as may be amended by the Stalking Horse Order. Purchaser agrees and acknowledges that Seller, including through its representatives, are and may continue soliciting inquiries, proposals or offers from third parties in connection with any Alternative Transaction pursuant to the terms of the Bidding Procedures Order. Seller may modify the motion seeking approval of the Sale Order pursuant to discussions with the United States Trustee assigned to the Chapter 11 Cases, the Bankruptcy Court, any creditor or committee representing a group of creditors in the Chapter 11 Cases, or any other party in interest, with such modifications being acceptable to Purchaser in its commercially reasonable discretion.

(c) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Section 8.1 and (ii) the Closing Date, the Parties shall use their respective commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order.

(d) Purchaser shall promptly take all actions as are reasonably requested by Seller to assist in obtaining the Bankruptcy Court's entry and approval of the Sale Order, and any other Order reasonably necessary in connection with the Transactions as promptly as practicable, including furnishing affidavits, non-confidential financial information, or other documents or information for filing with the Bankruptcy Court and making such employees and Advisors of Purchaser and its Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things, (i) providing necessary assurances of performance by Purchaser under this Agreement, (ii) demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code, (iii) establishing adequate assurance of future performance by Purchaser of the Purchaser's Assigned Contracts as required under Section 365 of the Bankruptcy Code, and (iv) demonstrating the Purchaser's ability to pay and perform or otherwise satisfy Purchaser's Assumed Liabilities following the Closing.

(e) Each of Seller and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the Transactions and (ii) keep the other reasonably apprised of the status of material matters related to the Agreement, including, upon reasonable request promptly furnishing the other with copies of notices or other communications received by Seller from the Bankruptcy Court with respect to the Transactions.

(f) Seller and Purchaser acknowledge that this Agreement and the sale of the Acquired Assets are subject to higher and better bids and Bankruptcy Court approval. Purchaser acknowledges that Seller must act in good faith and take reasonable steps to demonstrate that it has sought to obtain the highest or otherwise best price for the Acquired Assets, including giving notice thereof to the creditors of Seller and other interested parties, providing information about Seller and the Business to prospective bidders, entertaining higher and better offers from such prospective bidders, and, in the event that additional qualified prospective bidders desire to bid for the Acquired Assets, conducting an Auction.

(g) Purchaser shall use commercially reasonable efforts to provide adequate assurance of future performance as required under Section 365 of the Bankruptcy Code for the Assigned Contracts. Purchaser agrees that it will use commercially reasonable efforts to assist in obtaining a Bankruptcy Court finding that there has been a sufficient demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Purchaser's Advisors available to testify before the Bankruptcy Court.

(h) Nothing in this Section 5.1 shall prevent Seller from modifying the bidding procedures as necessary or appropriate to maximize value for Seller's estate in accordance with Seller's fiduciary obligations, following consultation with Purchaser.

(i) Purchaser agrees not to solicit or enter into any joint bidder, exclusivity, or similar arrangement prior to the Closing without the prior written consent of Seller.

Section 5.2 Sale Order. The Sale Order shall, among other things, (a) approve, pursuant to Sections 105, 363 and 365 of the Bankruptcy Code (i) the execution, delivery and performance by Seller of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the execution, delivery, and performance by Seller of its obligations under this Agreement, (b) authorize and empower Seller to assume and assign to Purchaser the Assigned Contracts, (c) find that Purchaser is a "good faith" purchaser within the meaning of Section 363(m) of the Bankruptcy Code, find that Purchaser is not a successor to Seller, and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code, (d) find that Purchaser has provided adequate assurance (as that term is used in Section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assigned Contracts, and (e) find that Purchaser shall have no Liability for any Excluded Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Acquired Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, successor, or transferee Liability, labor law, de facto merger, environmental, or substantial continuity. Without limiting Seller's obligation to take all such actions as are reasonably necessary to obtain Bankruptcy Court approval of the Sale Order, Purchaser agrees that it will promptly take such actions as are reasonably requested by Seller to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (A) demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code and (B) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code and in accordance with the Bidding Procedures Order.

Section 5.3 Approval. Seller's obligations under this Agreement and in connection with the Transactions are subject to entry of and, to the extent entered, the terms of any Orders of the Bankruptcy Court (including entry of the Sale Order). Nothing in this Agreement shall require Seller or its Affiliates to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

ARTICLE VI
COVENANTS AND AGREEMENTS

Section 6.1 Conduct of the Business of Seller.

(a) Except (i) as required by applicable Law, Order or a Governmental Body, (ii) any limitations on operations imposed by the DIP Financing Agreement and the other DIP Documents (as defined in the DIP Financing Agreement), as the case may be, (iii) as expressly contemplated or required by this Agreement, or (iv) as set forth on Schedule 6.1, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VII), unless Purchaser otherwise consents in writing, Seller shall (and shall cause its Affiliates and the Acquired Entities to) (A) carry on the Business

in the Ordinary Course, (B) conduct their business in accordance with Applicable Law and (C) use commercially reasonable efforts to maintain its Permits, material Intellectual Property, Equipment and Business Insurance Policies.

(b) Except (i) as required by Applicable Law or Order, (ii) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code, as the case may be, or (iii) as expressly contemplated or required by this Agreement, and notwithstanding any other provision of this Agreement, Seller shall not, and shall cause its Affiliates not to, enter into any settlement with respect to any matters disclosed on Schedule 3.19(d)(iv) that would reasonably be expected to result in liability or payment of money damages unless Purchaser otherwise consents thereto in writing.

(c) Except (i) as required by Applicable Law, Order or a Governmental Body, or (ii) as set forth on Schedule 6.1(c), during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VII), unless Purchaser otherwise consents in writing, Seller shall not, and shall cause its Affiliates and the Acquired Entities not to, take any of the following actions with respect to the Business, the Acquired Assets or the Assumed Liabilities:

(i) (A) issue, sell, encumber, or grant any Equity Interests of the Acquired Entities, (B) redeem, purchase, or otherwise acquire any of the outstanding Equity Interests of the Acquired Entities, (C) establish a record date for, declare, set aside for payment or pay any dividend or distribution on, or make any other dividend or distribution in respect of, any Equity Interests of the Acquired Entities, or (D) split, combine, subdivide, or reclassify any Equity Interests of the Acquired Entities;

(ii) (A) incur, assume or otherwise become liable for any indebtedness for borrowed money, issue or sell any debt securities or rights to acquire any debt securities of Seller or the Acquired Entities, guarantee any such indebtedness or any debt securities of another Person (collectively, "Indebtedness"), except for (1) letters of credit, bank guarantees, security or performance bonds or similar credit support instruments, overdraft facilities or cash management programs, in each case issued, made or entered into in the Ordinary Course and that do not constitute Assumed Liabilities, (2) Indebtedness incurred under arrangements that are not secured by the Acquired Assets or the assets held by the Acquired Entities and that the Acquired Entities are not responsible for (whether as borrowers or guarantors) and that do not constitute Assumed Liabilities, and (3) Indebtedness incurred under existing arrangements (including in respect of letters of credit) that do not constitute Assumed Liabilities, in each case of this clause (A), other than Excluded Liabilities, (B) enter into any swap or hedging transaction or other derivative agreements, or (C) make any loans, capital contributions or advances to, or investments in, any Person;

(iii) sell or lease to any Person, in a single transaction or series of related transactions, any of the Acquired Assets or the assets held by the Acquired Entities, except (x) Ordinary Course dispositions of Inventory, or (y) Ordinary Course

dispositions of obsolete, surplus or worn out assets or assets that are no longer used or useful in the conduct of the Business;

(iv) make or authorize capital expenditures including for property, plant and Equipment;

(v) except as permitted under Section 6.1(c)(iv), and except for acquisitions made with Purchaser's prior written consent, make any acquisition of, or investment in, any securities or business (including by merger) or consolidate with or into any legal entity, (which shall exclude acquisitions of Inventory in the Ordinary Course);

(vi) (1) increase any compensation of any current or former Business Employee (including bonus or long-term incentive opportunities), (2) hire any employee who would be a Business Employee, (3) take any action to accelerate any rights or benefits of any current or former Business Employee under any Employee Benefit Plan or (4) terminate any Business Employee or Business Service Provider (other than for cause); provided that the foregoing shall not restrict Seller from taking any action with respect to employees who are non-Business Employees, including the termination of any employees who are non-Business Employee;

(vii) recognize any Labor Union as the bargaining representative for any Business Employee, or make any statement or take any action that would cause Purchaser or its Affiliates to be a "perfectly clear successor" (as defined by the National Labor Relations Board and courts interpreting the National Labor Relations Act) to any bargaining relationship with any Labor Union;

(viii) make any changes in financial accounting methods, principles or practices affecting the consolidated assets, Liabilities or results of operations of Seller, its Affiliates and the Acquired Entities with respect to the Business, the Acquired Assets or the Assumed Liabilities except insofar as may be required (A) by GAAP (or any interpretation thereof), (B) by any applicable Law or (C) by any Governmental Body or quasi-governmental authority (including the Financial Accounting Standards Board or any similar organization);

(ix) grant any Encumbrance (other than Permitted Encumbrances) on any of its Acquired Assets or the assets held by the Acquired Entities other than to secure Indebtedness and other obligations in existence at the date of this Agreement (and required to be so secured by their terms);

(x) sell, license, transfer, abandon, permit to lapse (other than by expiration), or otherwise dispose of (including through exclusive license) any material Acquired Intellectual Property, except (A) abandonment or lapse of any issued or registered material Acquired Intellectual Property rights at the end of its final, non-renewable statutory term or (B) non-exclusive licenses granted to customers, suppliers, vendors, end-users, resellers or distributors in the Ordinary Course;

(xi) settle any pending or threatened Action or consent to the entry of any order against Seller or an Acquired Entity or relating to the Business, the Acquired Assets, the assets held by the Acquired Entities or Assumed Liabilities;

(xii) amend, supplement or modify in any material respect, terminate, reject or waive any material term under, exercise any material option under or give any material consent with respect to any Material Contract or Acquired Lease;

(xiii) enter into (x) any Contract that would have been a Material Contract if entered into prior to the date hereof or (y) any Contract with a term or commitment greater than six (6) months;

(xiv) enter into, modify, assign, novate, amend or terminate any Government Contract;

(xv) acquire any material assets that would be Acquired Assets;

(xvi) resolve any Liability that would be an Assumed Liability;

(xvii) satisfy any Excluded Liability with an Acquired Asset;

(xviii) grant any waiver under or amend or modify, or surrender, revoke, permit to lapse or otherwise terminate any Permits, other than waivers, amendments or modifications in the Ordinary Course;

(xix) acquire any fee interest (or local equivalent) or leasehold interest in any real property;

(xx) make, change or rescind any material Tax election, change any annual tax accounting period, adopt or change any Tax accounting method, file any material amended Tax Return, or enter into any closing agreement, consent or agree to any extension or waiver of the limitation period applicable to any claim or assessment in respect of a material amount of Taxes, enter into any Tax partnership agreement or any Tax allocation, sharing or indemnity Contract, agreement or arrangement that would be binding on Purchaser or any of its Affiliates (including the Acquired Entities after Closing) (other than a Contract, agreement or arrangement the principal subject matter of which is not Taxes), settle any material Tax claim or assessment, or file any Tax Return or take any position with respect to Taxes that is inconsistent with the Intended Tax Treatment, in each case to the extent such action would adversely affect the Acquired Assets or the Business in a Post-Closing Tax Period;

(xxi) amend, supplement or modify Seller's or its Affiliates' official collection policy or payments policy;

(xxii) engage in any ad hoc communications with customers outside the Ordinary Course;

(xxiii) make any material changes to cash management practices and policies, practices and procedures with respect to collection of accounts receivable, accrual of accounts receivable (including acceleration thereof), inventory control, prepayment of expenses, payment of accounts payable (including any delay thereof), accrual of other expenses, deferral of revenue and acceptance of customer deposits;

(xxiv) file any claim for loss under any Business Insurance Policy without the prior written consent of the Purchaser (not to be unreasonably withheld, conditioned, or denied);

(xxv) dissolve, liquidate or otherwise terminate its existence in a manner that would delay, prevent or impede the consummation of the Transactions;

(xxvi) amend or modify (whether by merger, consolidation or otherwise) the certificate of incorporation, bylaws or comparable organizational or governing documents of Seller or any of its respective Affiliates in a manner that would delay, prevent or impede the consummation of the Transaction; or

(xxvii) commit or agree to take any of the foregoing actions.

(d) Nothing contained in this Agreement is intended to give Purchaser or its Affiliates, directly or indirectly, the right to control or direct the Business (or the other business of Seller and its Affiliates) prior to the Closing, and nothing contained in this Agreement is intended to give Seller, directly or indirectly, the right to control or direct Purchaser's or its Subsidiaries' operations. Prior to the Closing, each of Purchaser and Seller shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 6.2 Access to Information.

(a) From the date hereof until the Closing (or the earlier termination of this Agreement) pursuant to Article VIII, Seller will provide Purchaser and its authorized Advisors with reasonable access (during reasonable business hours and upon reasonable advance notice) to (w) Seller and its Affiliates, to the extent related to the Business, the Acquired Assets, the Assumed Liabilities and the Acquired Entities, (x) Seller's accountants, counsel, financial advisors and other authorized outside representatives, officers and senior management in their respective principal places of business, (y) books, records and properties of Seller, to the extent related to the Business, and the Acquired Entities, except as prohibited by applicable Law and (z) such financial and operating data and other information relating to the Business as Purchaser and its authorized Advisors may reasonably request and Seller will instruct the employees, counsel and financial advisors of the Seller and their Affiliates to cooperate with Purchaser in its investigation of the Business; provided that (i) such access does not unreasonably interfere with the normal operations of Seller or any Acquired Entity, (ii) Seller and the Acquired Entities are not obligated to disclose and may redact or remove any information that is not related to the Business, the Acquired Entities, the Acquired Assets or the Assumed Liabilities, and (iii) nothing herein will require Seller or the Acquired Entities to provide access to, or to disclose any information to, Purchaser if such access

or disclosure (A) would reasonably be expected to adversely affect any legal privilege, (B) would be in violation of applicable Laws (including the Competition Laws) or the provisions of any agreement to which Seller or any Acquired Entity is bound or would violate any fiduciary duty, or (C) is in respect of Excluded Tax Returns; provided further, that the Parties shall use their respective commercially reasonable efforts to provide such access in a manner so as to not result in the waiver of such privilege or the violation of such Law, agreement or fiduciary duty.

(b) From the date hereof until the Closing (or the earlier termination of this Agreement) pursuant to Article VIII, and except as would be prohibited by Applicable Law, Seller will keep Purchaser reasonably informed of any material developments related to any False Claims Act or other matter disclosed on Schedule 3.19(d)(iv), or that would have been required to be disclosed on Schedule 3.19(d)(iv) if such matter had occurred on or prior to the date hereof including, but not limited to, further discussions with the government regarding possible settlement or scope of liability.

(c) The information provided pursuant to Section 6.2(a) will be used solely for the purpose of consummating the Transactions, and will be governed by all the terms and conditions of the Confidentiality Agreement, which Confidentiality Agreement shall not terminate upon the execution of this Agreement (but, for the avoidance of doubt, shall terminate on the earlier of (i) the date the Confidentiality Agreement terminates in accordance with its terms and (ii) the Closing Date) notwithstanding anything to the contrary therein. Purchaser will, and will cause its Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to Purchaser or any of its Advisors. Seller and its Affiliates make no representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and Purchaser may not rely on the accuracy of any such information, in each case, other than the Express Representations.

(d) From the Closing Date until the earlier of (x) two years following the Closing Date, and (y) the date of a final, unappealable order resolving the Chapter 11 Cases, Purchaser will provide Seller and its Advisors, at Seller's sole cost and expense, with (i) reasonable access, during normal business hours, without undue disruption, and upon reasonable advance written notice, to the books and records, including work papers, schedules, memoranda, and other documents (for the purpose of examining and copying) relating to the Acquired Assets, the Acquired Entities, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities to the extent relating to periods or occurrences prior to the Closing Date, and (ii) reasonable access, during normal business hours, without undue disruption, and upon reasonable advance written notice, to employees, officers, Advisors, accountants, offices and properties of Purchaser (including for the purpose of better understanding the books and records), in the case of each of the immediately preceding clauses (i) and (ii) solely for the purposes of Seller's wind-down activities; provided that (i) Purchaser shall not be obligated to disclose and may redact or remove any information that is not related to the Business, the Acquired Entities, the Acquired Assets, the Excluded Assets, the Excluded Liabilities or the Assumed Liabilities, and (ii) nothing herein will require Purchaser to provide access to, or to disclose any information to, Seller if such access or disclosure (A) would reasonably be expected to adversely affect any legal privilege, or (B) would be in violation of applicable Laws (including the Competition Laws) or the provisions of any agreement to which Seller or any Acquired Entity is bound or would violate any fiduciary duty;

provided further, that the Parties shall use their respective commercially reasonable efforts to provide such access in a manner so as to not result in the waiver of such privilege or the violation of such Law, agreement or fiduciary duty.

