

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

In re:

SUITABLE TECHNOLOGIES, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-10432 (MFW)

**Ref. Docket Nos. 91 and 109**

**ORDER (I) SCHEDULING A HEARING ON THE APPROVAL OF  
THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS,  
AND THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, (II) APPROVING CERTAIN  
BIDDING PROCEDURES AND ASSUMPTION AND ASSIGNMENT  
PROCEDURES, AND THE FORM AND MANNER OF NOTICE  
THEREOF, (III) AUTHORIZING THE DEBTOR TO AGREE TO  
(BUT NOT APPROVING) CERTAIN BID PROTECTIONS FOR ANY  
STALKING HORSE PURCHASER AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion [Docket No. 91] (the “**Motion**”)<sup>2</sup> of the above-captioned debtor and debtor in possession (the “**Debtor**”) for the entry of: (a) an order, (i) scheduling a hearing (the “**Sale Hearing**”) on approval of the proposed sale (the “**Sale**”) of all or substantially all of the Debtor’s assets (the “**Assets**”), free and clear of all liens, claims, encumbrances, and other interests other than those permitted by the APA (as defined below), Stalking Horse APA (as defined below), or Modified APA (collectively, the “**Encumbrances**”) to a potential stalking horse purchaser (a “**Stalking Horse Purchaser**”) or, absent a Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, and authorizing the assumption and assignment of certain executory contracts and unexpired leases (each, an “**Assumed Contract**,” and collectively, the “**Assumed Contracts**”) in connection therewith; (ii) authorizing and approving certain bidding procedures

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<sup>1</sup> The last four digits of the Debtor’s United States federal tax identification number are 7816. The Debtor’s mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion.

for the Sale attached hereto as **Exhibit 1** (collectively, the “**Bidding Procedures**”), authorizing and approving certain assumption and assignment procedures for the Assumed Contracts provided for herein (collectively, the “**Assumption and Assignment Procedures**”), and authorizing the Debtor to agree to (but not approving) certain bid protections for a Stalking Horse Purchaser, including a Break-Up Fee and an Expense Reimbursement (together, the “**Bid Protections**”), and authorizing and approving the form and manner of notice of each of the foregoing; and (iii) granting related relief; and (b) an order (the “**Sale Order**”), (i) authorizing and approving the Debtor’s entry into an asset purchase agreement for the Assets substantially in the form attached to the Bidding Procedures as **Schedule 1** (the “**APA**”), with a Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder; (ii) authorizing and approving the Sale, free and clear of all Encumbrances; (iii) authorizing and approving the assumption and assignment of the Assumed Contacts in connection therewith; and (iv) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required except as set forth herein; and it appearing that the Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined below) having been held; and the Court having found and determined that the relief set forth in this Order is in the best interests of the Debtor, its estate and creditors and all parties in interest, and that the legal and factual bases set forth in the Motion and at the

Bidding Procedures Hearing establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>3</sup>

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion 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).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105(a), 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), Rules 2002, 6004, 6006, 9007, and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

D. In the Motion and at the hearing on the relief set forth in this Order (the “**Bidding Procedures Hearing**”), the Debtor demonstrated that good and sufficient notice of the relief granted by this Order has been given and no further notice is required except as otherwise provided for herein. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

E. The Stalking Horse Notice (as defined below), with the information set forth in Paragraph 3 below, is appropriate and reasonably calculated to provide all interested

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<sup>3</sup> 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, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

parties with timely and proper notice of: (i) the identification of any Stalking Horse Purchaser; (ii) a copy of any Stalking Horse APA; (iii) any Stalking Horse Purchase Price; (iv) the deposit paid by any Stalking Horse Purchaser; (v) the amount of any Bid Protections agreed to in the Stalking Horse APA; and (vi) any other information to be set forth in such notice pursuant to Paragraph 3 below.

F. The Sale Notice (as defined below), substantially in the form attached hereto as **Exhibit 2**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of this Order, the Bidding Procedures, the auction for the Assets (the “**Auction**”), the Sale, and the Sale Hearing, and any and all objection deadlines related thereto, and no other or further notice is required of the foregoing.

G. The Bidding Procedures are: (i) fair, reasonable, and appropriate; and (ii) designed to maximize recovery with respect to the Sale.

H. The Assumption and Assignment Procedures provided for herein and the Assumption Notice (as defined below), substantially in the form attached hereto as **Exhibit 3**, are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption Notice have been tailored to provide an adequate opportunity for all Counterparties (as defined below) to assert any Contract Objections (as defined below).