(e) Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, licensee, licensor, distributor, noteholder or other material business relation of Seller prior to the Closing with respect to Seller, the Business or the Transactions, without the prior written consent of Seller for each such contact, except for in accordance with Section 6.2(a).

Section 6.3 Restricted Use of Confidential Information. From and after the Closing Date, until the earlier of (a) the dissolution of Seller and (b) the two (2) year-period following Closing, Seller shall, and shall cause its Affiliates and its and their respective Advisors to, hold all Confidential Information, to the extent relating to any Acquired Entities, Acquired Assets, Assumed Liabilities, Transferred Employees or the Business, in accordance with the confidentiality and non-use obligations set forth in the Confidentiality Agreement (as if Seller, its Affiliates and its and their respective Advisors were Recipients (as defined in the Confidentiality Agreement) thereunder).

Section 6.4 Employee Matters.

(a) Prior to and contingent on the occurrence of the Closing, Purchaser may extend an offer of employment or engagement to one or more of the Business Employees or Business Service Providers on such terms and conditions as determined by Purchaser (such Business Employees or Business Service Providers who receive an offer of employment or engagement, the "Offer Employees"), with such employment or engagement to take effect under the terms set forth in this Section 6.4 ("Transfer Offer") and that, if accepted, shall become effective immediately upon the Closing. Seller and its Affiliates shall cooperate in good faith with and provide reasonable assistance to Purchaser and its Affiliates in its or their efforts to enter into a Transfer Offer with the Offer Employees, including by (i) making the Business Employees or Business Service Providers reasonably accessible to meet and interview with Purchaser or their Affiliates, and (ii) otherwise facilitating Purchaser's and its Affiliates' interview and evaluation processes. Business Employees and Business Service Providers who accept such Transfer Offers and begin employment or engagement with Purchaser shall be collectively referred to herein as "Transferred Employees." Purchaser shall notify Seller in a reasonable timeframe (but in any event within three Business Days of receiving a response from the applicable Business Employee or Business Service Provider and no later than immediately prior to the Closing) with respect to whether each such offer has been accepted or rejected. Nothing herein shall be construed as a representation or guarantee by Seller or any of its Affiliates that any Business Employees or Business Service Providers will accept the Transfer Offer, or that any Transferred Employee will continue in employment or engagement with Purchaser following the Closing for any period of time. Purchaser shall carry out all necessary actions to effect the timely employment or engagement by it of each Business Employee or Business Service Provider who has accepted a Transfer Offer. Effective as of the Closing, each Transferred Employee previously employed or engaged by Seller shall cease to be an employee or service provider of Seller.

(b) On the Closing, Transferred Employees (and their eligible dependents and beneficiaries) shall cease active participation in the Employee Benefit Plans (if applicable).

(c) Purchaser shall assume, honor and be solely responsible for paying, providing and satisfying when due all compensation (including salary, wages, commissions, bonuses, incentive compensation, overtime, premium pay and shift differentials), vacation, personal days, sick pay and other paid time off, benefits and benefit claims, severance and termination pay, notice, and benefits (including any employer Taxes or other payments related thereto), in each case, accruing, incurred or arising as a direct result of employment with, or separation from employment from, Purchaser after the Closing Date with respect to Transferred Employees.

(d) The provisions of this Section 6.4 are for the sole benefit of the Parties and nothing herein, express or implied, is intended or shall be construed to confer upon or give any Person, other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 6.4 or under or by reason of any provision of this Agreement). Nothing contained herein, express or implied: (i) shall be construed to establish, amend, or modify any benefit or compensation plan, program, agreement or arrangement; (ii) shall, subject to compliance with the other provisions of this Section 6.4, alter or limit Purchaser's or Seller's ability to amend, modify or terminate any particular benefit or compensation plan, program, agreement or arrangement; or (iii) is intended to confer upon any current or former employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment.

(e) Seller and its Affiliates expressly agree to retain all obligations, Liabilities, and commitments under the Worker Adjustment and Retraining Notification Act of 1988 or any similar Laws (collectively, the "WARN Act"), including any requirement to provide notice, that accrue prior to, on or after the Closing Date; provided Purchaser shall be liable for any Liabilities arising under the WARN Act solely with respect to Transferred Employees who may be entitled to notice under the WARN Act with respect to any termination of employment from Purchaser after the Closing Date, provided Seller provides to Purchaser upon the Closing Date a complete and true list of each "employment loss" (as defined under the WARN Act) of Business Employees occurring within the ninety (90) day period immediately prior to the Closing Date, by employment site, date of employment loss, and reason for employment loss. Notwithstanding anything to the contrary herein, Seller or its Affiliates shall be permitted to provide WARN Act notices prior to the Closing to any Business Employees who are owed notice under the WARN Act, in consultation with Purchaser.

(f) Sellers and its Affiliates shall be solely responsible for any and all obligations and Liabilities arising under Section 4980B of the Tax Code with respect to all "M&A qualified beneficiaries" as defined in 26 C.F.R. § 54.4980B-9.

Section 6.5 Regulatory Approvals.

(a) Seller will (i) cooperate with Purchaser in exchanging such information and providing such assistance as Purchaser may reasonably request in connection with any filings made

by the Purchaser Group pursuant to Section 6.5(b), and (ii) (A) supply promptly any additional information and documentary material that may be requested in connection with the filings made pursuant to this Section 6.5(a) or Section 6.5(b) and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances in connection with such filings.

(b) Purchaser will, and will cause its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by any member of the Purchaser Group under any applicable Laws for the consummation of the Transactions, if any, (ii) cooperate with Seller in exchanging such information and providing such assistance as Seller may reasonably request in connection with any filings made by Seller pursuant to Section 6.5(a), and (iii) (A) supply reasonably promptly any additional information and documentary material that may be requested in connection with the filings made pursuant to this Section 6.5(b) or Section 6.5(a) and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances.

(c) Notwithstanding anything to the contrary herein, Seller shall, at Sellers's sole cost and expense, prepare, submit, and diligently prosecute applications, filings, submissions and other documents for the transfer, assignment or reissuance to Purchaser of any Permits desired by Purchaser and required under Law (including Environmental Law), and Seller shall reasonably cooperate with Purchaser to obtain the relevant issuing Governmental Bodies' approval of the transfer, assignment, or revocation and reissuance of such Permits. Seller covenants and agrees to provide draft applications, filings, and submissions to Purchaser at least 10 Business Days in advance of submittal or filing, unless Purchaser agrees in writing to waiver such timing, and to incorporate any reasonable Purchaser comments. Seller agrees to share any communications to or from Governmental Bodies with Purchaser regarding the Permits and to consult and coordinate with Purchaser as to any significant such communications. In the period prior to the transfer of any Permit from Seller to Purchaser, Seller agrees to continue to serve as the operator of record with respect to any equipment covered by any Permit, and in doing so Seller shall act in all respects at the direction of Purchaser, provided that Seller shall not be required to take any action that would violate applicable Law, the terms of any Permit, or any Order of the Bankruptcy Court, and Seller shall make all filings required under such Permits at the direction of and in cooperation with Purchaser.

Section 6.6 Reasonable Efforts; Cooperation.

(a) Subject to the other terms of this Agreement, each Party shall, and shall (whether directly or through its Advisors), use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable to cause the Transactions to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof, including the satisfaction of the conditions to the Closing set forth in Article VII, and to cooperate with each other Party and its Advisors in connection with any step required to be taken as part of its obligations hereunder.

(b) The obligations of Seller pursuant to this Agreement, including this Section 6.6, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Chapter 11 Cases), Seller's debtor-in-possession financing, and Seller's obligations as Debtor

to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order).

Section 6.7 Further Assurances. Subject to the terms and conditions of this Agreement, from time to time, as and when reasonably requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the Transactions. Without limiting the generality of the foregoing, at Purchaser's request, Seller shall, and shall cause its Affiliates to, promptly execute and deliver such assignments and other documents, and take such other steps, as may be required to vest and perfect title to all Acquired Intellectual Property in Purchaser or its designee.

Section 6.8 Insurance Matters.

(a) Purchaser acknowledges that, upon Closing, all nontransferable insurance coverage provided in relation to Seller and the Acquired Assets that is maintained by Seller or its Affiliates (whether such policies are maintained with third party insurers or with Seller or its Affiliates) shall cease to provide any coverage to Purchaser, the Acquired Assets, and the Assumed Liabilities, and no further coverage shall be available to Purchaser with respect to the Business, the Acquired Assets, or the Assumed Liabilities under any such policies. From and after the Closing, Purchaser shall have the right to make claims and to receive proceeds from such claims with respect to any matter to the extent related to the Acquired Assets or Assumed Liabilities for periods prior to the Closing, and Seller shall cooperate in seeking recovery or allowing Purchaser to seek recovery under the applicable occurrence-based insurance policies, and Seller shall cooperate with Purchaser's reasonable requests if it seeks recovery, with respect to such matters and shall remit (or, at Purchaser's request, direct any such insurer to pay directly to Purchaser) any insurance proceeds actually obtained with respect to such claims (net of Seller's reasonable and documented out-of-pocket costs and expenses of seeking recovery, to the extent not otherwise paid or reimbursed by Purchaser) to Purchaser.

(b) To the extent that any Business Insurance Policy covers any Liability relating to the Acquired Assets and relating to or arising out of Pre-Closing Matters, Seller shall cooperate with Purchaser in submitting claims and seeking recovery with respect to Pre-Closing Matters on behalf of Purchaser under the Business Insurance Policies. Seller shall, on request from Purchaser, with respect to any claim arising from an Assumed Liability that is covered or potentially covered by the Seller's Insurance Policies, (A) report such claim to the appropriate insurer as promptly as practicable after such claim is reported to Seller, and (B) instruct that any proceeds of such Business Insurance Policy are paid as soon as reasonably practicable following the Closing directly to Purchaser, the attorneys handling the defense of such claim or, where applicable, to the claimant as a result of any judgment or settlement, rather than to Seller (but subject to all limitations and deductibles and exclusions under such policies and net of Seller's reasonable and documented out-of-pocket costs and expenses of seeking such recovery and any Taxes incurred by Seller with respect to such recovery, all of which shall be paid directly to Seller).

(c) For a period of six (6) months after the Closing, Seller may not release or waive any actual liability or potential liability of any insurer of a Business Insurance Policy with

respect to Pre-Closing Matters (including but not limited to any cancel, lapse, or non-renewal of a Business Insurance Policy) without the prior written consent of the Purchaser.

Section 6.9 Receipt of Misdirected Assets; Liabilities.

(a) From and after the Closing, if Seller or any of its Affiliates becomes aware that any right property or asset forming part of the Acquired Assets has not been transferred to Purchaser or receives any right, property or asset that is an Acquired Asset, the Seller shall (at no cost to Purchaser) promptly (i) notify Purchaser and (ii) transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks, or other documents) to Seller, and such asset will be deemed the property of Seller held in trust by Purchaser for Seller until so transferred. From and after the Closing, if Purchaser or Seller discovers that any asset previously deemed an Excluded Asset should have been included as an Acquired Asset pursuant to the terms of this Agreement, Seller shall promptly (at no cost to Purchaser) transfer such asset to Purchaser.

(b) From and after the Closing, if Seller or any of its Affiliates is subject to a Liability that should belong to Purchaser or its Affiliates pursuant to the terms of this Agreement, Seller shall promptly transfer or cause such of its Affiliates to transfer such Liability to Purchaser, and Purchaser shall assume and accept such Liability. From and after the Closing, if Purchaser or any of its Affiliates is subject to a Liability that should belong to Seller or its Affiliates pursuant to the terms of this Agreement, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such Liability to Seller or its Affiliates, and Seller or its Affiliates shall assume and accept such Liability.

Section 6.10 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that it has conducted an independent investigation and verification of the Business (including its financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks, and prospects), the Acquired Assets, and the Assumed Liabilities and, in making its determination to execute this Agreement and proceed with the Transactions, the Purchaser Group has relied, is relying, and will rely solely on the Express Representations and the results of the Purchaser Group's own independent investigation and verification and have not relied on, are not relying on, and will not rely on, any information, statements, disclosures, documents, projections, forecasts or other material (including in the Dataroom, the Information Presentation or the Projections), in each case, whether written or oral, made available or provided to the Purchaser Group by or on behalf of the Seller Parties, or any failure of any of the foregoing to disclose or contain any information, except for the Express Representations (it being understood that the Purchaser Group has relied only on the Express Representations).

(b) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser or any member of the Purchaser Group may rely in connection with the Transactions and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (A) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Representations) including in the Dataroom, Information Presentation, Projections, meetings, calls or correspondence with management of Seller, any of the Seller Parties or any other Person on behalf of Seller or any of the Seller Parties or any of their respective Affiliates or Advisors and (B) any other statement relating to the historical, current or future business, financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks and prospects of the Business, or the quality, quantity or condition of any of the Acquired Assets (including, for the avoidance of doubt, any assets of the Acquired Entities), are, in each case, specifically disclaimed by Seller, on its behalf and on behalf of the Seller Parties, except to the extent set forth in the Express Representations.

(c) Without limiting the generality of the foregoing, in connection with the investigation by the Purchaser Group, Purchaser and the members of the Purchaser Group, and the Advisors of the foregoing, have received or may receive, from or on behalf of Seller, or other Seller Parties, certain projections, forward-looking statements and other forecasts (whether in written, electronic, or oral form, and including in the Information Presentation, Dataroom, management meetings, etc.) (collectively, the "Projections"). Purchaser acknowledges and agrees, on behalf of itself and the Purchaser Group, that (i) such Projections are being provided solely for the convenience of Purchaser to facilitate its own independent investigation of Seller, (ii) there are uncertainties inherent in attempting to make such Projections, (iii) Purchaser is familiar with such uncertainties, and (iv) Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Projections (including the reasonableness of the assumptions underlying such Projections), except, in each case, to the extent expressly set forth in the Express Representations.

(d) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that the covenants and agreements contained in this Section 6.10 (i) require performance after the Closing to the maximum extent permitted by applicable Law and (ii) are an integral part of the Transactions and that, without these agreements set forth in this Section 6.10, Seller would not enter into this Agreement.

Section 6.11 Seller's Support Obligations.

(a) Seller and its Affiliates may have entered into various arrangements (i) in which guarantees, letters of credit, sureties, bonds, or similar arrangements were issued by Seller or its Affiliates and (ii) in which Seller or its Affiliates are the primary obligors on other Contracts, in any such case to support or facilitate the Acquired Assets. The arrangements entered into by Seller and its Affiliates referred to in the foregoing clauses (i) and (ii) that are set forth in Schedule 6.11(a) are referred to as the "Seller's Support Obligations".

(b) Seller, on behalf of itself and its Affiliates, and Purchaser, agree to use commercially reasonable efforts to obtain replacements for Seller's Support Obligations that will be in effect at the Closing or, at Purchaser's election, which Purchaser may make in its sole discretion, will use commercially reasonable efforts to arrange for itself or one of its Subsidiaries to be substituted as the primary obligor as of the Closing through an assumption, accession, acknowledgement, or similar agreement (which shall include the full and unconditional release of Seller and its Affiliates with respect to any obligations and liabilities arising after such replacement except to the extent that any such liabilities relate to any actions or omissions of Seller or its Affiliates that occurred prior to such replacement or facts or circumstances in existence prior to such replacement) with the beneficiary of the applicable Seller's Support Obligation. Notwithstanding the foregoing, if any Seller's Support Obligation relates to an asset that will no longer be acquired by Purchaser pursuant to this Agreement, Purchaser shall no longer have any obligation with respect to the replacement of such Seller's Support Obligation.

(c) Whether or not Purchaser is able to satisfy the terms of Section 6.11(b), the obligations of Purchaser in Section 6.11(b) shall continue following the Closing until such terms have been satisfied. All costs and expenses incurred in connection with providing the release or substitution of Seller's Support Obligations shall be borne by Seller.

(d) Notwithstanding anything to the contrary, Seller shall, and shall cause each of their respective Affiliates, to cooperate with Purchaser and any successor obligor or service provider, to enable such primary obligor or successor service provider to assume such Seller's Support Obligations.

Section 6.12 Releases.

(a) As of the Closing, Seller, on behalf of itself and its Affiliates, and its and their Affiliates' representatives, heirs, estates successors or executors, partners, members, equity holders, directors, officers, employees, controlling persons, agents, successors, stockholders, trustees, principals, parents, Subsidiaries, joint ventures, predecessors, and assigns (as applicable) (collectively, the "Seller Releasing Parties"), (a) irrevocably and unconditionally waives, releases, and forever discharges Purchaser, the Acquired entities and its and their current, former and future Affiliates, Advisors, stockholders, members, directors, managers, trustees, principals, parents, Subsidiaries, joint ventures, predecessors, successors, assigns, beneficiaries, heirs or executors (collectively, the "Acquired Entity Released Parties") from any and all rights, commitments, actions, debts, claims, counterclaims, suits, Causes of Action, Avoidance Actions, damages, demands, losses, obligations, costs, expenses, compensation and other Liabilities of every kind and nature whatsoever, whether known or unknown, matured or contingent and whether arising in Law, in equity or otherwise, in each case based upon facts, circumstances or occurrences existing at or prior to Closing (collectively, the "Released Claims"), (b) irrevocably covenants to refrain from, directly or indirectly, asserting any claims or commencing, instituting or causing to be commenced, any Action of any kind against any Acquired Entity Released Party with respect to the Released Claims and (c) represents to the other Parties that Seller has not assigned or transferred, nor purported to assign or transfer, to any Person all or any part of, or any interest in, any Released Claim (and notwithstanding anything to the contrary in this Agreement, no such assignment or transfer shall be permitted, and any purported assignment or transfer shall be legally

ineffective). Seller also hereby waives the benefits of, and any right that such Person may have under, any statute or common law principle of similar effect in any jurisdiction with respect to any Released Claim.

(b) Without limiting the foregoing, Seller, on behalf of itself and the Seller Releasing Parties, expressly waives and releases any and all rights and benefits under Section 1542 of the California Civil Code (or any analogous law of any other state), which reads as follows: "A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." Seller, on behalf of itself and the other Seller Releasing Parties, expressly waives all rights afforded by any statute which limits the effect of a release with respect to unknown claims. Seller, on behalf of itself and the other Seller Releasing Parties, understands the significance of this release of unknown claims and waiver of statutory protection against a release of unknown claims, and acknowledges and agrees that this waiver is an essential and material term of this Agreement. Seller, on behalf of itself and the other Seller Releasing Parties, acknowledges that each of the Acquired Entity Released Parties will be relying on the waivers and releases provided in Section 6.12(a) and Section 6.12(b) in connection with entering into this Agreement and that Section 6.12(a) and Section 6.12(b) are intended for the benefit of, and will grant express third party beneficiary rights to each Acquired Entity Released Party to enforce Section 6.12(a) and Section 6.12(b).

(c) As of the Closing, Purchaser, on behalf of itself and its Subsidiaries (including, after the Closing, the Acquired Entities) (collectively, the "Purchaser Releasing Parties"), representatives, heirs, estates, successors, and assigns (as applicable), (i) irrevocably and unconditionally waives, releases, and forever discharges Seller and their current, former and future Affiliates, Advisors, stockholders, members, directors, managers, trustees, principals, parents, Subsidiaries, joint ventures, predecessors, successors, assigns, beneficiaries, heirs or executors (collectively, the "Seller Released Parties") from any and all Released Claims of the Purchaser Releasing Parties against the Seller Released Parties, (ii) irrevocably covenants to refrain from, directly or indirectly, asserting any claims or commencing, instituting or causing to be commenced, any Action of any kind against any Seller Released Party with respect to the Released Claims, and (iii) represents to Seller that Purchaser has not assigned or transferred, nor purported to assign or transfer, to any Person all or any part of, or any interest in, any Released Claim (and notwithstanding anything to the contrary in this Agreement, no such assignment or transfer shall be permitted, and any purported assignment or transfer shall be legally ineffective). Purchaser also hereby waives the benefits of, and any right that such Person may have under, any statute or common law principle of similar effect in any jurisdiction with respect to any Released Claim.

(d) Without limiting the foregoing, Purchaser, on behalf of itself and the Purchaser Releasing Parties, expressly waives and releases any and all rights and benefits under Section 1542 of the California Civil Code (or any analogous law of any other state), which reads as follows: "A general release does not extend to claims which the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party." Purchaser, on behalf of itself and the other Purchaser Releasing Parties, expressly

waives all rights afforded by any statute which limits the effect of a release with respect to unknown claims. Purchaser, on behalf of itself and the Purchaser Releasing Parties, understands the significance of this release of unknown claims and waiver of statutory protection against a release of unknown claims, and acknowledges and agrees that this waiver is an essential and material term of this Agreement. Purchaser, on behalf of itself and the other Purchaser Releasing Parties, acknowledges that each of the Seller Released Parties will be relying on the waivers and releases provided in Section 6.12(c) and Section 6.12(d) in connection with entering into this Agreement and that Section 6.12(c) and Section 6.12(d) are intended for the benefit of, and will grant express third party beneficiary rights to each Seller Released Parties to enforce Section 6.12(c) and Section 6.12(d).

(e) Notwithstanding the generality of the foregoing, nothing herein constitutes a waiver or release by any Person of, and Released Claims shall not be deemed to include any claim, action, suit, right or proceeding (i) arising under or relating to this Agreement or any Transaction Agreement, including any breach of this Agreement or any Transaction Agreement, (ii) such Person may have in the Ordinary Course for compensation, vacation pay, and benefits arising under such Person's employment arrangements, (iii) arising as a result of Fraud, (iv) in respect of bonds, indentures, notes or similar instruments of Seller or any Affiliate thereof, or (v) in respect of, relating to or against any employee, contractor or other similar service provider of the Company or any of its Affiliates.

Section 6.13 Polish Matters.

(a) The Seller shall, and shall cause the Acquired Entities to, use reasonable best efforts (and in any event no less than the level of efforts used in respect of its own financing arrangements) to facilitate Purchaser obtaining financing on terms substantially consistent with those set out in the mandate letter dated 17 December 2025 between AE Poland 2 sp. z o.o., AE Poland Holdings sp. z o.o. and the European Bank for Reconstruction and Development ("EBRD") in respect of financing of up to EUR 250,000,000 (the "Financing"). In particular, Seller shall: (a) promptly notify EBRD of the Transaction (the "EBRD Notice"); (b) use all reasonable endeavours to procure that the Purchaser (or its designated Affiliate) is accepted by EBRD as sponsor of the Transaction in substitution for Seller; (c) provide, and cause the Acquired Entities to provide, in a timely manner all information, documentation and confirmations reasonably requested by Purchaser or EBRD in connection with the Financing, including corporate, financial and project-related information, subject only to customary confidentiality protections; (d) participate in meetings, discussions and correspondence with EBRD and its advisers as reasonably requested by Purchaser; and (e) not take any action, and cause its Affiliates not to take any action, that would reasonably be expected to prejudice, delay or adversely affect the availability, structure or timing of the Financing.

(b) Prior to the Closing, the Seller shall: (i) use reasonable best efforts to ensure that the rights and obligations under the grant agreement between the Polish State Treasury, represented by the Minister of Finance and Economy, and Ascend Elements Poland sp. z o.o., dated 30 December 2025 (the "Grant Agreement"), are transferred to the Acquired Entity, being the owner of the Opole Property; and (ii) cause the Minister of Finance and Economy to be notified in writing of the Transaction no later than 5 Business Days from the date hereof (the "Grant

Agreement Notice"), and Seller shall take, and cause each of its Affiliates to take, all steps reasonably requested by Purchaser to support the continuity of, and to preserve, a constructive working relationship between Purchaser and the Minister of Finance and Economy in connection with the grant financing to be provided under the Grant Agreement.

(c) Seller shall, and shall cause its Affiliates and its and their respective Representatives to, (i) consult with Purchaser and its Representatives in advance of any meeting, conference or discussion with any Governmental Body in connection with the matters described in the foregoing Sections 6.13(a) and 6.13(b) (together, the "Polish Matters"); and (ii) to the extent permitted by such Governmental Body, give Purchaser, its Affiliates and its and their respective Representatives the opportunity to attend and participate in any meeting, conference or discussion with any Governmental Body. Seller shall, and shall cause its Affiliates and its and their respective Representatives to, cooperate with Purchaser and its Affiliates and its and their respective Representatives in preparing, providing, delivering, submitting, filing, updating and publishing (as applicable), as expeditiously as possible, all applications, notifications, report forms or other documents as may be required in connection with the Polish Matters, and Seller shall, and shall cause its Affiliates and its and their respective Representatives to, provide copies and drafts of all such applications, notifications, report forms or other documents to Purchaser and its Representatives with sufficient time for review by Purchaser and its Representatives prior to their delivery, submission, filing or publishing, as applicable, and shall take into consideration any comments provided by Purchaser or its Representatives in good faith.

(d) Seller shall, and shall cause its applicable Affiliates to, use best efforts to resolve the matters set forth on Schedule 3.8(b) (the "ESM Notices") as promptly as practicable following the date hereof. Seller shall, and shall cause its Affiliates to, (i) keep Purchaser and its representatives informed of any discussions or meetings with ESM or its representatives, (ii) provide Purchaser and its representatives with an opportunity to participate in any such meetings and to review and comment on any such correspondences prior to their delivery to ESM, and (iii) incorporate any comments provided by Purchaser or any of its representatives into any such correspondence.

Section 6.14 Use of Names. From and after Closing, Seller shall not, and shall cause its Affiliates not to, use the name "Ascend" or any other trademark or service mark included in the Seller Intellectual Property, including names or marks containing or comprising the foregoing, and any name or trademark that is confusingly similar to the foregoing (collectively, the "Business Marks"). Within thirty (30) days after Closing, Seller shall, and shall cause its Affiliates to, file applicable documentation to amend their organizational and governing documents to change their corporate names to names that do not include the Business Marks. Notwithstanding the foregoing, Seller and its Affiliates shall be entitled to continue to use the Business Marks solely in a non-trademark manner to describe accurately their corporate history and otherwise for purposes of Seller's wind-down activities.

Section 6.15 Hopkinsville Land Option. Seller shall, and shall cause its applicable Affiliates to use their reasonable best efforts to negotiate and secure a renewed option to enable Seller or an applicable Acquired Entity, or a transferee of such rights, to acquire approximately 164 acres of land adjacent to Hopkinsville Property at a purchase price not to exceed $50,000 per

acre, on terms acceptable to Purchaser; provided, however, nothing shall require Seller or its Affiliates to spend any cash to secure such option.

Section 6.16 Appeal of Tax Assessment for Hopkinsville Property. On or before May 18, 2026, Seller shall, and Seller shall cause its applicable Affiliates to, (a) request and conduct a conference with the Property Valuation Administrator, and (b) commence a timely and valid appeal of the tax assessment imposed on the Hopkinsville Property for tax year 2026. In connection therewith, Seller shall, and Seller shall cause its applicable Affiliates to, (i) promptly and properly file, with evidence and grounds for the appeal, to have the value of the Hopkinsville Property assessed at an amount acceptable to Purchaser, (ii) provide to Purchaser and its representatives copies of such filing and related materials reasonably in advance of submitting such filing for Purchaser's review and comment, (iii) incorporate any comments proposed by Purchaser or any of its representatives, and (iv) cooperate with Purchaser and its representatives, and provide information and access to Purchaser and its representatives, in each case in connection with the foregoing. Purchaser and its representatives shall be entitled to attend any such conference.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions Precedent to the Obligations of Purchasers and Sellers. The respective obligations of each Party to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by the party receiving the benefit of such obligation) on or prior to the Closing Date, of each of the following conditions:

(a) no Law shall be in effect that prohibits or makes illegal the Transactions;

(b) the Bankruptcy Court shall have entered the Sale Order approving the sale free and clear of all Encumbrances, and such order shall have become a Final Order and this Agreement shall become effective in accordance with the terms, and shall not have been stayed, reversed, or modified in a manner not reasonably acceptable to the Parties; and

(c) all approvals, clearances, authorizations, expirations or waiting period expirations or terminations required under Competition Laws for the consummation of the Transactions shall have been issued or obtained, or shall have occurred, as applicable.

Section 7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) (i) the representations and warranties made by Seller in Article III (in each case, other than the Fundamental Representations and the representations and warranties in Section 3.24) shall be true and correct in all respects as of the date of this Agreement and the Closing Date with the same force and effect as though made on and as of the Closing Date (without giving effect to materiality, Material Adverse Effect or similar phrases), except (A) that representations and warranties that are made as of a specified date need be true and correct only as of such date and

(B) to the extent the failure of such representations and warranties to be true and correct as of such dates has not had or would not reasonably be expected to have a Material Adverse Effect, (ii) the representations and warranties set forth in Section 3.1, Section 3.2, Section 3.3, Section 3.4, Section 3.5, Section 3.14(b) and Section 3.18 (collectively, the "Fundamental Representations") shall be true and correct in all respects, except for any *de minimis* inaccuracies, as of the Closing Date as though made on and as of the date of this Agreement and the Closing Date, except that such Fundamental Representations and warranties that are made as of a specified date or period need be true and correct in all respects, except for any *de minimis* inaccuracies, only as of such date or period, and (iii) the representations and warranties set forth in Section 3.24 shall be true and correct as of the date of this Agreement and the Closing Date as though made on and as of the Closing Date;

(b) Seller shall have performed and complied with the covenants required to be performed or complied with by Seller under this Agreement, the DIP Financing Agreement, the DIP Guaranty Agreement and all other DIP Documents on or prior to Closing in all material respects;

(c) there shall not have been a Material Adverse Effect since the date of the Balance Sheet Date;

(d) Seller shall have delivered, or caused to be delivered, the EBRD Notice and the Grant Agreement Notice in accordance with Section 6.13;

(e) the Acquired Entity entitled to receive the grant financing under the Grant Agreement shall have duly exercised the option to acquire, and shall have become the sole owner and acquired all right, title and interest in and to the real property located at Opole, Poland covered by land and mortgage registers under numbers: OP1O/00164138/8, OP1O/00171892/3 and OP1O/00165182/8, in each case in accordance with the applicable terms thereof;

(f) no Action shall have been brought, initiated or asserted against any Acquired Entity, any joint venture to which Seller or any Acquired Entity is party, or any assets held by any such Acquired Entity or joint venture asserting that any Governmental Body is entitled to remedies, relief or interests under or pursuant to the False Claims Act or any similar applicable Law with respect to any such Acquired Entity, joint venture or assets;

(g) Seller shall have used its best efforts to cause ESM to have executed and delivered a written consent and waiver, in form and substance satisfactory to Purchaser, pursuant to and in connection with Sections 2.9, 2.10 and 2.11 of the joint venture agreement dated 8 April 2024 between Ascend Elements, Inc. and ESM (the "JVA"), unconditionally and irrevocably: (i) acknowledging that the consummation of the Transactions constitutes or may constitute a change of Control (within the meaning of "Control" as defined in the JVA) over Ascend Elements Poland sp. z o.o. (as the SPV under the JVA) such that AE may cease to Control the SPV; (ii) waiving any and all rights and remedies that it has or may have pursuant to the JVA arising from or in connection with (a) such change of Control, including the right to cause the immediate termination of AE's personal rights in AE Elemental sp. z o.o. and any right to require the SPV to transfer its shares in AE Elemental sp. z o.o., or (b) any other breaches of the JVA that occurred prior to the Closing Date; (iii) confirming the full retention by Ascend Elements Poland sp. z o.o. of any and

all corporate rights (prawa korporacyjne) and personal rights (uprawnienia osobiste) it holds as a shareholder of AE Elemental sp. z o.o. under the JVA, the Deed of Adherence and applicable law; and (iv) releasing and holding harmless Ascend Elements Poland sp. z o.o. and its successors and assigns from any and all liabilities, obligations and penalties (including the contractual penalty referred to in Section 2.11 of the JVA) arising from or in connection with such change of Control resulting from the consummation of the Transactions;

(h) Seller shall have delivered to Purchaser written confirmation from ESM of its withdrawal of the ESM Notices and any and all claims and Actions in respect thereof, without any Liability or obligation to Seller, any Acquired Entity or any of their respective Affiliates or representatives, in form and substance satisfactory to Purchaser in its sole discretion;

(i) Seller shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.3;

(j) Seller shall have used, and shall have caused each of its applicable Affiliates to have used, its best efforts to obtain the consent of each of the City of Hopkinsville and the Hopkinsville Industrial Foundation., Inc., as applicable, in form and substance acceptable to Purchaser, stating that (i) each of (x) the City of Hopkinsville Mortgage and the Hopkinsville Grant Agreement recorded on the Hopkinsville Property, and (y) the KY Seller Mortgage and Assignment of Leases recorded on the Hopkinsville Property, which is being assumed by Purchaser hereunder (subject to the terms and conditions hereof), shall remain in effect on the same terms and conditions as are currently in place for Seller and its applicable Affiliates as of the date hereof, and (ii) that such counterparty waives any breaches, rights, defaults and other similar items thereunder (including in respect of the transactions contemplated by this Agreement);

(k) the rights and obligations under the Grant Agreement shall have been transferred, and all consents, approvals and waivers of the Minister of Finance and Economy required to effect such transfer shall have been obtained, in each case in form and substance satisfactory to Purchaser, such that the Acquired Entity being the owner of the Opole Property is entitled to receive the grant financing to be provided under the Grant Agreement; and

(l) Seller shall have delivered to Buyer written confirmation from the U.S. federal government in form and substance reasonably satisfactory to Buyer, that: (i) the federal Encumbrance in or on the Hopkinsville Property has been fully satisfied and extinguished; (ii) no trust relationship under 2 CFR § 200.316 or 2 CFR § 910.360 subsists with respect to the Hopkinsville Property; and (iii) neither the United States nor the applicable federal awarding agency claims, retains, holds or owns, or purports to claim, retain, hold or own, any Encumbrance, reversionary interest, equitable interest, or right to disposition, sale or transfer proceeds with respect to the Hopkinsville Property.