I. Entry of this Order is in the best interests of the Debtor, its estate and creditors and all other interested parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. Those portions of the Motion seeking approval of (a) the Debtor’s entry into a Stalking Horse APA, (b) the Assumption and Assignment Procedures, (c) the Bidding

Procedures, (d) the date and time of the Sale Hearing, and (e) the noticing and objection procedures related to each of the foregoing, including, without limitation, the Stalking Horse Notice (as defined below), the notice of the Sale and the entry of this Order, substantially in the form attached hereto as **Exhibit 2** (the “**Sale Notice**”), and the notice of the Debtor’s potential assumption and assignment of the Assumed Contracts, substantially in the form attached hereto as **Exhibit 3** (the “**Assumption Notice**”) (subclauses (a) – (e) above, collectively, the “**Bidding and Auction Process**”), are hereby GRANTED to the extent set forth herein.

2. Any objections to the Motion as it pertains to the Bidding and Auction Process or the relief granted by this Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice. For the avoidance of doubt, all rights of interested parties with respect to any Stalking Horse APA, including, without limitation, any Break-Up Fee or Expense Reimbursement (each as defined below) agreed to therein, are reserved.

3. The Debtor is hereby authorized, but not directed, in consultation with the Consultation Parties, to execute one or more APA(s) with a Stalking Horse Purchaser(s) (each, a “**Stalking Horse APA**”) not later than **June 29, 2020** (the “**Stalking Horse Designation Deadline**”). In the event the Debtor enters into any Stalking Horse APA, within two (2) business days of the Stalking Horse Designation Deadline, the Debtor shall file with the Court and serve by regular mail on the Stalking Horse Notice Parties a notice (a “**Stalking Horse Notice**”) that shall include the following: (a) the identification of the Stalking Horse Purchaser (and to the extent that the Stalking Horse Purchaser is a newly formed acquisition entity or the like, the identity of the Stalking Horse Purchaser’s parent company or sponsor); (b) a copy of the Stalking Horse APA; (c) the purchase price provided for in the Stalking Horse APA (the “**Stalking Horse**

**Purchase Price**”); (d) the deposit paid by the Stalking Horse Purchaser; (e) the amount of any Bid Protections agreed to in the Stalking Horse APA; and (f) whether the Stalking Horse Purchaser has any connection to the Debtor other than those arising from the negotiation and execution of the Stalking Horse APA.

4. The Debtor is hereby authorized, but not directed, in consultation with the Consultation Parties, to agree in any Stalking Horse APA to a break-up fee (a “**Break-Up Fee**”) and an expense reimbursement for the documented and reasonable expenses incurred by a Stalking Horse Purchaser (an “**Expense Reimbursement**”) for any such Stalking Horse Purchaser that is not the Successful Bidder; provided that (i) in the aggregate, any Break-Up Fee shall not exceed two percent (2%) of any Stalking Horse Purchase Price, (ii) the aggregate amount of any Expense Reimbursement shall not exceed one percent (1%) of any Stalking Horse Purchase Price, and (iii) such Stalking Horse Purchaser is not an insider of the Debtor as that term is defined in section 101(31) of the Bankruptcy Code. To the extent the Debtor agrees to a Break-Up Fee or an Expense Reimbursement with any Stalking Horse Purchaser, the Stalking Horse Notice shall identify the amount and conditions of the same. Notwithstanding the foregoing, nothing in this Order is intended or shall be deemed to approve, or authorize the Debtor to pay, any such Break-Up Fee or Expense Reimbursement, and approval of, and authorization for the Debtor to pay, any such Break-Up Fee and Expense Reimbursement, shall be subject to further order of this Court.

5. The Bidding Procedures are hereby approved. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court’s intent that the Bidding Procedures are approved in their entirety, as if fully set forth in

this Order. The Debtor is hereby authorized to conduct the Auction pursuant to the terms of the Bidding Procedures and this Order.

6. The Debtor shall have the right, in its reasonable discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtor and its estate shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtor. The Debtor and its estate is not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures or the Sale, provided that the information was provided in accordance with this Order.

7. For all purposes under the Bidding Procedures: (a) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and any Stalking Horse APA shall be considered a Qualifying Bid; (b) the Lender (as defined in the DIP Order) is, and will be deemed to be, a Qualifying Bidder for all purposes under the Bidding Procedures, without regard to any of the requirements or conditions set forth herein and without any other or further action by the Lender; and (c) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtor may consider a combination of bids for the Assets.

8. The Bidding Procedures shall apply to the Potential Bidders, the Qualifying Bidders, the submission, receipt, and analysis of all bids relating to the Sale, and the conduct of the Sale and the Auction.