Section 7.3 Conditions Precedent to the Obligations of Seller. The obligations of Seller to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Seller in its sole discretion), on or prior to the Closing Date, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct as of the Closing Date with the same force and effect as though made on and as of the Closing Date, except that representations and warranties that are made as of a specified date need be true and correct only as of such date, except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on the ability of Purchaser to perform its obligations pursuant to this Agreement or to consummate the Transactions in a timely manner;

(b) Purchaser shall have performed and complied with the covenants required to be performed or complied with by it under this Agreement on or prior to the Closing Date in all material respects; and

(c) Purchaser shall have delivered, or caused to be delivered, to Seller all of the items set forth in Section 2.4.

Section 7.4 Waiver of Conditions. None of Purchaser or Seller may rely on the failure of any condition set forth in this Article VII, as applicable, to be satisfied if such failure was caused by such Party's failure to perform any of its obligations under this Agreement, including its obligation to use its reasonable best efforts to consummate the Transactions as required under this Agreement or otherwise comply with any provision of this Agreement, in all material respects.

Section 7.5 Notice of Alternative Transactions.

(a) In the event that Seller or any of its Affiliates intends to accept a proposal or offer regarding an Alternative Transaction (an "Alternative Transaction Offer" or "Alternative Transaction Proposal"), Seller shall notify Purchaser of such intention to accept, in writing, within one (1) Business Day (the "Alternative Transaction Notice") of receiving such Alternative Transaction Offer, which notice shall include, among other things, the name of the applicable Person making such an offer, or with whom Seller and its affiliates are engaged in such activity with (as applicable) and all material terms of the Alternative Transaction Offer or a copy of the competing agreement. Purchaser shall have fourteen (14) calendar days after receipt of the Alternative Transaction Notice (the "Modified Offer Period") to notify Seller, in writing, as to whether it will offer substantially similar terms to the Alternative Transaction Offer. In the event that Purchaser agrees to offer substantially similar terms to the Alternative Transaction Offer, Purchaser and Seller shall revise the terms of this Agreement accordingly in order to close the Transaction on such revised terms.

(b) If following the expiration of the Modified Offer Period, Seller still intends to accept the Alternative Transaction Offer, Seller shall hold an auction (the "Auction") no later than seven (7) calendar days after the expiration of the Modified Offer Period, pursuant to which Seller shall solicit alternative offers (each a "Formal Bid") over three (3) business days (the "Auction Period"). For the avoidance of doubt, notwithstanding the expiration of the Modified Offer Period, nothing shall prejudice Purchaser's right to submit a Formal Bid during the Auction Period, and Seller shall provide Purchaser with advanced notice of the Auction. If an Auction is conducted, and Purchaser is not the Successful Bidder but is the next highest bidder at the Auction, Purchaser may, in its sole discretion, serve as a back-up bidder (the "Backup Bidder") and keep Purchaser's bid to consummate the transactions contemplated by this Agreement on the terms and

conditions set forth in this Agreement (as the same may be revised in the auction) open and irrevocable until the earlier of the date the Bankruptcy Court enters the Sale Order or when this Agreement is otherwise terminated as set forth herein. If the Successful Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such successful bidder, the Backup Bidder will be deemed to have the new prevailing bid, and Seller may consummate the transactions contemplated by this Agreement on the terms and conditions set forth in this Agreement as such terms may have been improved upon in the Auction.

ARTICLE VIII
TERMINATION

Section 8.1 Termination of Agreement. This Agreement may be terminated only in accordance with this Section 8.1. This Agreement may be terminated at any time prior to the Closing:

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

(b) by written notice of either Purchaser or Seller, upon the issuance of an Order by a court of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Closing or declaring unlawful the Transactions, and such Order having become final, binding and non-appealable; provided that no Party may terminate this Agreement under this Section 8.1(b) if the issuance of such Order was caused by such Party's material breach of its obligations under this Agreement;

(c) by written notice of either Purchaser or Seller, if the Closing shall not have occurred on or before June 5, 2026 (the "Outside Date") (or such later date as provided in the Bidding Procedures Order); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by such Party's material breach of any of its obligations or material breach of any of its representations or warranties under this Agreement;

(d) by written notice from Seller to Purchaser, if the board of directors, board of managers, or such similar governing body of Seller determines, after consulting with external counsel, if required by its fiduciary duties under applicable Law, to pursue an Alternative Transaction, as contemplated by and permitted under the Bidding Procedures, and consummates such Alternative Transaction promptly following termination hereof, provided that in connection therewith, all outstanding Obligations (as defined in the DIP Financing Agreement) under the DIP Financing Agreement are repaid in full upon termination of this Agreement;

(e) by written notice from Seller to Purchaser, upon a material breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or Section 7.3(b) would not be satisfied, including a breach of Purchaser's obligation to consummate the Closing; provided that (i) if such breach is curable by Purchaser (other than a breach or failure by Purchaser to consummate the Closing within five (5) Business Days of when required pursuant to Section 2.2) then Seller may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to

the Outside Date and (B) 10 Business Days after Seller notifies Purchaser in writing of such breach and (ii) Seller's right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to Seller at any time that Seller is in material breach of any agreement, covenant, representation or warranty hereunder;

(f) by written notice from Purchaser to Seller, upon a material breach of any covenant or agreement on the part of Seller, or if any representation or warranty of Seller will have become untrue, in each case, such that any of the conditions set forth in Section 7.1 or Section 7.2 would not be satisfied, including a breach of Seller's obligation to consummate the Closing; provided that (i) if such breach is curable by Seller (other than a breach or failure by Seller to consummate the Closing within five (5) Business Days of when required pursuant to Section 2.2) then Purchaser may not terminate this Agreement under this Section 8.1(f) unless such breach has not been cured by the date which is the earlier of (A) two (2) Business Days prior to the Outside Date, and (B) 10 Business Days after Purchaser notifies Seller in writing of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(f) will not be available to Purchaser at any time that Purchaser is in material breach of any agreement, covenant, representation or warranty hereunder;

(g) by written notice from Seller to Purchaser, if all of the conditions set forth in Sections 7.1 and 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction and waiver of such conditions at the Closing) or waived, and Purchaser fails to complete the Closing within five (5) Business Days of the time required by Section 2.2;

(h) by written notice of either Purchaser or Seller, if (i) Seller enters into one or more Alternative Transactions with one or more Persons other than Purchaser or the Successful Bidder or the Backup Bidder at the Auction or (ii) the Bankruptcy Court approves an Alternative Transaction other than with the Successful Bidder or the Backup Bidder;

(i) by written notice from either Purchaser or Seller, if Purchaser (i) is not the Successful Bidder or the Backup Bidder at the Auction or (ii) is the Backup Bidder at the Auction and Seller consummates an Alternative Transaction with the Successful Bidder;

(j) by Purchaser if any of the Chapter 11 Cases are converted to a case under Chapter 7 of the Bankruptcy Code;

(k) by Purchaser if Seller shall default for a period beyond any applicable grace period in the observance or performance of any agreement, covenant or condition set forth in the DIP Financing Agreement or any other DIP Document;

(l) by Purchaser, if Seller withdraws or seek to withdraw a notice or motion to approve the Stalking Horse Protections and does not cure within two (2) Business Days;

(m) by Purchaser upon (i) the failure of Seller to fulfill any condition precedent set forth in Section 2(a) of the DIP Financing Agreement, (ii) the failure of any Loan Party (as defined in the DIP Financing Agreement) to comply with any Milestone set forth in Section 14(g)

of the DIP Financing Agreement or (iii) upon any Event of Default (under and as defined in the DIP Financing Agreement) occurring;

(n) by Purchaser if the Bankruptcy Court issues any order that results in Purchaser being unable to credit bid in accordance with Section 2.1(a); or

(o) by written notice from Purchaser to Seller if Purchaser has not entered into a definitive agreement by May 12, 2026 with each of the holders of the Senior CLNs and Junior CLNs to provide for the Senior CLNs Credit Bid Amount and Junior CLNs Credit Bid Amount described in Section 2.1(a).

Section 8.2 Effect of Termination.

(a) In the event of a valid termination of this Agreement pursuant to Section 8.1, this Agreement shall become null and void and no Party nor any of its partners, officers, directors, managers or equityholders will have any Liability under this Agreement; provided that Section 6.2(b), this Section 8.2 and Article X (other than Section 10.12) shall survive any such termination; provided further that no termination will relieve Purchaser or Seller from any Liability for Willful Breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by Purchaser or Seller to consummate the Closing if and when it is obligated to do so hereunder) or relieve any Person from any Liability for Fraud. Subject to Section 10.12, nothing in this Section 8.2 will be deemed to impair the right of any Party to be entitled to specific performance or other equitable remedies to enforce specifically the terms and provisions of this Agreement prior to termination hereof.

(b) In consideration for Purchaser having expended considerable time and expense in connection with this Agreement and the negotiation thereof, if this Agreement is terminated pursuant to Section 8.1(d), Section 8.1(f), Section 8.1(h), Section 8.1(i), Section 8.1(j), Section 8.1(k), Section 8.1(l), Section 8.1(m), or Section 8.1(n) (such provisions of Section 8.1, the "Specified Provisions"), or any other provision of Section 8.1 (when Purchaser could have terminated this Agreement under any of the Specified Provisions), then Seller shall pay to the Purchaser the Expense Reimbursement, and if this Agreement is terminated pursuant to Section 8.1(d), Section 8.1(f), Section 8.1(h), Section 8.1(i), Section 8.1(k), Section 8.1(m) or Section 8.1(n) or any other provision of Section 8.1 (when Purchaser could have terminated this Agreement under any of Section 8.1(d), Section 8.1(f), Section 8.1(h), Section 8.1(i), Section 8.1(k), Section 8.1(m), or Section 8.1(n)), Seller shall pay the Break-Up Fee; provided, that the Expense Reimbursement shall be payable within two (2) Business Days of termination hereof to an account designated by Purchaser in writing to Seller. The Break-Up Fee shall be paid (i) no earlier than upon consummation of an Alternative Transaction and (ii) out of the proceeds received by Seller from an Alternative Transaction. Each of the Parties acknowledges and agrees that the agreements contained in this Section 8.2(b) are an integral part of this Agreement and that each of the Break-Up Fee and Expense Reimbursement is not a penalty, but rather represents liquidated damages in a reasonable amount that will reasonably compensate Purchaser in the circumstances in which each of the Break-Up Fee and Expense Reimbursement is payable for the efforts and resources expended and opportunities foregone by Purchaser while negotiating and pursuing this Agreement and in reasonable reliance on this Agreement and on the reasonable expectation of the consummation of the Transactions, which amount would otherwise be

impossible to calculate with precision. In any event, Seller shall not be required to pay the Break-Up Fee or Expense Reimbursement more than one time; provided, that Purchaser shall be entitled to receive both the Break-Up Fee and the Expense Reimbursement when otherwise due hereunder.

(c) Subject in all cases to Section 10.12, prior to the Closing, in the event of any breach by Seller of this Agreement, the sole and exclusive remedy of Purchaser shall be to terminate this Agreement in accordance with Section 8.1 and, if applicable, to receive the Break-Up Fee and Expense Reimbursement in accordance with Section 8.2(b). Pursuant to the Bidding Procedures Order and subject to approval by the Bankruptcy Court and entry of the Sale Order, the claim of Purchaser in respect of the Break-Up Fee and/or the Expense Reimbursement is and constitutes an allowed administrative expense claim against Seller under Sections 503 and 507(b) of the Bankruptcy Code in the Chapter 11 Cases.

ARTICLE IX
TAXES

Section 9.1 Transfer Taxes. Any U.S. federal, state, local, and non-U.S., sales Tax, consumption sales, use, excise, value added, registration, real property, purchase, transfer, franchise, deed, fixed asset, stamp, documentary stamp, use or other similar Taxes and recording charges (including all related interest, penalties, and additions to any of the foregoing) payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the Transactions (the "Transfer Taxes") shall be borne and timely paid 50% by Purchaser and 50% by Seller when due; Seller shall timely file all Tax Returns related to any Transfer Taxes with the appropriate Taxing Authority. The Transfer Taxes shall be calculated assuming that no exemption from Transfer Taxes is available under the Bankruptcy Code unless otherwise indicated in the Sale Order. The Parties will cooperate in good faith prior to Closing to determine the amount of Transfer Taxes required to be paid in connection with the Transactions, and shall cooperate in good faith to reduce the amount of Transfer Taxes payable, including by soliciting and providing appropriate resale exemption certificates or other evidence acceptable to Purchaser or Seller, as appropriate, of exemption from such Transfer Taxes and by discussing in good faith whether adjustments to the Transaction structure (including, for the avoidance of doubt, acquiring the equity of an entity, rather than acquiring assets directly, if doing so would avoid a material amount of Transfer Taxes becoming due) as may be warranted to minimize the liability for Transfer Taxes arising hereunder.

Section 9.2 Allocation of Purchase Price. For U.S. federal and applicable state and local income Tax purposes, Purchaser, Seller, and their respective Affiliates shall allocate the Purchase Price (and any Assumed Liabilities or other amounts treated as part of the purchase price for U.S. federal income Tax purposes) among the Acquired Assets in accordance with section 1060 of the Tax Code and analogous provisions of Applicable Law. Within 90 days following the determination of the final Purchase Price, Purchaser shall provide a proposed allocation to Seller setting forth the allocation of the Purchase Price (and other amounts treated as part of the purchase price for U.S. federal income Tax purposes) among the Acquired Assets (the "Allocation"), for Seller's approval, which approval shall not be unreasonably withheld. Seller and Purchaser shall work in good faith to resolve any disputes relating to the Allocation within fifteen (15) days. If Seller and Purchaser are unable to resolve any such dispute, such dispute shall be resolved

promptly by a nationally recognized accounting firm acceptable to Purchaser and Seller, the costs of which shall be borne by Seller. If within fifteen (15) days after receiving the Allocation, Seller has not objected, the Allocation shall be final and binding. The Parties and their respective Affiliates shall file all Tax Returns in accordance with such Allocation (as finally determined under this Section 9.2) and not take any Tax related action inconsistent with the Allocation, in each case, unless otherwise required by a "determination" within the meaning of section 1313(a) of the Tax Code.

Section 9.3 Cooperation.

(a) Purchaser and Seller shall reasonably cooperate, as and to the extent reasonably requested by the other Party, in connection with the filing of Tax Returns and any Action, audit, litigation, or other proceeding with respect to Taxes; provided that in providing such information, assistance and access, each Party shall be entitled to redact information that is not related to the Business. Notwithstanding anything to the contrary in this Agreement, Seller shall not be obligated to provide or disclose any Excluded Tax Returns, provided, that Seller shall provide any reasonably requested information related to the Acquired Assets contained in any Excluded Tax Returns.

(b) Seller shall reasonably cooperate with Purchaser, as and to the extent reasonably requested by Purchaser, to amend the structure of the transactions undertaken pursuant to this Agreement in order to qualify for the Intended Tax Treatment or otherwise achieve a Tax-efficient outcome for the parties.

Section 9.4 Tax Sharing Agreements.

To the extent relating to any Acquired Entity, Seller shall terminate or cause to be terminated, on or before the Closing Date, the rights and obligations of the Acquired Entities pursuant to all Tax sharing agreements or Tax indemnity agreements (other than this Agreement), if any, to which an Acquired Entity, on the one hand, and Seller or any of its Affiliates (other than the Acquired Entities), on the other hand, are parties.

Section 9.5 Allocation of Taxes for Straddle Period. Any Taxes attributable to a Straddle Period required to be apportioned under this Agreement shall be apportioned as follows: (a) the amount of ad valorem and other periodic Taxes allocable to the Pre-Closing Tax Period shall be equal to (i) the amount of such Taxes for the entire Straddle Period multiplied by (ii) a fraction, the numerator of which is the number of calendar days during the Straddle Period that are in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period; and (b) all Taxes not allocated under clause (a) shall be allocated to the Pre-Closing Tax Period (including, for the avoidance of doubt, any Taxes with respect to income included pursuant to Section 951 and Section 951A of the Code) on the basis of a "closing of the books," as if such taxable period ended as of the end of the day on the Closing Date, and the taxable year of any other partnership, pass-through entity or "controlled foreign corporation" within the meaning of Section 957 of the Code that any Acquired Entity owns, directly or indirectly, shall be deemed to end at the end of the Closing Date for such purposes; provided, that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the

period beginning after the Closing Date in proportion to the number of calendar days in each period; provided, that for the avoidance of doubt, (x) nothing contained in this Section 9.5 shall be construed so as to cause an Assumed Liability to become an Excluded Liability or *vice versa*, and (y) Purchaser shall be responsible and pay for all property Taxes that constitute Assumed Liabilities pursuant to Section 1.3(c).

Section 9.6 Preparation of Tax Returns and Payment of Taxes.

(a) Seller shall prepare and timely file (i) all Tax Returns with respect to the Acquired Assets, the Business, and the Acquired Entities for any Tax period ending on or before the Closing Date (the "Applicable Seller Prepared Returns") (and Purchaser shall cooperate with Seller in causing such Tax Returns to be filed) and (ii) all income Tax Returns of Seller and its Affiliates (including, for the avoidance of doubt, any combined, consolidated, or similar income Tax Return of Seller or its Affiliates that includes an Acquired Entity), and, Purchaser shall have no rights to review and comment on any such Tax Returns described in this clause (ii). Seller shall provide Purchaser with a draft of all Applicable Seller Prepared Returns at least thirty (30) days (or such shorter period of time as is reasonably practicable) prior to the filing of any such Tax Return to the extent such Applicable Seller Prepared Returns relate to any Assumed Liability or Acquired Entity. Seller shall incorporate any changes reasonably requested by Purchaser with respect to such Tax Returns that are supported at a "more likely than not" (or higher) level of confidence and consistent with past practice. Seller shall be responsible for and timely pay all Taxes due on any Tax Return Seller is obligated to file under this Section 9.6(a), except for Transfer Taxes allocated to Purchaser pursuant to Section 9.1.To the extent not otherwise provided in this Agreement, Seller shall be responsible for and shall promptly pay when due all property Taxes and levied with respect to the Acquired Assets attributable to the Pre-Closing Tax Period, including any and all interest and penalties with respect thereto (including due to any delay in payment of such property Taxes).

(b) The parties agree that for purposes of filing any Tax Return related to the transactions contemplated by this Agreement the parties shall not apply the principles of Pierce v. Commissioner, 326 F. 2d 67 (8th Cir. 1964) with respect to any prepaid amount received or deferred revenue accrued prior to the Closing in connection with the Acquired Assets, the Acquired Entities or the Business.

Section 9.7 Tax Treatment. Each party hereto agrees that, for U.S. federal (and applicable state and local) income Tax purposes, (i) the purchase and sale or assumption, as the case may be, of the Acquired Assets and Assumed Liabilities contemplated by this Agreement shall be treated as a taxable exchange governed by Section 1001 of the Tax Code, and (ii) Purchaser shall be treated for U.S. federal income tax purposes as acquiring assets underlying the Acquired Entities (and, for the avoidance of doubt, as acquiring no stock of any entity classified as a "c corporation" for U.S. federal income tax purposes) (the "Intended Tax Treatment"). Each party hereto shall file any federal, state and local income tax returns on a basis consistent with the foregoing treatment, and each party hereto will assert the correctness of that treatment, and each party will not adopt any treatment that is contrary to or inconsistent with that treatment, in all dealings with the Internal Revenue Service unless otherwise required by a "final determination" within the meaning of Section 1313(a) of the Tax Code.

Section 9.8 Other Tax Matters.

(a) After the Closing, to the extent that any such action is reasonably expected to materially increase the aggregate Tax Liabilities shown as due and owing on Seller Combined Tax Returns, Purchaser shall not, and shall cause its Affiliates (including the Acquired Entities) not to, for so long as Seller remains in existence, without the prior written consent of Seller (not to be unreasonably conditioned, delayed, or withheld) (a) file any ruling or request with any taxing authority with respect to Tax Returns of an Acquired Entity for a Pre-Closing Tax Period; (b) make or initiate any voluntary contact with any taxing authority (including any voluntary disclosure agreement or similar process) with respect to the filing of any Tax Returns of an Acquired Entity for a Pre-Closing Tax Period; or (c) make or change any Tax election of an Acquired Entity that is retroactive to, any Pre-Closing Tax Period.

(b) The Parties agree to treat any payment made from one Party to another pursuant to this Agreement that is not reflected as part of the Purchase Price under this Agreement as an adjustment to the Purchase Price for all income Tax purposes to the extent permitted by applicable Law.

ARTICLE X
MISCELLANEOUS

Section 10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Except in the case of Fraud, each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement in this Agreement or in any other Transaction Agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and Seller acknowledge and agree, on their own behalf and on behalf of the Purchaser Group or Seller Parties, as the case may be, that the agreements contained in this Section 10.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing and (b) are an integral part of the Transactions and that, without the agreements set forth in this Section 10.1, none of the Parties would enter into this Agreement.

Section 10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein, all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other Transaction Agreements, the performance of this Agreement and the other Transaction Agreements and the consummation of the Transactions will be paid by the Party incurring such fees, costs and expenses; provided that (a) all Transfer Taxes will be allocated pursuant to Section 9.1 and (b) all Cure Costs will be allocated pursuant to Section 1.5(c).

Section 10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail (provided, that no "bounce back" or other automatic notice of non-delivery is generated), (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Parties.

Notices to Purchaser:

Kinterra Capital Corp.
Bay Adelaide – East Tower
22 Adelaide Street West, Suite 3930
Toronto, ON, M5H 4E3

Attention: Corporate Secretary
Email: notifications@kinterracapital.com

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

Latham & Watkins LLP
1271 Avenue of the Americas
New York, NY 10020

Attention: Adam Goldberg
Daniel Mun

Email: adam.goldberg@lw.com
daniel.mun@lw.com

Notices to Seller:

Ascend Elements, Inc.
133 Flanders Road
Westborough, MA 01581
Attention: Deacon Powell
Email: dpowell@ascendelements.com

with copies to (which shall not constitute notice):

Norton Rose Fulbright US LLP
2200 Ross Avenue, Suite 3600
Attention: Ryan Manns
Scarlet McNellie

Email: ryan.manns@nortonrosefulbright.com
Scarlet.mcnellie@nortonrosefulbright.com

Section 10.4 Binding Effect; Assignment. This Agreement shall be binding upon Purchaser and, subject to the terms of the Bidding Procedures Order (with respect to the matters covered thereby) and the entry and terms of the Sale Order, Seller, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Chapter 11 Cases or any successor Chapter 7 cases; provided that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated without the prior written consent of Purchaser and Seller, and any attempted assignment or delegation without such prior written consent shall be null and void, except that Purchaser may assign or transfer any or all of its rights and/or obligations under this Agreement (including any of its rights to acquire any of the Acquired Assets hereunder or any of its obligations to assume any Assumed Liabilities hereunder) to one or more of its Affiliates without the prior written consent of any other party hereto (provided, however, that such assignment shall not relieve Purchaser of its obligations hereunder).

Section 10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and Seller or (b) waived only in a writing executed by the Party against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

Section 10.6 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than (i) for purposes of Section 10.7, the Non-Recourse Persons, and (ii) the Parties and such permitted assigns, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

Section 10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of, or related to this Agreement may only be brought against, only the Persons that are expressly named as Parties and not against any other Persons. Except to the extent named as a Party, and then only to the extent of the specific obligations of such Parties set forth in this Agreement and in the Transaction Agreements, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of any Party (each, a "Non-Recourse Person") will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the Parties or for any Agreement Dispute and (ii) in no event shall any Person have any shared or vicarious liability, or otherwise be the subject of legal or equitable claims, for the actions or omissions (including through equitable claims (such as unjust

enrichment) not requiring proof of wrongdoing committed by the subject of such claims) of any other Person, and each of such Persons and the Non-Recourse Persons are intended third party beneficiaries of this Section 10.7 and shall be entitled to enforce this Section 10.7 as if a party directly hereto. Notwithstanding anything to the contrary set forth herein, nothing in this Section 10.7 or elsewhere herein shall limit the rights or remedies in the case of Fraud against the Person committing Fraud.

Section 10.8 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction.

Section 10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Party. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

Section 10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement. However, each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules, and any disclosure in the Schedules will be deemed a disclosure against any representation or warranty set forth in this Agreement, in each case only to the extent the applicability of such disclosure to such section of the Schedules is readily apparent on the face of such disclosure. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules, or the Exhibits does not imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course, and no Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules, or Exhibits in any Agreement Dispute or other controversy between the Parties as to whether any obligation, item, or matter not set forth or included in this Agreement, the Schedules, or Exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement, or other item set forth on any Schedule is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item, and such terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, the Schedules, and the Exhibits is disclosed solely

for purposes of this Agreement, and no information contained in this Agreement, the Schedules, or the Exhibits will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of Contract.

Section 10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreements and other agreements expressly referred to herein, and the other Transaction Agreements, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions and supersedes all prior agreements and documents among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the other Transaction Agreements will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions of this Agreement or the intent of the Parties, and will be deemed joint work product of the Parties.

Section 10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any Action required of it under this Agreement. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which the Parties are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither Seller nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that either Seller or Purchaser pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Seller pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit Seller from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any Action, in each case in accordance with Section 10.13, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (i) for the period during which such Action is pending, plus ten (10) Business Days or (ii) by such other time period established by the court presiding over such Action, as the case may be. In no event will this Section 10.12 be used, alone or together with any other provision of this Agreement, to require Sellers to remedy any breach of any representation or warranty made by Seller herein. For the avoidance of doubt, Seller shall not have the right hereunder to obtain an injunction, specific performance or other equitable relief to cause Purchaser to consummate the Closing unless and until (A) all of the conditions to Closing set forth in Section 7.1 and Section 7.2 have been satisfied, (B) Seller has delivered an irrevocable written notice to Purchaser certifying that it is ready, willing

and able to consummate the Closing, and (C) Purchaser does not consummate the Closing within five (5) Business Days after its receipt of such written notice from Seller.

Section 10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action of any kind whatsoever, including a counterclaim, cross-claim, or defense, regardless of the legal theory under which any Liability or obligation may be sought to be imposed, whether sounding in contract or in tort or under statute, or whether at law or in equity, or otherwise under any legal or equitable theory, that may be based upon, arising out of, or related to this Agreement, the negotiation, execution, or performance of this Agreement, or the Transactions and any questions concerning the construction, interpretation, validity, and enforceability of this Agreement (each, an "Agreement Dispute") brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such Action, in the Court of Chancery of the State of Delaware (or if such court lacks jurisdiction, any other state or federal court sitting in the State of Delaware) (clauses (a) and (b), the "Chosen Courts"). Each of the Parties irrevocably submits to the exclusive jurisdiction of the Chosen Courts for the pendency of the Chapter 11 Cases for itself and with respect to its property, generally and unconditionally, with regard to any Agreement Dispute. No Party shall commence any Agreement Dispute except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree, or award rendered by any Chosen Courts, and no Party will file a motion to dismiss any Agreement Dispute filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Courts, and each Party hereby irrevocably waives any objection that any Chosen Court is an improper or inconvenient forum for resolving any Agreement Dispute. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by Law.

Section 10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and any Agreement Dispute will be governed by and construed in accordance with the internal Laws of the State of New York applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of New York or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of New York to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY AGREEMENT DISPUTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY AGREEMENT DISPUTE. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH AGREEMENT DISPUTE WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE

CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY AGREEMENT DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS Section 10.14(b).

Section 10.15 Counterparts and PDF. This Agreement and any other Transaction Agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party to such Transaction Agreement, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a .PDF, DocuSign, or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version of such Contract delivered in person. Minor variations in the form of the signature page to this Agreement or any Transaction Agreement, including footers from earlier versions of any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party to any Transaction Agreement, each other party to such Transaction Agreement will re-execute original forms of such Transaction Agreement and deliver them to all other parties. No party to any such Transaction Agreement will raise the use of a .PDF, DocuSign, or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of PDF, DocuSign, or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

Section 10.16 Publicity. Neither Seller nor Purchaser shall issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party (which approval will not be unreasonably conditioned, withheld, or delayed), unless, in the reasonable judgment of the applicable disclosing Party, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Seller (or their respective Affiliates) lists securities; provided that the Party intending to make such release shall use its reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the contents of such release. However, a copy of this Agreement will be filed with the Bankruptcy Court. For the avoidance of doubt, the parties hereto acknowledge and agree that Purchaser and its Affiliates may provide general information about the Business and the subject matter of this Agreement in connection with Purchaser's or its Affiliates' fund raising, marketing, informational, reporting activities or efforts to obtain incentives from any Governmental Body, subject, in each case, to customary confidentiality obligations by the recipient of such information.

Section 10.17 Bulk Sales Laws. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets of the Debtors shall be free and clear of any Encumbrances in the Acquired Assets (including any Encumbrances claims arising out of any

"bulk sales," "bulk transfers," or similar Laws), except Permitted Encumbrances, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with any "bulk sales," "bulk transfers," or similar Laws in respect of the Transactions.

ARTICLE XI
ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

Section 11.1 Certain Definitions.

(a) "Acquired Intellectual Property" means the Seller Intellectual Property and all Intellectual Property owned or purported to be owned by one or more Acquired Entities.

(b) "Action" means any action, suit, claim, charge, inspection, inquiry, litigation, arbitration, mediation, audit, proceeding (including any civil, criminal, administrative, public, private, arbitral, investigative or appellate proceeding), prosecution of any kind whatsoever whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, and any subpoena, request for information, notice of violation, deficiency notice, or similar enforcement or investigative communication, commenced, brought, conducted or heard by or before any Governmental Body.

(c) "Advisors" means, with respect to any Person as of any relevant time, any directors, officers, employees, investment bankers, financial advisors, accountants, agents, attorneys, consultants, or other representatives of such Person.

(d) "Affiliate" means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, affairs and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, the Acquired Entities will be Affiliates of Seller until Closing and Affiliates of Purchasers after Closing.

(e) "Alternative Transaction" means any transaction (or series of transactions), whether direct or indirect, whereby any Person or group of Persons (other than Seller and its Affiliates or Purchaser and its Affiliates) acquires (i) beneficial ownership of a majority of the Equity Interests of Seller or any Acquired Entity or (ii) any Acquired Assets (other than a de minimis amount), in each case whether by merger, sale of assets or equity, transfer, exchange, recapitalization, plan of reorganization or otherwise. A liquidation or wind-down of Seller's estates (or a plan in the Chapter 11 Cases approving a liquidation or wind-down) shall not be an Alternative Transaction.

(f) "Alternative Transaction Notice" has the meaning set forth in Section 7.5 of this Agreement.

(g) "Alternative Transaction Offer" has the meaning set forth in Section 7.5 of this Agreement.

(h) "Alternative Transaction Proposal" has the meaning set forth in Section 7.5 of this Agreement.

(i) "Anti-Corruption Laws" means the U.S. Foreign Corrupt Practices Act of 1977, as amended (15 U.S.C. §§ 78dd-1, et seq.), the U.K. Bribery Act 2010, and any other applicable anti-bribery and anti-corruption Laws.

(j) "Applicable Law" means, with respect to any Person, any transnational, domestic or foreign federal, state, provincial, municipal or local law (statutory, common or otherwise, and including international conventions, protocols and treaties), act, statute, constitution, treaty, convention, ordinance, code, policy, rule, regulation, Order, or other similar requirement enacted, issued, adopted, promulgated, implemented, enforced or applied by or under any Governmental Body that is binding upon or applicable to such Person or its properties, as amended unless expressly specified otherwise.

(k) "Assumed Environmental Liabilities" has the meaning set forth in Section 1.3(b) of this Agreement.

(l) "Auction" shall have the meaning ascribed to such term in the Bidding Procedures Order.

(m) "Avoidance Actions" means, collectively, any and all claims or causes of action arising under or pursuant to chapter 5 of the Bankruptcy Code or any other similar state or federal statutes or common law, including fraudulent transfer or fraudulent conveyance law.

(n) "Backup Bidder" has the meaning set forth in Section 7.5(b) of this Agreement.

(o) "Balance Sheet Date" means March 31, 2026.

(p) "Bankruptcy Code" has the meaning set forth in the preamble of this Agreement.

(q) "Bankruptcy Court" has the meaning set forth in the preamble of this Agreement.