9. The following “**Assumption and Assignment Procedures**” are hereby approved:

- (a) On or before July 1, 2020 (the “**Assumption Notice Deadline**”), the Debtor shall file with the Court and serve on each counterparty (each, a “**Counterparty**,” and collectively, the “**Counterparties**”) to an Assumed Contract an Assumption Notice.
- (b) The Assumption Notice shall include, without limitation, the cure amount (each, a “**Cure Amount**”), if any, that the Debtor believes is required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for each of the Assumed Contracts. If a Counterparty objects to (i) the assumption and assignment of the Counterparty’s Assumed Contract, (ii) the Cure Amount for its Assumed Contract or (iii) the provision of adequate assurance of future performance, the Counterparty must file with the Court and serve on the Objection Notice Parties (as defined below) a written objection (a “**Contract Objection**”).
- (c) Within two (2) business day of the Stalking Horse Designation Deadline, the Debtor shall provide the Adequate Assurance Information for any Stalking Horse Purchaser to all Counterparties whose Assumed Contracts are included in the Stalking Horse APA and that are the subject of the Assumption Notice. In all other cases, the Debtor shall provide by overnight mail the Adequate Assurance Information of all parties that submit a bid, not later than one (1) business day after the date of the Bid Deadline, to all Counterparties whose Assumed Contracts are included in such bid and that are the subject of an Assumption Notice.
- (d) Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, **on or before 4:00 p.m. (ET) on July 16, 2020** (the “**Contract Objection Deadline**”), and proof of service of such Contract Objection upon the Objection Notice Parties shall be filed with the Court as and when required by the Local Rules; (iv) be served upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

***\*If any Stalking Horse Purchaser is designated in accordance with the Bid Procedures, any objections to adequate assurance of performance by such Stalking Horse Purchaser shall be filed by the Contract Objection Deadline.\****



***\*\*Any objections to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Purchaser shall be filed in accordance with subparagraph (g) below.\*\****

- (e) The “**Objection Notice Parties**” are as follows: (i) counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq. (rbrady@ycst.com) and Robert F. Poppiti, Jr., Esq. (rpoppiti@ycst.com)); (ii) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Case; (iii) counsel to the Lender, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801 (Attn: Curtis S. Miller (cmiller@mnat.com)); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)); and (v) counsel to the Stalking Horse Purchaser(s), if any.
- (f) As soon as reasonably practicable after the completion of the Auction, the Debtor shall file with the Court a notice identifying the Successful Bidder (a “**Notice of Successful Bidder**”), which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any) and the amounts of the same, (ii) the Selected Assumed Contracts, and (iii) the proposed assignee(s) of such Selected Assumed Contracts.
- (g) As soon as reasonably practicable after the completion of the Auction, the Debtor will cause to be served by overnight mail and, if available, electronic mail, upon each affected Counterparty and its counsel (if known) the Notice of Successful Bidder.

***\*\*In the event any Stalking Horse Purchaser is not the Successful Bidder, the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance not later than July 21, 2020 at 4:00 p.m. (ET).*\*\***

- (h) At the Sale Hearing, the Debtor will seek Court approval of its assumption and assignment to any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of only those Assumed Contracts that have been selected by any Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, to be assumed and assigned (each, a “**Selected Assumed Contract**,” and collectively, the “**Selected Assumed Contracts**”). The Debtor and its estate reserves any and all rights with respect to any Assumed Contracts that are not ultimately designated as Selected Assumed Contracts.
- (i) If no Contract Objection is timely received with respect to a Selected Assumed Contract: (i) the Counterparty to such Selected Assumed Contract shall be deemed to have consented to the assumption by the Debtor and assignment to any

Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of the Selected Assumed Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder); (ii) any and all defaults under the Selected Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code; and (iii) the Cure Amount for such Selected Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Selected Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Selected Assumed Contract against the Debtor and its estate or any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

- (j) To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtor or fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtor and assigned to any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtor or any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder, pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.
- (k) Notwithstanding anything to the contrary herein, if after the Sale Hearing or the entry of the Sale Order additional executory contracts or unexpired leases of the Debtor are determined to be Assumed Contracts, as soon as practicable thereafter, the Debtor shall file with the Court and serve, by regular mail, on the Counterparties an Assumption Notice, and such Counterparties shall file any Contract Objections not later than fourteen (14) days thereafter. If no Contract Objection is timely received, the Debtor shall be authorized to assume and assign such Assumed Contracts to any Stalking Horse Purchaser or, absent any Stalking

Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, without further notice to creditors or other parties in interest and without the need for further order of the Court, and such assumption and assignment shall be subject to the terms of the Sale Order.

10. The Debtor's decision to assume and assign the Assumed Contracts to any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of the Sale, the Assumed Contracts shall not be deemed assumed or assumed and assigned, and shall in all respects be subject to further administration by the Debtor and its estate under the Bankruptcy Code in connection with the Chapter 11 Case.

11. The Assumption and Assignment Procedures are appropriate and fair to all Counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules. The Assumption Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all Counterparties and any other affected parties of the Debtor's intent to assume and assign to any Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, some or all of the Assumed Contracts, and (ii) afford the Counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006; and (b) hereby approved.