(r) "Bidding Procedures" means the procedures employed with respect to the proposed sale of the Assets and the assumption of the Assumed Liabilities set forth on Exhibit 1 to the Bidding Procedures Order.

(s) "Bidding Procedures Order" means the Order *(A) Approving Bid Procedures, (B) Authorizing Designation of a Stalking Horse Bidder, (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing, and (D) Granting Related Relief Docket No. 120.*

(t) "Break-Up Fee" means the amount of $2,000,000.

(u) "Business" means the business operations of Seller and its Subsidiaries (including the Acquired Entities), including the business of recycling spent lithium-ion batteries and manufacturing scrap into pCAM and battery-grade lithium carbonate.

(v) "Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York are authorized or required by Law to be closed.

(w) "Business Employee" means each employee of Seller or its Affiliates.

(x) "Business Service Provider" means each individual independent contractor (whether providing services directly or through an entity wholly owned by them), consultant, or other natural Person, other than a Business Employee, providing services to the Business, Seller, any Affiliate of Seller or any of the Acquired Entities.

(y) "Cash and Cash Equivalents" means all of Seller's cash or cash equivalents (including checks and deposits in transit, demand deposits, money markets or similar accounts), checking account balances, marketable securities, bankers' acceptances, and any cash equivalents whether on hand, in transit, in banks or other financial institutions, or otherwise held, including the aggregate proceeds from the Term Loans provided to Seller pursuant to the DIP Financing Agreement, in each case, to the extent readily convertible to cash within 30 days; provided, however, that "Cash and Cash Equivalents" shall not include all deposits and other credit support with third-parties, including cash security deposits, cash held as a guarantee in respect of performance of Contracts and other cash collateral posted with counterparties or to otherwise support letters of credit, in each case, including any held in connection on behalf of any Seller or with or supporting the Acquired Assets or the Assumed Liabilities.

(z) "Cause of Action" means any and all claims, demands, Actions, causes of action, choses in action, counterclaims, judgments, costs, expenses, damages, and liabilities (whether known or unknown), including Avoidance Actions.

(aa) "Confidentiality Agreement" means that certain Non-Disclosure Agreement, effective from March 11, 2026, by and between Seller and Kinterra Capital Corp., an Ontario business corporation.

(bb) "Confirmation Order" means the Order of the Bankruptcy Court approving confirmation of a chapter 11 plan of reorganization or liquidation.

(cc) "Consent" means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(dd) "Contract" means any contract, indenture, note, bond, lease, sublease, mortgage, agreement, guarantee, or other agreement, commitment or understanding that is binding upon a Person or its property.

(ee) "Critical Vendor Avoidance Claims" means, collectively, any and all Avoidance Actions of Seller or its estate against vendors and suppliers that (1) are critical to the Business, as determined by the Purchaser in its sole discretion, and (2) received payments from

the Debtors in accordance with any order of the Bankruptcy Court approving the Debtors' critical vendors' motion; provided that any such vendors or suppliers shall be set forth on Schedule 11.1(dd), which Schedule shall be delivered by Purchaser to Seller prior to the Closing.

(ff) "Cure Costs" has the meaning set forth in Section 1.3(d) of this Agreement.

(gg) "Debtors" means, collectively, the debtors-in-possession in the Chapter 11 Cases.

(hh) "Designation Notice" has the meaning given to such term in Section 1.5(b).

(ii) "DIP Financing Agreement" means that certain Debtor in Possession Secured Term Loan Agreement, dated on or about May 6, 2026 (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time), by and among Ascend Elements, Inc., as Parent Borrower, Ascend Elements US, LLC, as Borrower, and Bluegrass Infrastructure Partners Holdings, LLC, as DIP Lender.

(jj) "DIP Guaranty Agreement" means that certain Guaranty Agreement, dated on or about May 6, 2026 (as amended, restated, amended and restated, supplemented, waived, extended, or otherwise modified from time to time), by and among Ascend Elements, Inc., its subsidiaries party thereto and Bluegrass Infrastructure Partners Holdings, LLC.

(kk) "Documents" means all written files, documents, instruments, papers, books, reports, emails, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, reports, studies, and documents, Tax Returns, ledgers, journals, customer lists, regulatory filings, plans, research materials, technical documentation (design specifications, engineering information, test results, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

(ll) "DOE" means the United States Department of Energy.

(mm) "DPA" means Section 721 of the Defense Production Act of 1950, as amended, including all implementing regulations.

(nn) "Encumbrance" means any liens, claims, defenses (including rights of setoff and recoupment), and interests, in each case, in, on, or related to the Acquired Assets, including security interests or similar interests of whatever kind or nature, liens as defined in Section 101(37) of the Bankruptcy Code, encumbrances, mortgages, deed of trust, conditional sales or other title retention agreements, pledges, deeds of trust, hypothecations, mechanic's, workmen's, repairmen's, materialmen's, warehousemen's, carrier's and other similar statutory or inchoate lien, assignments, preferences, debts, easements, charges, suits, licenses, options, profit sharing interest, rights of recovery, judgments, right of way, encroachment, right of first offer, right of first refusal, purchase, or repurchase right or option, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state, and local taxes), licenses,

covenants, restrictions, indentures, instruments, leases, options, off-sets, causes of action, contract rights and claims, to the fullest extent of the law, in each case, of any kind or nature in, on, or related to the Acquired Assets (including all "claims" as defined in Section 101(5) of the Bankruptcy Code), known or unknown, whether prepetition or postpetition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable, including any and all such liabilities, causes of action, contract rights and claims arising out of the Debtors' continued operations following the Closing Date.

(oo) "Environmental Credits" means all air emissions credits, allowances, offsets, or other environmental attributes held by Seller at any point in the year prior to the Effective Date.

(pp) "Environmental Laws" means all Laws concerning Hazardous Materials, pollution or protection of natural resources, the environment, or human or worker health and safety.

(qq) "Equipment" means equipment, computers, furniture, furnishings, fixtures, office supplies, vehicles and other fixed assets.

(rr) "Equity Interests" means, with respect to a Person, any (a) membership interests, partnership interests, profits interests, capital stock or other equity securities (including profit participation features or stock or equity appreciation rights, "phantom" stock rights, stock-based performance units, or other similar rights) or other ownership interests of such Person, or (b) any securities (including debt securities or other indebtedness), options, warrants, rights to subscribe to, purchase rights, calls or commitments relating to the issuance, purchase, or sale or repurchase of or exercisable or exchangeable for or convertible into, or other rights to acquire any of the items in clause (a) of such Person.

(ss) "ERISA" means the Employee Retirement Income Security Act of 1974.

(tt) "ERISA Affiliate" means any trade or business (whether or not incorporated) that is treated as a single employer with Seller or the Acquired Entities within the meaning of Section 414 of the Tax Code (whether or not such trade or business is incorporated or located in the U.S.). For the avoidance of doubt, any former ERISA Affiliate of any of Seller or the Acquired Entities shall continue to be considered an ERISA Affiliate thereof within the meaning of this definition with respect to the period such Person was an ERISA Affiliate of Seller or any Acquired Entity and with respect to Liabilities arising after such period for which any of the Acquired Entities could be liable under the Tax Code or ERISA.

(uu) "ESM" means Elemental Strategic Metals Sp. z o.o.

(vv) "ESM Notice" has the meaning set forth in Section 6.13(d) of this Agreement.

(ww) "Excluded Contracts" means, collectively, all Contracts to which Seller or any of its Affiliates is a party, or in respect of which any assets or properties of Seller or any of its Affiliates is subject to or bound, other than the Assigned Contracts and the Acquired Leases, in each case subject to, for the avoidance of doubt, Section 1.5.

(xx) "Excluded Tax Returns" means Tax Returns (or any portion of any Tax Return) and other books and records related to any consolidated, combined, affiliated or unitary group for Tax purposes that includes Seller or any of its Affiliates that is not an Acquired Entity.

(yy) "Expense Reimbursement" means an amount equal to the reasonable and documented out-of-pocket fees and expenses of Purchaser in connection with the Transactions contemplated by this Agreement and the Transaction Agreements, including all such fees and expenses related to negotiating this Agreement, or any of the other Transaction Agreements, preparing to implement the transactions contemplated hereby and thereby, and investigating and evaluating the Seller Parties, the Business, the Acquired Entities, the Acquired Assets, the Excluded Assets and the Assumed Liabilities, which shall constitute an allowed superpriority administrative expense claim against the Seller Parties under Sections 105(a), 503(b), and 507(b) of the Bankruptcy Code with priority over all other administrative expenses of Sellers of the kind specified in Section 503(b) of the Bankruptcy Code; *provided*, *however*, that the Expense Reimbursement shall not exceed $1,500,000.

(zz) "Final Order" means a judgment or Order of the Bankruptcy Court (or any other court of competent jurisdiction) entered by the clerk of the Bankruptcy Court (or such other court) on the docket in the Chapter 11 Cases (or the docket of such other court), which is in full force and effect, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for *certiorari,* or move for a new trial, stay, reargument or rehearing has expired and as to which no appeal, petition for *certiorari* or motion for new trial, stay, reargument or rehearing is then pending or (b) if an appeal, writ of *certiorari* new trial, reargument or rehearing thereof has been sought, such Order or judgment of the Bankruptcy Court or other court of competent jurisdiction has been affirmed by the highest court to which such Order was appealed, or *certiorari* has been denied, or a new trial, stay, reargument or rehearing has been denied or resulted in no modification of such Order, and the time to take any further appeal, petition for *certiorari* or move for a new trial, reargument or rehearing has expired, as a result of which such order has become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure; provided, that the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such Order, will not cause such Order not to be a Final Order as long as such motion has not been filed.

(aaa) "Fraud" means actual and intentional common law fraud with respect to the representations and warranties set forth in Article III or Article IV of this Agreement, as interpreted by Delaware courts applying Delaware law. For the avoidance of doubt, "Fraud" shall not include equitable fraud or any fraud claim based on constructive knowledge, recklessness, negligent misrepresentation or a similar theory.

(bbb) "GAAP" means United States generally accepted accounting principles as in effect from time to time.

(ccc) "Governmental Authorization" means any permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

(ddd) "Governmental Body" means any government, quasi-governmental entity, or other governmental, administrative, or regulatory body, of any nature, whether foreign or domestic, federal, state, provincial, or local, or any agency, branch, department, official, entity, instrumentality, political subdivision, or authority of any of the foregoing, or any court, tribunal, judicial, or arbitral body of competent jurisdiction.

(eee) "Government Contract" means any Contract (including any purchase, delivery, or task order, basic ordering agreement, pricing agreement, letter contract, grant, cooperative agreement, other transactional authority agreement, or change order) between the Seller, any Acquired Entity, or any Joint Venture of which the Seller or any Acquired Entity is a member, on the one hand, and any Governmental Body or any prime contractor or subcontractor (at any tier) of any Governmental Body, on the other hand.

(fff) "Government Official" means (i) any official, employee, agent or representative of, or any Person acting in an official capacity for or on behalf of, any Governmental Body, (ii) any official, employee, agent or representative of, or any Person acting in an official capacity for or on behalf of, a company, business, enterprise or other entity owned, in whole or in part, or controlled by any Governmental Body or (iii) any official, employee, agent or representative of, or any Person acting in an official capacity for or on behalf of, a public international organization.

(ggg) "Hazardous Material" means any material, substance or waste that is listed, regulated, or defined as "hazardous," "toxic," "radioactive," or as a "pollutant" or "contaminant," under, or for which liability or standards of conduct may be imposed pursuant to, Environmental Laws, including but not limited to petroleum, petroleum products and by-products, asbestos or asbestos-containing materials, per- and polyfluoroalkyl substances, polychlorinated biphenyls, radioactive materials, noise, odor, lead, urea formaldehyde, radon gas or mold.

(hhh) "Hopkinsville Property" has the meaning set forth in Schedule 3.7.

(iii) "Hopkinsville Grant Agreement" means that certain Grant Agreement, by and between Seller and the City of Hopkinsville, dated as of December 14, 2022, and recorded on December 15, 2022.

(jjj) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976 and the rules and regulations promulgated thereunder.

(kkk) "Intellectual Property" means (i) patents, patent applications, and patent disclosures, and continuations, continuations-in-part, divisionals, renewals, extensions, reexaminations, revisions, substitutions, provisionals and reissues thereof; (ii) trademarks, service marks, trade dress, logos, corporate names, and Internet domain names, together with all associated goodwill; (iii) copyrights and copyrightable subject matter (including literary works and any other

original works of authorship fixed in any tangible medium, whether or not published); (iv) issuances, registrations and applications for any of clauses (i) through (iii); (v) trade secrets and other rights in confidential proprietary information, including know-how, inventions, processes, formulae, models and methodologies, techniques, protocols, source code, algorithms, layouts, specifications and databases; (vi) rights in software; (vii) rights in drawings, schematics, and other technical plans; (viii) sui generis rights to databases; (ix) raw data, reports, test sheets, procedures, studies, and any other related or similar data, whether or not published; and (x) all other intellectual property in any jurisdiction in the world.

(lll) "International Trade Laws" means (a) all applicable trade, export control, import, and antiboycott Laws imposed, administered, or enforced by the U.S. government, including the Arms Export Control Act (22 U.S.C. § 1778), the International Emergency Economic Powers Act (50 U.S.C. §§ 1701–1706), Section 999 of the Internal Revenue Code, the U.S. customs laws at Title 19 of the U.S. Code, the Export Control Reform Act of 2018 (50 U.S.C. §§ 4801-4861), the International Traffic in Arms Regulations (22 C.F.R. Parts 120–130), the Export Administration Regulations (15 C.F.R. Parts 730-774), the U.S. customs regulations at 19 C.F.R. Chapter 1, and the Foreign Trade Regulations (15 C.F.R. Part 30); and (b) all applicable trade, export control, import, and antiboycott Laws imposed, administered or enforced by any other country, except to the extent inconsistent with U.S. Law.

(mmm)"Inventory" means all inventory (including finished goods, supplies, raw materials, work in progress, spare, replacement and component parts) maintained or held by, stored by or on behalf of, or in transit to, Seller or the Acquired Entities, including any such inventory (i) being held by customers of the Business pursuant to consignment arrangements, or (ii) being held by suppliers of the Business under tolling or similar arrangements.

(nnn) "IT Assets" means all hardware, computers, storage media, databases, applications, websites, software, servers, workstations, routers, hubs, switches, circuits, networks, computer network equipment or systems, data communications lines, and all other information technology equipment and assets including parts of any of the foregoing such as firmware, screens, terminals, disks, cabling, related infrastructure, and other peripheral and associated electronic equipment and services that are owned, licensed, leased, or used or accessed on a different legal basis, or controlled by Seller or any of its Affiliates.

(ooo) "Junior CLNs" means, collectively, the Subordinated Secured Convertible Promissory Notes issued by Seller under that certain Subordinated Secured Convertible Note Purchase Agreement, dated as of June 13, 2025, by and among Seller and the following investors: (a) Alumni Ventures – Ascend Elements Trust, (b) AOV Co-Invest II, L.P., (c) AROP II, LLC, (d) At One Leaders I, LP, (e) At One Ventures OpCo, LLC, (f) Avenue Venture Opportunities Fund, L.P., (g) Big Harvest International (HK) Limited, (h) Clearvision Sustainability Growth Fund 1, LP, (i) CMA CGM Group Fund For Energies SAS, (j) Dahlia Investments Pte. Ltd., (k) David M. and Alena J. Schwaber JTWROS, (l) Demetrius Universal Corp., (m) DMC, II LP, (n) Doral Energy – Tech Ventures, Limited Partnership, (o) Doral Tech SI, Limited Partnership, (p) Fifth Wall Early Stage Climate Technology Fund, L.P., (q) Fifth Wall Accelerate (Late Stage), L.P., (r) Fifth Wall Ventures SPV XXXIX, L.P., (s) HV FUND, SCS RAIF – HV FUND-VENTURE DIRECT, (t) Irongrey, LLC, (u) James A. Ellis 2018 Family Trust, (v) James O'Neill, (w) James

P Baum Trust, (x) JC Bluegrass (Invest) SCSp, (y) John Harper 2002 Revocable Trust, (z) Kyle Matzke, (aa) Massachusetts Technology Development Corporation d/b/a Mass Ventures, (bb) Project Arise – Decarbonization Partners I SPV B, LP, (cc) Sandy Pool Blind Trust, (dd) TDK Ventures Inc., (ee) Ulster Investment Capital Corp., (ff) Volta One, LLC, (gg) Volta Three, a compartment of Oxygen Ventures S.à.r.l., (hh) Volta Two, LLC, (ii) Woven Capital, L.P., (jj) Avenue Venture Opportunities Fund II, L.P., (kk) ESC Sustainable Solutions Fund, L.P., and (ll) InMotion Ventures Ltd.

(ppp) "Knowledge of Seller", or words of like import, means the actual knowledge, after due inquiry of direct reports of Linh Austin, Ahmed Allouache, Eric Gratz, Adam Titus, Tomasz Poznar, Deacon Powell, and Barbara Knight, none of whom shall have any personal Liability or obligations regarding such knowledge.

(qqq) "KY Seller Mortgage" means the Commercial Real Estate Mortgage and Assignment of Leases, dated as of November 16, 2022, executed by Ascend Elements, Inc., for the benefit of Hopkinsville Industrial Foundation, Inc., and recorded on November 18, 2022, in the Christian County, Kentucky Clerk's Office, under Doc No. 10038904, at Book 1763 Page 419-431.

(rrr) "Labor Contract" means any collective bargaining agreement, labor agreement, works council agreement, shop agreement, employee representative agreement, memorandum of understanding, side letter, settlement agreement, or any other Contract or arrangement (whether formal or informal, and whether in effect, expired but still being applied, or pending ratification) between Seller or any of the Acquired Entities and any Labor Union.

(sss) "Labor Union" means any labor union, labor organization, works council, employee representative body, staff or employee association, bargaining unit, or similar organization, committee or group (whether certified, recognized, pending certification or recognition, or claiming to represent any employees) that has, purports to have, or seeks to exercise the authority to represent any Business Employee.

(ttt) "Law" means any domestic, foreign, international, transnational, multinational, federal, state, provincial, local, municipal, or other law, statute, legislation, constitution, principle of common law, ordinance, code, decree, treaty, convention, rule, protocol, regulation, act, Order, or other similar requirement in each case, issued, enacted, adopted, promulgated, implemented, enforced, applied or otherwise put into effect by or under the authority of any Governmental Body.

(uuu) "Lease" means all leases, subleases, licenses, concessions and other agreements pursuant to which any Person holds any Leased Real Property (including all amendments, assignments, renewals, guarantees and other agreements with respect thereto).

(vvv) "Liability" means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued,

liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(www) "Massachusetts Facility" means that certain facility of Seller or its Subsidiaries located at 133 Flanders Rd, Westborough, Massachusetts 01581.

(xxx) "Material Adverse Effect" means (x) a material adverse effect on the business, condition (financial or otherwise), or operations of the Business, Acquired Entities, Acquired Assets, and Assumed Liabilities, taken as whole or (y) an Effect that individually or in the aggregate, has prevented or materially delayed or would prevent or materially delay the Transactions or has materially impaired or would materially impair the ability of the Seller to consummate the Transactions; provided that none of the following, either alone or in combination, shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect with respect to the foregoing clause (x) solely as it relates to Article VII: any matter, event, change, development, occurrence, circumstance or effect (each, an "Effect") in, arising from, or relating to (i) general business or economic conditions; (ii) national or international political or social conditions, including tariffs, trade wars, Sanctions or International Trade Laws, riots, protests, the engagement by the United States or any other country in hostilities or the escalation of any hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military or terrorist (whether or not state-sponsored) attack upon the United States or any other country, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, Equipment, or personnel of the United States or of any other country; (iii) any fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak (including "Coronavirus" or "COVID-19") or the worsening of any outbreak, or any quarantine or trade restrictions related thereto or any other *force majeure*; (iv) to financial, banking, or securities markets (including (A) any disruption of any of such markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, Contract, or index, and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions); (v) changes in GAAP or interpretation of GAAP; (vi) changes in Laws or other binding directives or determinations issued or made by any Governmental Body and any change in the terms or enforcement of any of the foregoing; (vii) the negotiation, announcement, or pendency of this Agreement or the Transactions (except any Effects arising from or related to the breach or inaccuracy of the representations and warranties set forth in Section 3.4); (viii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) and any other failure to win or maintain customers or business (provided that this clause (viii) shall not prevent a determination that any effect, change, event, condition or occurrence underlying such failure to meet projections, forecasts or budgets has resulted in a Material Adverse Effect (to the extent such effect, change, event, condition or occurrence is not otherwise excluded from this definition of Material Adverse Effect) (ix) any action taken by Purchaser or its Affiliates with respect to the Transactions or the financing of the Transactions or any breach by Purchaser of this Agreement; or (x) the commencement or pendency of the Chapter 11 Cases. However, any adverse Effect resulting or arising from any matter described in clauses (i) through (vi) shall be taken into account in determining whether there has

been a Material Adverse Effect to the extent that such Effect has had a disproportionate adverse effect on Seller or any of its Affiliates or the Business relative to similarly situated participants in the industries and geographic areas in which Seller or any of its Affiliates or the Business operates.

(yyy) "Open Source Software" means any software that contains or is derived in any manner (in whole or in part) from any software, code or libraries that are distributed as free software or as open source software or under any licensing or distribution models similar to open source, including but not limited to any software licensed under or subject to terms that require source code to be provided or made available to subsequent licensees or sublicensees (regardless of whether the license restricts source code from being distributed in modified form) or which may impose any other obligation or restriction with respect to a Person's Intellectual Property, including, without limitation, any software licensed under or subject to the Artistic License, the Mozilla Public License, the GNU Affero GPL, the GNU GPL, the GNU LGPL, any other license that is defined as an Open Source License by the Open Source Initiative, and any similar license or distribution model.

(zzz) "Opole Property" means the undeveloped plots of land located in the Opole Voivodeship, Opole City County, Opole City, Poland cadastral unit, cadastral district 166101_1.0147, Wrzoski, in the city of Opole, in the Opole-Wrzoski Subzone of the Wałbrzych Special Economic Zone INVEST-PARK, owned by WSSE "INVEST-PARK" sp. z o.o., with a total area of 43.9999 ha, consisting of plots of land no.: 668/52, 668/3, 668/4, 668/5, 668/6, 668/7, 668/11, 668/12, 668/13, 668/14, 668/15, 668/16, 668/17, 668/18, 668/19, 668/20, 668/53, 668/22, 668/55, 668/40, 668/45, 670/31, 670/33, 670/35, 670/37, 670/39, 670/41, 670/43, 618/3, 602/6, for which the District Court in Opole, 6th Land and Mortgage Register Division keeps land and mortgage registers under numbers: OP1O/00164138/8, OP1O/00171892/3 and OP1O/00165182/8.

(aaaa) "Order" means any order, injunction, judgment, decree, ruling, writ, assessment, subpoena, directive, determination, or award entered, enacted, or enforced by a Governmental Body, including any order entered by the Bankruptcy Court in the Chapter 11 Cases (including the Sale Order) and any consent, settlement, or compliance order of, or settlement or conciliation agreement with, and any interpretation thereof, by any Governmental Body

(bbbb) "Ordinary Course" means the ordinary and usual course of operations of the Business, taken as a whole, taking into account the contemplation, commencement and pendency of the Chapter 11 Cases and recent past practice in response to any tariffs, Sanctions, or International Trade Laws implemented by any Governmental Body.

(cccc) "Organizational Documents" means, with respect to any Person other than a natural person, the constituent documents or agreements by which such Person was organized (such as a certificate of incorporation, certificate of formation, certificate of limited partnership or articles of organization, and including any certificates of designation for preferred stock or other forms of preferred equity) or that relate to the internal governance of such Person (such as bylaws, a partnership agreement or an operating, limited liability or members agreement).

(dddd) "Pass-Through Income Tax Return" means any income Tax Return (such as IRS Form 1065 and associated K-1s) for a Pre-Closing Tax Period or Straddle Period that allocates income, gain, loss, deduction or other Tax items or Taxes, directly or indirectly, to Seller

and does not reflect or concern Taxes that are imposed on the entity itself for which the Tax Return is filed. By way of example and without limitation, Tax Returns primarily concerning property Taxes, sales and use Taxes, payroll Taxes, and withholding Taxes are not Pass-Through Income Tax Returns.

(eeee) "Permitted Encumbrances" means (i) Encumbrances for Taxes not yet due and payable and that are being contested in good faith by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP, or the nonpayment of which is permitted or required by the Bankruptcy Code, (ii) easements, rights of way, restrictive covenants, encroachments, and similar non-monetary Encumbrances or non-monetary impediments against any of the Acquired Assets, in each case, that do not, individually or in the aggregate, adversely affect the operation of the Acquired Assets and, in the case of the Acquired Leased Real Property, that do not, individually or in the aggregate, adversely affect the use or occupancy of such Acquired Leased Real Property as it relates to the operation of the Business, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law that (a) are not violated by the current use or occupancy of the applicable Acquired Leased Real Property as it relates to the operation of the Business, or (b) the violation of which would not reasonably be expected to adversely affect the use or occupancy of the applicable Acquired Leased Real Property as it relates to the operation of the Business, (iv) materialmans', mechanics', artisans', shippers', warehousemans', or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable as of the Petition Date and that are being contested by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP, (v) non-exclusive licenses of Intellectual Property granted in Ordinary Course, (vi) any Encumbrances set forth on Schedule 11.1(yyy), (vii) the City of Hopkinsville Mortgage and Grant Agreement recorded on the Hopkinsville Property held by the City of Hopkinsville, KY, and the KY Seller Mortgage and Assignment of Leases recorded on the Hopkinsville Property held by Hopkinsville Industrial Foundation, Inc., both subject to the satisfaction of the conditions precedent to Purchaser's obligations to consummate the Closing set forth in Section 7.2(i), (viii) solely prior to Closing, any Encumbrances that will be removed or released by operation of the Sale Order and (ix) matters that would be disclosed by an accurate survey or inspection of the Acquired Leased Real Property, in each case, that do not, individually or in the aggregate, adversely affect the use or occupancy of such Acquired Leased Real Property as it relates to the operation of the Business.

(ffff) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, organization, estate, Governmental Body or other entity or group.

(gggg) "Personal Information" means any data or information (i) that identifies, relates to, describes, is reasonably capable of being associated with, or would reasonably be linked, directly or indirectly, with a particular individual or household or (ii) that is otherwise subject to a Law relating to privacy or security of data or information (including such data or information that constitutes or is defined as "personal information" or "personal data" or other equivalent term under any such Law).

(hhhh) "Post-Closing Tax Period" mean any Tax period beginning after the Closing Date and that portion of a Straddle Period beginning after the Closing Date.

(iiii) "Pre-Closing Matters" means occurrences or events on or prior to the Closing.

(jjjj) "Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date and the portion of any Straddle Period through the end of the Closing Date.

(kkkk) "Privacy Requirements" means (a) all applicable Laws concerning data protection, privacy, security and any processing of Personal Information; (ii) policies, notices, or statements concerning data protection, privacy, security and any processing of Personal Information; and (ii) privacy, security, or other commitments related to Personal Information of any Contracts, codes of conduct, or industry standards by which Seller or any Acquired Entity is bound.

(llll) "Purchaser Group" means Purchaser, any Affiliate of Purchasers (including, following the Closing, the Acquired Entities) and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(mmmm) "City of Hopkinsville Mortgage" means the Real Estate Mortgage, dated as of December 14, 2022, executed by Ascend Elements, Inc., for the benefit of City of Hopkinsville, Kentucky, and recorded on December 15, 2022, in the Christian County, Kentucky Clerk's Office, under Doc No. 10039660, at Book 1766 Page 684-701.

(nnnn) "Registered Acquired Intellectual Property" means all registrations, issuances and applications for registration for the Acquired Intellectual Property (including patents, trademarks, copyrights and domain names) that is issued by, registered with or the subject of an application filed with or recorded by any Governmental Body or registrar.

(oooo) "Release" means any actual or threatened release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, placing, discarding, abandonment, disposing or migration.

(pppp) "Sale Order" means a Final Order of the Bankruptcy Court granting the Sale Motion and approving the terms of the Transactions free and clear of all liens, claims, encumbrances, and other interests pursuant to Sections 105, 363, 365, 503, and 507 of the Bankruptcy Code. Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008, and 9014, Bankruptcy Local Rules 2002-1 and 4002-1, and the *Procedures for Complex Cases in the Southern District of Texas*, substantially in the form attached hereto as Exhibit A, which shall be, in form and substance, satisfactory to Purchasers.

(qqqq) "Sanctioned Country" means at any time, a country or territory that is itself the target of comprehensive Sanctions (currently, Cuba, Iran, North Korea, Syria (before July 1, 2025), the Crimea region of Ukraine, the so-called Donetsk People's Republic, and so-called Luhansk People's Republic).

(rrrr) "Sanctioned Person" means (a) any Person listed in any Sanctions-related list of designated Persons maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury ("OFAC") or the U.S. Department of State, the United Nations Security Council, the European Union, any Member State of the European Union, or the United Kingdom; (b) any Person operating, organized, or resident in a Sanctioned Country; (c) the government of a Sanctioned Country or the Government of Venezuela; or (d) any Person 50% or more owned or controlled by any such Person or Persons or acting for or on behalf of such Person or Persons.

(ssss) "Sanctions" means economic or financial sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State, or (b) the United Nations Security Council, the European Union, any European Union member state or the United Kingdom.

(tttt) "Securities Act" means the Securities Act of 1933 and the rules and regulations promulgated thereunder.

(uuuu) "Security Breach" means any (i) unauthorized, accidental or unlawful access, storage, use, modification, transfer, disclosure, destruction, or any other processing of any Personal Information or IT Assets used or maintained by Seller (with respect to the Business) or Acquired Entity; (ii) phishing or other cyberattack on such IT Assets that causes a monetary loss, business disruption to the access or use of such IT Assets by Seller or any Acquired Entity, or a compromise to the security of such IT Assets or Personal Information; (iii) any other act or omission that compromises the security, integrity or confidentiality of Personal Information or such IT Assets; or (iv) occurrence that constitutes a "data breach," "security breach," "personal data breach," "security incident," "cybersecurity incident," or any similar term under any applicable Law.

(vvvv) "Seller Combined Tax Return" means any combined, consolidated, affiliated, or unitary Tax Return that includes Seller or any of its Affiliates (other than an Acquired Entity), on the one hand, and any Acquired Entity, on the other hand.

(wwww) "Seller Parties" means Seller and its former, current, or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns.

(xxxx) "Senior CLNs" means, collectively, the Senior Secured Convertible Promissory Notes issued by Seller under that certain Senior Secured Convertible Note and Warrant Purchase Agreement, dated as of December 22, 2025, by and among Seller and the following investors: (a) Doral Energy – Tech Ventures, Limited Partnership, (b) Fifth Wall Early Stage Climate Technology Fund, L.P., (c) Fifth Wall Accelerate (Late Stage), L.P., and (d) Project Arise – Decarbonization Partners I SPV B, LP.

(yyyy) "Straddle Period" means any taxable period that includes but does not end on the Closing Date.

(zzzz) "Stalking Horse Order" means the order of the Bankruptcy Court, in form and substance reasonably acceptable to Purchaser and Seller, approving (a) this Agreement as the stalking horse bid for the Acquired Assets pursuant to the Bid Procedures Order, (b) the Bid Protections, including the Break-Up Fee and the Expense Reimbursement, and (c) such other relief as may be reasonably necessary or appropriate to facilitate the transactions contemplated by this Agreement.

(aaaaa) "Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company, or other entity of which a majority of the total voting power of shares of stock or other Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers, trustees, or other governing body of such Person is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association, or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(bbbbb) "Tax" or "Taxes" means any and all federal, state, local, non-U.S. (or any governmental unit, agency, or political subdivision of any of the foregoing) or other taxes, customs, duties, charges, fees, levies, or other like assessments of whatever kind or nature, including all income, corporate, profits, employment (including Social Security, unemployment insurance and employee income tax withholding), franchise, license, gross receipts, sales, use, transfer, stamp, occupation, property, capital, severance, premium, alternative minimum, windfall profits, ad valorem, value added, excise, payroll, withholding, recapture and escheat payments; including any interest, penalty, fine or addition with respect thereto, that are imposed, assessed or collected by any Governmental Body, in each case, whether disputed or not and including any express or implied obligations to indemnify or otherwise assume or succeed to the liability of any other Person for any such amounts.

(ccccc) "Tax Code" means the United States Internal Revenue Code of 1986, as amended.

(ddddd) "Tax Return" means any return, claim for refund, report, statement or information return relating to Taxes filed or required to be filed with a Governmental Body, including any schedule or attachment thereto, and including any amendments thereto.

(eeeee) "Taxing Authority" means any U.S. federal, state, local, municipal, or foreign government, any subdivision, agency, commission or authority thereof or any quasi-Governmental Body exercising Tax regulatory authority.

(fffff) "Transaction Agreements" means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

(ggggg) "Transactions" means the transactions contemplated by this Agreement and the other Transaction Agreements.

(hhhhh) "Willful Breach" means a knowing and intentional material breach of this Agreement that is a consequence of an act taken by the breaching Party, or the failure by the breaching Party to take an act it is required to take under this Agreement, in each case with actual knowledge that the taking of, or the failure to take, such act would, or would reasonably be expected to, cause a breach of this Agreement.