12. The inclusion of a contract, lease or other agreement on an Assumption Notice shall not constitute or be deemed a determination or admission by the Debtor and its estate or any other party in interest that such contract, lease or other agreement is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and any and all rights of the Debtor and its estate with respect thereto shall be reserved.

13. The Stalking Horse Notice, the Sale Notice, the Assumption Notice, the Bidding Procedures, the Auction, the Sale Hearing, and the Assumption and Assignment Procedures and the objection periods associated with each of the foregoing are reasonably calculated to provide notice to any affected party and afford the affected party the opportunity to exercise any rights affected by the Motion as it relates to the Bidding Procedures, the Auction, the Sale, the Sale Hearing, and the assumption and assignment to the Stalking Horse Purchaser or, absent any Stalking Horse Purchaser or in the event a Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, of the Assumed Contracts pursuant to Bankruptcy Rules 2002(a)(2), 6004 and 6006, and such notice and objection periods are hereby approved.

14. The Sale Notice is approved. Within five (5) business days of the entry of this Order, the Debtor shall serve the Sale Notice by regular mail on: (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Lender; (c) all parties known by the Debtor to assert a lien or encumbrance on any of the Assets; (d) all persons known or reasonably believed to have asserted an interest in or claim to any of the Assets; (e) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets within the one (1) year prior to the Petition Date; (f) the Office of the United States Attorney for the District of Delaware; (g) the Office of the Attorney General in each state in which the Debtor has operated; (h) the Office of the Secretary of State in each state in which the Debtor has operated; (i) the Internal Revenue Service and all state and local taxing authorities in the states which the Debtor has or may have any tax liability; (j) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (k) the Federal Trade Commission; (l) the United States Attorney General/Antitrust

Division of Department of Justice; (m) all non-Debtor parties to any of the Assumed Contracts; (n) all of the Debtor's other known creditors and equity security holders; and (o) all other parties that have filed a notice of appearance and demand for service of papers in the Chapter 11 Case as of the service date (collectively, the "**Sale Notice Parties**").

15. The Debtor shall post the Sale Notice, any Stalking Horse Notice, and the Bidding Procedures Order on the website of the Debtor's claims and noticing agent. Within seven (7) business days of the entry of this Order, the Debtor shall cause the Sale Notice to be published once in the national edition of *USA Today*. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008, and is reasonably calculated to provide notice to any affected party, including any Potential Bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

16. Any objections to the Sale or the relief requested in connection with the Sale (a "**Sale Objection**"), other than a Contract Objection, which shall be governed by the Assumption and Assignment Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, **on or before 4:00 p.m. (ET) on July 16, 2020** (the "**Sale Objection Deadline**"), and proof of service of such Sale Objection upon the Objection Notice Parties shall be filed with the Court as and when required by the Local Rules; and (e) be served upon the Objection Notice Parties. If a Sale Objection is not filed and served on or before the Sale Objection Deadline in accordance with the foregoing requirements, the objecting party may be barred from objecting to

the Sale and being heard at the Sale Hearing, and this Court may enter the Sale Order without further notice to such party.

17. Failure to file a Sale Objection on or before the Sale Objection Deadline (a) may forever bar the assertion, whether at any Sale Hearing or thereafter, of any objection to the Motion, to entry of the Sale Order, and/or to the consummation and performance of the Sale contemplated by a Stalking Horse APA or any Modified APA with a Successful Bidder, and (b) for purposes of section 363(f)(2) of the Bankruptcy Code, shall be deemed to be “consent” to entry of the Sale Order and consummation of the Sale and all transactions related thereto.

18. The Lender, in its capacity as such, (i) shall have the continuing right to use the amounts then outstanding under the Postpetition Debt (as defined in the DIP Order), or any part thereof, to credit bid with respect to the Assets, and (ii) subject to Paragraph 10 of the DIP Order, shall have the continuing right to use the amounts then outstanding under the Prepetition Secured Debt (as defined in the DIP Order), or any part thereof, to credit bid with respect to the Assets.

19. As part of its bid, each Qualifying Bidder must provide the Debtor, the other Bidding Procedures Notice Parties, the Consultation Parties and the Counterparties to any Assumed Contracts included in its bid, information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code (the “**Adequate Assurance Information**”), including (a) the Qualifying Bidder’s financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to such Qualifying Bidder; and (b) a contact person for the proposed assignee that the applicable Counterparty may directly contact in connection with the adequate assurance of future

performance. To the extent that the Qualifying Bidder is a newly formed acquisition entity or the like, the financial and other information supporting the Qualifying Bidder's financial wherewithal shall include financial and other information supporting the financial wherewithal of the Qualifying Bidder's parent company or sponsor. To the extent available, the Adequate Assurance Information may also include: (x) a corporate organization chart or similar disclosure identifying ownership and control of the proposed assignee; and (y) financial statements, tax returns and annual reports. The Debtor, the other Bidding Procedures Notice Parties and the Consultation Parties shall keep confidential all Adequate Assurance Information provided to them under this Paragraph and the Bidding Procedures, and shall be permitted to use and disclose such Adequate Assurance Information only as provided in this Order and the Bidding Procedures unless the Qualifying Bidder that provided such Adequate Assurance Information otherwise consents in writing.

20. Each Counterparty in receipt of Adequate Assurance Information under this Order shall review the Adequate Assurance Information received on a confidential basis and shall not disclose the Adequate Assurance Information except as expressly provided in this Order and the Bidding Procedures. Such Counterparty may not use or disclose, except to representatives, attorneys, advisors and financing sources (collectively, "**Representatives**"), any confidential Adequate Assurance Information for any purpose other than: (a) evaluating whether adequate assurance of future performance as required under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code has been provided; and (b) in support of any objection (the "**Assignment Objection**") (subject to the limitations on disclosure set forth herein) by such Counterparty relating to adequate assurance of future performance. Any Assignment Objection that includes confidential, non-public Adequate Assurance Information must be filed under seal

unless disclosure of such confidential, non-public information is authorized by the Debtor and the applicable assignee(s). The party filing an Assignment Objection under seal shall follow the procedures for the same set forth in Local Rule 9018-1(d). The unredacted versions of such Assignment Objections shall be served upon the Debtor, the other Bidding Procedures Notice Parties, the Consultation Parties and the United States Trustee, with a copy to the Court's chambers; provided further, that all rights of all parties in interest in the Chapter 11 Case are reserved to oppose the filing under seal of any such information and to seek any other relief from this Court with respect to such matter. Any Representative receiving Adequate Assurance Information shall be notified and shall agree to be bound by the restrictions set forth in this Order.

21. If no timely Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid are submitted on or before the Bid Deadline, the Debtor shall not hold an Auction and shall request at the Sale Hearing that this Court approve the Stalking Horse APA and the transactions contemplated thereunder. If the Debtor timely receives one or more Qualifying Bids other than any Stalking Horse Purchaser's Qualifying Bid, then the Debtor shall conduct the Auction on **July 16, 2020 at 10:00 a.m. (ET)**, at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801. Only the Debtor, the Auction Bidders, the Consultation Parties, and creditors of the Debtor, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any such creditors provide counsel for the Debtor written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) the day prior to the Auction.



22. The Debtor shall have until **July 22, 2020 at Noon (ET)** to file and serve a reply to any objection filed in connection with the Sale, including any Sale Objection or Contract Objection.

23. The Sale Hearing shall be held in this Court on **July 23, 2020 at 3:00 p.m. (ET)**, unless otherwise determined by this Court. The Sale Hearing may be adjourned by the Debtor from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and/or by filing a hearing agenda or notice on the docket of the Chapter 11 Case.

24. The Debtor is authorized to conduct the Sale without the necessity of complying with any state or local bulk transfer laws or requirements.

25. In the event that there is a conflict between this Order or the Bidding Procedures, on the one hand, and the Motion, the APA, a Stalking Horse APA, or a Modified APA, on the other hand, this Order and the Bidding Procedures shall control and govern. If there is a conflict between this Order and the Bidding Procedures, this Order shall control and govern. If there is a conflict between this Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Order, this Order and the Bidding Procedures shall control and govern.

26. Prior to mailing the Assumption Notice and the Sale Notice, as applicable, the Debtor may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this Order, and make such other, non-material changes as the Debtor deems necessary or appropriate.

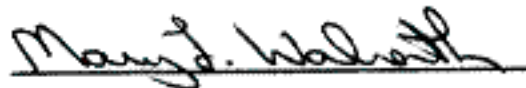
27. This Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the

Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtor is not subject to any stay in the implementation, enforcement or realization of the relief granted in this Order, and may, in its sole discretion and without further delay, take any action and perform any act authorized or approved under this Order.

28. The requirements set forth in Local Rules 6004-1, 9006-1 and 9013-1 are hereby satisfied or waived.

29. Attached hereto as **Schedule A** is a summary of the key dates established by this Order.

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



MARY F. WALRATH  
UNITED STATES BANKRUPTCY JUDGE

Dated: April 20th, 2020  
Wilmington, Delaware

26148689..