Section 11.2 Index of Defined Terms.

Acquired Assets - 7
Acquired Entities - 7
Acquired Lease - 8
Acquired Leased Real Property - 8
Agreement - 5
Agreement Dispute - 63
Alternative Transaction Notice - 52
Alternative Transaction Offer - 52
Alternative Transaction Proposal - 52
Assignment and Assumption Agreement - 19
Assumed Environmental Liabilities - 11
Backup Bidder - 53
Bankruptcy Code - 7
Bankruptcy Court - 7
Chapter 11 Case - 7
Chosen Courts - 63
Closing Date - 19
DIP Credit Bid Amount - 18
Cure Costs - 11
Dataroom - 32
Disclosure Schedule - 20
Effective Date - 5
Employee Benefit Plan - 30
Express Representations - 32
Formal Bid - 52
Information Presentation - 32
Intent-To-Use Trademark - 8
Lease Assignment Agreement - 19
IP Assignment Agreement - 20
Material Contract - 23
Minimum Overbid Increment - 35
Non-Recourse Person - 61
Offer Employees - 43
Outside Date - 53
Parties - 5
Party - 5
Permits - 25
Petition Date - 7
Projections - 32
Purchaser - 5
Purchaser Cure Costs - 11
Seller - 5
Seller Cure Costs - 11
Seller's Support Obligations - 48
Transfer Offer - 43
Transferred Employees - 43

Section 11.3 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any Transaction Agreement.

(a) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. Section, clause, Schedule, and Exhibit references in this Agreement are references to Sections, clauses, Schedules and Exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed to this Agreement or referred to in this Agreement are incorporated in and made a part of this Agreement as if set forth in full in this Agreement. Any capitalized terms used but not defined in any Schedule or Exhibit shall be defined as set forth in this Agreement.

(b) Whenever the words "include," "includes" or "including" are used in this Agreement, they will be deemed to be followed by the words "without limitation," whether or not such words are actually included. Where the context permits, the use of the term "or" will be equivalent to the use of the term "and/or."

(c) The words "to the extent" shall mean "the degree by which" and not simply "if."

(d) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(e) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(f) The word "will" will be construed to have the same meaning and effect as the word "shall". The words "shall," "will," or "agree(s)" are mandatory. The word "May" is permissive.

(g) References to "$" and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(h) References to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(i) Any document or item will be deemed "delivered," "provided" or "made available" by Sellers, within the meaning of this Agreement if such document or item is (i) included in the Dataroom at least 24 hours prior to the execution of this Agreement or (ii) actually delivered or provided to Purchaser or any of Purchaser's Advisors.

(j) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(k) Any reference to any particular Bankruptcy Code or Tax Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Bankruptcy Code or Tax Code section or Law, the reference to such Bankruptcy Code or Tax Code section or Law means such Bankruptcy Code or Tax Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

(l) A reference to any Party to this Agreement or any other agreement or document shall include such Party's successors and assigns, but only if such successors and assigns are not prohibited by this Agreement.

(m) A reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

[*Signature pages follow*.]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their respective duly authorized officers as of the date first above written.

PURCHASER:

BLUEGRASS INFRASTRUCTURE PARTNERS HOLDINGS, LLC

By: Kamal Toor
Name: Kanwaljit (Kamal) Toor
Title: Director

SELLER:

ASCEND ELEMENTS, INC.

Linh Austin (May 6, 2026 15:45:39 PDT)

By: _____
Name: Linh Austin
Title: Chief Executive Officer

EXHIBIT A

FORM OF SALE ORDER

[*forthcoming*]

EXHIBIT B

IP ASSIGNMENT AGREEMENT

[*forthcoming*]

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	Chapter 11
ASCEND ELEMENTS, INC. *et al.*, [1]	Case No. 26-90440 (CML)
Debtors.	(Jointly Administered)

ORDER (I) APPROVING (A) THE DESIGNATION OF THE STALKING HORSE BIDDER AND (B) THE STALKING HORSE BID PROTECTIONS AND (II) GRANTING RELATED RELIEF
[Relates to Docket Nos. 50; 120; [__]]

In accordance with the *Order (A) Approving Bid Procedures; (B) Authorizing Designation of Stalking Horse Bidder; (C) Scheduling an Auction, Related Deadlines, and a Sale Hearing; and (D) Granting Related Relief* [Docket No. 120] (the "**Bid Procedures Order**"),[2] approving, among other things, the bid procedures for the sale of substantially all of the Debtors' assets (the "**Assets**") or any portion thereof (the "**Sale**"), annexed as Exhibit 1 to the Bid Procedures Order (the "**Bid Procedures**"), and upon consideration of the *Notice of Designation of Stalking Horse Bidder, Proposed Bid Protections, and Objection Deadline,* dated as of May 7, 2026 [Docket No. [●] (the "**Stalking Horse Notice**") and the relevant terms and conditions of the *Asset Purchase Agreement* by and between Ascend Elements, Inc. and Bluegrass Infrastructure Partners Holdings, LLC ("**Newco**") dated May 6, 2026 2026 (substantially in the form attached to the Stalking Horse Notice as **Exhibit 1**, the "**Stalking Horse Agreement**" and the Assets to be purchased thereunder,

1 The Debtors in these Chapter 11 Cases, along with the last four digits of each Debtor's federal tax identification number, are: Ascend Elements, Inc. (2893) and Ascend Elements US, LLC (8309). The location of the Debtors' service address is: 133 Flanders Road, Westborough, MA 01581.

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

the "**Acquired Assets**") appended thereto; and due and proper notice of the Bid Procedures Order and the Stalking Horse Notice having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing no other or further notice need be provided; and the Court having reviewed the Stalking Horse Notice; and the Court having determined that the legal and factual bases set forth in the Stalking Horse Bidder establish just cause for the relief granted herein; and it appearing that the relief granted herein is in the best interests of the Debtors, their estate, their 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, CONCLUDED, AND DETERMINED THAT:

A. The predicates for relief granted herein are sections 105 and 363 of the Bankruptcy Code, rules 2002, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and rules 2002-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the "**Local Rules**").

B. 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 any of the following findings of fact constitute conclusions of law, and to the extent that any of the following conclusions of law constitute findings of fact, they are adopted as such.

C. This Court has jurisdiction to consider and approve the designation of the Stalking Horse Agreement (as defined herein) as the Stalking Horse Bid and provision of the Stalking Horse Bid Protections (as defined herein) in accordance with 28 U.S.C. §§ 157 and 1334.

D. Venue of this case is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

E. Pursuant to the Bid Procedures Order, the Debtors are authorized, in the exercise of their reasonable business judgment, and subject to the consent and consultation rights set forth in the Bid Procedures Order, to (i) designate a stalking horse bidder, (ii) enter into a stalking horse asset purchase agreement in accordance with the Bid Procedures, and (iii) agree to any break-up fee and/or expense reimbursement, subject to further Court approval, in each case in accordance with the Bid Procedures.

F. The Court finds that the Debtors, with the approval of their independent director, exercised their valid and non-conflicted business judgment in approving a joint bid among Kinterra Capital Corp. (and its affiliates, including Newco) and certain of the Senior Noteholders and Junior Noteholders in accordance with the Bid Procedures Order. The Court further finds that such joint bid does not constitute impermissible collusion or otherwise negatively impact competition for the purchase of the Debtors' assets, the validity of the Auction (if any), or the Debtors' sale process.

G. Pursuant to the Stalking Horse Notice, in accordance with the Bid Procedures, the Debtors have (i) designated Newco as the Stalking Horse Bidder (as such term is defined in the Bid Procedures) (the "**Stalking Horse Bidder**"), (ii) entered into the Stalking Horse Agreement and designated the Stalking Horse Agreement as the Stalking Horse Bid (as such term is defined in the Bid Procedures), and (iii) agreed to provide the Stalking Horse Bidder with certain bid protections as set forth in the Stalking Horse Agreement consisting of (a) an expense reimbursement by the Debtors for reasonable and documented out-of-pocket fees and expenses incurred by the Stalking Horse Bidder in connection with the sale, including the preparation of a stalking horse bid and the Debtors' Chapter 11 cases, to the extent not otherwise paid by the Debtors in connection with the DIP financing arrangements, in an aggregate amount not to exceed $1,500,000 and (b) a break-up fee equal to $2,000,000 (the "**Stalking Horse Bid Protections**").

The Stalking Horse Bid Protections will be payable to the Stalking Horse Bidder in accordance with the terms of and subject to the conditions set forth in the Stalking Horse Agreement without further order of the Court.

H. The Committee has been consulted with respect to the Stalking Horse Bid Protections, as required by the Bidding Procedures.

I. The Stalking Horse Notice was timely filed in accordance with the Stalking Horse Designation Deadline set forth in the Bid Procedures Order and satisfies the requirements set forth in the Bid Procedures Order for designation of the Stalking Horse Bid and provision of the Stalking Horse Bid Protections.

J. The notice of the designation of the Stalking Horse Bid and provision of the Stalking Horse Bid Protections provided by the Stalking Horse Notice are (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in accordance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, and the Bid Procedures Order, and (iii) adequate and sufficient under the circumstances of these Chapter 11 Cases, such that no other or further notice is required. A reasonable opportunity to be heard regarding the relief provided herein has been afforded to all interested persons and entities.

K. The Stalking Horse Agreement provides the Debtors with the opportunity to sell the Acquired Assets in a manner designed to preserve and maximize their value, and provide a floor for further marketing and an auction process.

L. Without the Stalking Horse Bid, the Debtors are at a significant risk of realizing a lower price for the Acquired Assets. As such, the contributions of the Stalking Horse Bidder to the Sale process indisputably have provided a substantial benefit to the Debtors, their estates, and the

creditors in these Chapter 11 Cases. The Stalking Horse Bid will enable the Debtors to secure a fair and adequate Baseline Bid (as defined in the Bid Procedures) for the Acquired Assets at the Auction (if any); and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest.

M. The Debtors have demonstrated a compelling and sound business justification for the Court to authorize the Stalking Horse Bid Protections. Entry of this Order is in the best interests of the Debtors and their estates, creditors, interest holders, and all parties in interest.

N. The Stalking Horse Bid Protections, as approved by this Order (i) are fair, reasonable and appropriate; (ii) have been negotiated with the Stalking Horse Bidder (which is not an "insider" or "affiliate" 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 Bidder and the Debtors) and the Debtors at arm's length and in good faith within the meaning of section 363(m) of the Bankruptcy Code, as required by the Bid Procedures; (iii) provide a benefit to the Debtors' estates and stakeholders; (iv) are necessary to ensure that the Stalking Horse Bidder will continue to pursue the transaction contemplated by and agree to be bound by the Stalking Horse Agreement; (v) are consistent with applicable Fifth Circuit law; and (vi) are reasonable, necessary, and consistent with market terms for these types of transactions and bid protections approved by courts in other chapter 11 cases.

O. To the extent payable under this Order and in accordance with the Stalking Horse Agreement, the Stalking Horse Bid Protections: (i)(a) are actual and necessary costs of preserving the Debtors' estates within the meaning of section 503(b) of the Bankruptcy Code and (b) 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; (ii) are commensurate to the real and

material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) are reasonably tailored to encourage, rather than hamper, bidding for the Assets, by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets; (iv) are a material inducement for, and condition necessary to, ensure that the Stalking Horse Bidder will continue to pursue the transaction contemplated by the Stalking Horse Agreement; and (v) are reasonable in relation to the Stalking Horse Bidder's efforts and to the magnitude of the proposed transaction and the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing such transaction. Unless it is assured that the Stalking Horse Bid Protections are available, the Stalking Horse Bidder is unwilling to remain obligated to consummate the transaction or otherwise be bound by the Stalking Horse Agreement.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. The Debtors' designation of Newco as the Stalking Horse Bidder and the Stalking Horse Agreement, substantially in the form attached to the Stalking Horse Notice as Exhibit 1, as the Stalking Horse Bid (as such term is defined in the Bid Procedures Order) for the Assets, is hereby approved. The Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid, for all purposes under the Bid Procedures Order.

2. Kinterra Capital Corp. or its affiliates (including Newco) shall be deemed a Qualified Bidder, and any bid submitted by Kinterra Capital Corp. or its affiliates (including Newco) shall be deemed a Qualified Bid, for all purposes under the Bid Procedures Order.

3. The Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform under the Stalking Horse Agreement with respect to

the Stalking Horse Bid Protections and related termination provisions, subject to entry of the Sale Order. The Stalking Horse Agreement shall be binding and enforceable on the Debtors' estates and the parties thereto in accordance with and subject to its terms, including as they relate to the Bid Procedures and related termination provisions, and subject to entry of the Sale Order. For the avoidance of doubt, notwithstanding the foregoing, the Stalking Horse Bid will remain subject to higher and better offers, as determined in consultation with the Consultation Parties, and the Debtors shall not be authorized to consummate any sale with respect to the Stalking Horse Bid until after the Sale Hearing and the entry of an appropriate form of Sale Order by the Court.

4. Pursuant to sections 105(a), 363, 503, and 507 of the Bankruptcy Code, the Stalking Horse Bid Protections are hereby approved in their entirety. The Stalking Horse Bid Protections shall be earned and payable to the Stalking Horse Bidder in accordance with the terms of and subject to the conditions set forth in the Stalking Horse Agreement. The Debtors are authorized to pay the Stalking Horse Bid Protections to the Stalking Horse Bidder in accordance with the terms of, and subject to the conditions set forth in, the Stalking Horse Agreement, without the need for further order of this Court.

5. The Stalking Horse Bid Protections (i) shall, to the extent payable under the terms of the Stalking Horse Agreement, be treated as allowed administrative expense claims against the Debtors' estates pursuant to sections 105(a), 503(b), and 507(a)(2) of the Bankruptcy Code; (ii) shall not be subordinate to any other administrative expense claim against the Debtors' estates other than any claims granted superpriority administrative status by order of the Court pursuant to sections 364(c)(1), 364(d)(1), 503(b), and 507(b) of the Bankruptcy Code; (iii) shall not be subject to any bar date in these Chapter 11 Cases or any requirement to file any request for allowance of an administrative expense claim or proof of claim; (iv) shall be payable in accordance with the

terms of and subject to the conditions set forth in the Stalking Horse Agreement; and (v) shall survive the termination of the Stalking Horse Agreement and dismissal or conversion of these Chapter 11 Cases to the extent so provided in the Stalking Horse Agreement.

6. The Stalking Horse Agreement and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto solely in accordance with the terms thereof, without further order of the Court; provided, however, the parties may not amend the Purchase Price, Stalking Horse Bid Protections, or make any other changes to the Stalking Horse Agreement that are materially adverse to the Debtors absent further order of this Court.

7. This Order, and the claims granted hereunder in favor of the Stalking Horse Bidder on account of the Stalking Horse Bid Protections, shall be binding upon the Debtors' estates, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the Debtors' estates.

8. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to (i) deliver any notice provided for in the Stalking Horse Agreement, including, without limitation, a notice terminating the Stalking Horse Agreement in accordance with the terms thereof and (ii) take any actions permitted under the Stalking Horse Agreement to terminate the Stalking Horse Agreement, solely to the extent permitted by the Stalking Horse Agreement, and assert any claims with respect to the Break-Up Fee and the Seller Reimbursement (each as defined in the Stalking Horse Agreement).

9. The Minimum Bid Requirements as set forth in paragraph 4 of the Qualified Bid Requirements shall apply to the determination of Qualified Bids, and for those purposes: (a) the Purchase Price of the Stalking Horse Bid is $80,000,000; (b) the amount of the Stalking Horse Bid

Protections is $3,500,000; (c) notwithstanding paragraph 4 of the Qualified Bid Requirements, the Initial Minimum Overbid Increment shall be $3,200,000; and (d) notwithstanding paragraph 4 of the Qualified Bid Requirements and the Auction Procedures, the Subsequent Minimum Overbid Increments shall be $500,000 for whole Company bids or $250,000 for partial Company bids, subject to the Company's discretion.

10. The failure to describe specifically or include any provision of the Stalking Horse Agreement or related documents in the Stalking Horse Notice or herein shall not diminish or impair the effectiveness of any such provision as to such parties.

11. All objections to the entry of this Order or to the relief granted herein that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled.

12. Absent further order of the Court, no person or entity (other than the Stalking Horse Bidder) 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.

13. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) and 6006(d), or any applicable provisions of the Local Rules or otherwise, the terms and conditions of this Order are immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Order.

14. In the event of any inconsistencies between this Order and the Stalking Horse Notice, the Stalking Horse Agreement and/or the Bid Procedures, this Order shall govern in all respects.

15. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order.

16. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Order.

Signed: _____, 2026

Christopher Lopez
United States Bankruptcy Judge