**Schedule A**

<b><u>DATE</u></b>	<b><u>DEADLINE/EVENT</u></b>
<b>June 4, 2020 at 5:00 p.m. (ET)</b>	Stalking Horse Bid Deadline
<b>June 29, 2020</b>	Stalking Horse Designation Deadline
<b>July 1, 2020</b>	Assumption Notice Deadline
<b>July 13, 2020 at 5:00 p.m. (ET)</b>	Bid Deadline
<b>July 15, 2020</b>	Deadline for Debtor to Designate Qualifying Bids and Baseline Bid
<b>July 16, 2020 at 10:00 a.m. (ET)</b>	Auction
<b>July 16, 2020 at 4:00 p.m. (ET)</b>	Sale Objection Deadline; Contract Objection Deadline <sup>1</sup>
<b>As soon as practicable after completion of the Auction</b>	Deadline to File and Serve Notice of Successful Bidder
<b>July 21, 2020 at 4:00 p.m. (ET)</b>	Adequate Assurance Objection Deadline for Successful Bidder Other Than a Stalking Horse Purchaser
<b>July 22, 2020 at Noon (ET)</b>	Debtor's Deadline to Reply to Sale Objections
<b>July 23, 2020 at 3:00 p.m. (ET)</b>	Sale Hearing
<b>No later than July 31, 2020</b>	Sale Closing

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<sup>1</sup> The Sale Objection Deadline and Contract Objection Deadline apply to all objections to the sale of the Assets and the assumption and assignment of the Assumed Contracts (including adequate assurance of future performance by a Stalking Horse Purchaser), with the exception of objections related to adequate assurance of future performance by a Successful Bidder *other than* a Stalking Horse Purchaser.

**Exhibit 1**

Bidding Procedures

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

In re:

SUITABLE TECHNOLOGIES, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-10432 (MFW)

**BIDDING PROCEDURES**

On February 26, 2020, the above-captioned debtor and debtor in possession (the “**Debtor**”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”). The Debtor is maintaining its business and managing its property as a debtor in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On April \*, 2020, the United States Bankruptcy Court for the District of Delaware (the “**Court**”) entered an order [Docket No. \*] (the “**Bidding Procedures Order**”), among other things, authorizing the Debtor to solicit bids and approving these procedures (collectively, the “**Bidding Procedures**”) to be employed by the Debtor in connection with the proposed sale (the “**Sale**”) of all or substantially all of the Debtor’s assets (the “**Assets**”), free and clear of all liens, claims, encumbrances, and other interests, other than those permitted by the APA,<sup>2</sup> Stalking Horse APA or Modified APA, as applicable (collectively, the “**Encumbrances**”), to a potential stalking horse purchaser (a “**Stalking Horse Purchaser**”) or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, pursuant to an asset purchase agreement, substantially in the form attached hereto as **Schedule 1** (the “**APA**”), with the Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder.

**ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD CONTACT:**

- (A) LUIS PILLICH (610-937-2357; LPILLICH@STOUT.COM) OF STOUT RISIUS ROSS ADVISORS, LLC, INVESTMENT BANKER FOR THE DEBTOR; AND/OR**
- (B) ROBERT S. BRADY, ESQ. (302-571-6690; RBRADY@YCST.COM) OR ROBERT F. POPPITI, JR, ESQ. (302-576-3591; RPOPPITI@YCST.COM) OF YOUNG CONAWAY STARGATT & TAYLOR, LLP, COUNSEL FOR THE DEBTOR.**

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<sup>1</sup> The last four digits of the Debtor’s United States federal tax identification number are 7816. The Debtor’s mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

<sup>2</sup> Capitalized terms used but not yet defined herein shall have the meaning ascribed to such terms below. Capitalized terms used but not defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Order.

**Summary of Key Dates Established by Bidding Procedures**

<b><u>DATE</u></b>	<b><u>DEADLINE/EVENT</u></b>
<b>June 4, 2020 at 5:00 p.m. (ET)</b>	Stalking Horse Bid Deadline
<b>June 29, 2020</b>	Stalking Horse Designation Deadline
<b>July 13, 2020 at 5:00 p.m. (ET)</b>	Bid Deadline
<b>July 15, 2020</b>	Deadline for Debtor to Designate Qualifying Bids and Baseline Bid
<b>July 16, 2020 at 10:00 a.m. (ET)</b>	Auction
<b>As soon as practicable after the completion of the Auction</b>	Deadline to File and Serve Notice of Successful Bidder
<b>July 23, 2020 at 3:00 p.m. (ET)</b>	Sale Hearing
<b>No later than July 31, 2020</b>	Sale Closing

**1. Stalking Horse Purchaser**

Pursuant to the Bidding Procedures Order, the Debtor is authorized to enter into an APA with a Stalking Horse Purchaser (a “**Stalking Horse APA**”) not later than **June 29, 2020** (the “**Stalking Horse Designation Deadline**”). In the event the Debtor enters into a Stalking Horse APA, the Debtor will file with the Court and serve on the Stalking Horse Notice Parties a notice that includes the following: (a) the identification of the Stalking Horse Purchaser (and to the extent that the Stalking Horse Purchaser is a newly formed acquisition entity or the like, the identity of the Stalking Horse Purchaser’s parent company or sponsor); (b) a copy of the Stalking Horse APA; (c) the purchase price provided for in the Stalking Horse APA (the “**Stalking Horse Purchase Price**”); (d) the deposit paid by the Stalking Horse Purchaser; (e) the amount of any Break-Up Fee or any Expense Reimbursement; and (f) whether the Stalking Horse Purchaser has any connection to the Debtor other than those arising from the negotiation and execution of the Stalking Horse APA.

Notwithstanding the foregoing, nothing herein or in the Bidding Procedures Order is intended or shall be deemed to approve, or authorize the Debtor to pay, any such Break-Up Fee or Expense Reimbursement, and approval of, and authorization for the Debtor to pay, any such Break-Up Fee and Expense Reimbursement, shall be subject to further order of the Court.

*A Qualifying Bidder that desires to be a Stalking Horse Purchaser should take notice of the “**Stalking Horse Bid Deadline**” set forth below.*

## 2. Assets to be Sold

The Debtor shall offer for sale the Assets, provided that the Debtor, in consultation with the Consultation Parties, determines that the aggregate consideration offered by any bid, or combination of bids, for the Assets, satisfies the requirements set forth in these Bidding Procedures. Potential Bidders may bid on all or any number or combination of the Assets.

## 3. Participation Requirements

Any person or entity that wishes to participate in the bidding process for the Assets (each, a “**Potential Bidder**”) must first become a “**Qualifying Bidder**”. In order to become a Qualifying Bidder, and thus being able to conduct due diligence and gain access to the Debtor’s confidential electronic data room concerning the Assets (the “**Data Room**”), a Potential Bidder must submit to the Debtor and its advisors:

- (a) documentation identifying the interested party, its principals, and the representatives thereof who are authorized to appear and act on their behalf for all purposes regarding the contemplated transaction;
- (b) an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor;
- (c) a statement and other factual support demonstrating to the Debtor’s reasonable satisfaction, after consultation with the Consultation Parties, that the interested party has a *bona fide* interest in consummating a sale transaction; and
- (d) sufficient information, as determined by the Debtor, after consultation with the Consultation Parties, to allow the Debtor to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Debtor in its discretion), and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtor and assigned to such bidder, pursuant to section 365 of the Bankruptcy Code, in connection with the Sale.

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

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures: (i) any designated Stalking Horse Purchaser shall be considered a Qualifying Bidder, and any Stalking Horse APA shall be considered a Qualifying Bid; (ii) the Lender is, and will be deemed to be, a Qualifying Bidder for all purposes under the Bidding Procedures, without regard to any of the requirements or conditions set forth herein and without any other or further action by the Lender; and (iii) in determining whether the Potential Bidders constitute Qualifying Bidders, the Debtor may consider a combination of bids for the Assets.



**4. Bankruptcy Court Jurisdiction**

Any Potential Bidders and Qualifying Bidders shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of such parties; (b) bring any such action or proceeding in the Court; and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

**5. Form of Agreement**

Potential Bidders should reference the APA attached hereto as **Schedule 1** in connection with their bids. As set forth below, Potential Bidders intending to submit bids must include with their bids:

- (a) a statement that such Potential Bidder offers to (i) purchase the Assets, or a number or combination of the Assets, and (ii) assume liabilities, upon substantially the same terms as, or terms more favorable to the Debtor and its estate than, the terms set forth in a Stalking Horse APA, if applicable; and
- (b) a clean and duly executed asset purchase agreement (a “**Modified APA**”) and a marked copy of the Modified APA that reflects any variations from the APA and, if applicable, a Stalking Horse APA.

**6. Due Diligence**

The Debtor will provide any Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtor believes to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) Luis Pillich (610-937-2357; lpillich@stout.com); and/or (b) Robert S. Brady, Esq. (302-571-6690; rbrady@ycst.com) or Robert F. Poppiti, Jr., Esq. (302-576-3591; rpoppiti@ycst.com).

The due diligence period shall extend through and including the Bid Deadline. The Debtor may, but shall not be obligated to, in its sole discretion, furnish any due diligence information after the Bid Deadline.

The Debtor reserves the right, in its reasonable discretion, to withhold or limit access to any due diligence information that the Debtor determines is business-sensitive or otherwise not appropriate for disclosure to a Qualifying Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality or similar provisions relating to any due diligence information, the Debtor and its estate shall be authorized to provide due diligence information to Qualifying Bidders provided that such Qualifying Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtor. The Debtor and its estate is not responsible for, and shall have no liability with respect to, any information

obtained by, or provided to, any Qualifying Bidders in connection with the Bidding Procedures and the Sale.

## 7. **Bid Requirements**

Other than in the case of a bid submitted by any Stalking Horse Purchaser or the Lender, in its capacity as such, to be deemed a “**Qualifying Bid**,” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the following requirements (each, a “**Bid Requirement**”):

- (a) be in writing;
- (b) fully disclose the identity of the Qualifying Bidder (and to the extent that the Qualifying Bidder is a newly formed acquisition entity or the like, the identity of the Qualifying Bidder’s parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtor or its advisors should contact in the event that the Debtor has any questions or wishes to discuss the bid submitted by the Qualifying Bidder;
- (c) set forth the purchase price to be paid by such Qualifying Bidder;
- (d) not propose payment in any form other than cash (except as otherwise expressly set forth in these Bidding Procedures);
- (e) state the liabilities proposed to be paid or assumed by such Qualifying Bidder;
- (f) specify the Assets that are included in the bid and, to the extent a Stalking Horse Purchaser is designated, state that such Qualifying Bidder offers to purchase the Assets, or a number or combination of the Assets, upon substantially the same terms as, or terms more favorable to the Debtor and its estate than, the terms set forth in the Stalking Horse APA;
- (g) be accompanied by a Modified APA that reflects any variations from the APA and, if applicable, a Stalking Horse APA;
- (h) state that such Qualifying Bidder’s offer is formal, binding and unconditional and is irrevocable until two (2) business days after the closing of the Sale;
- (i) state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Modified APA and provide written evidence in support thereof;
- (j) contain such financial and other information to allow the Debtor to make a reasonable determination, after consultation with the Consultation Parties, as to the Qualifying Bidder’s financial and other capabilities to close the transactions contemplated by the Modified APA, including, without limitation, such financial and other information supporting the Qualifying Bidder’s ability to comply with the requirements of adequate assurance of future performance under section

365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts and leases that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtor to serve such information on any counterparties to any contracts or leases potentially being assumed and assigned in connection with the Sale within one (1) business day after the Debtor's receipt of such information. To the extent that the Qualifying Bidder is a newly formed acquisition entity or the like, the financial and other information supporting the Qualifying Bidder's financial wherewithal shall include financial and other information supporting the financial wherewithal of the Qualifying Bidder's parent company or sponsor;

- (k) identify with particularity each and every executory contract and unexpired lease the assumption and assignment of which is a condition to close the transactions contemplated by the Modified APA;
- (l) a commitment to close the transactions contemplated by the Modified APA by no later than July 31, 2020;
- (m) except with respect to a Qualifying Bidder that desires to be a Stalking Horse Purchaser, not request or entitle such Qualifying Bidder to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;
- (n) in the event that there is a Stalking Horse Purchaser, the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) any Stalking Horse Purchase Price, (B) any Break-Up Fee, (C) any Expense Reimbursement, and (D) \$100,000;
- (o) not contain any contingencies of any kind, including, without limitation, contingencies related to financing, internal approval or due diligence;
- (p) contain written evidence satisfactory to the Debtor that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the transactions contemplated by the Modified APA, with appropriate contact information for such financing sources;
- (q) contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale;
- (r) sets forth (i) a statement or evidence that the Qualifying Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated

with such filings, and (ii) any regulatory and third-party approval required for the Qualifying Bidder to close the transactions contemplated by the Modified APA, and the time period within which the Qualifying Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualifying Bidder's Modified APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualifying Bidder agrees that its legal counsel will coordinate in good faith with Debtor's legal counsel to discuss and explain Qualifying Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Modified APA; provided, further that the offer contains a covenant to cooperate with the Debtor to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;

- (s) provides for the Qualifying Bidder to serve as a backup bidder (the "**Back-Up Bidder**") if the Qualifying Bidder's bid is the next highest and best bid (the "**Back-Up Bid**") after the Successful Bid, in accordance with the terms of the Modified APA;
- (t) includes written evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Modified APA;
- (u) provides a good faith cash deposit (the "**Deposit**") in an amount equal to ten percent (10%) of the purchase price provided for in the Modified APA (or such additional amount as may be determined by the Debtor in its reasonable discretion); and
- (v) provides that in the event of the Qualifying Bidder's breach of, or failure to perform under, the Modified APA, the Debtor and its estate shall be entitled to retain the Deposit as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

A bid from a Qualifying Bidder satisfying all of the above requirements, as determined by the Debtor, in consultation with the Consultation Parties, shall constitute a Qualifying Bid. The Debtor reserves the right to work with any Qualifying Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualifying Bid.

Each Qualifying Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

## 8. Bid Deadline; Stalking Horse Bid Deadline

A Qualifying Bidder, other than any Stalking Horse Purchaser or the Lender, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Bidding Procedures Notice Parties and Consultation Parties so as to be received on or before **July 13, 2020 at 5:00 p.m. (ET)** (the “**Bid Deadline**”); provided that the Debtor may extend the Bid Deadline without further order of the Court, after consultation with the Consultation Parties. To the extent that the Bid Deadline is extended for all parties, the Debtor shall file a notice on the docket of the Chapter 11 Case indicating the same. **Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.**

A Qualifying Bidder that desires to be a Stalking Horse Purchaser must deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Bidding Procedures Notice Parties and Consultation Parties so as to be received on or before **June 4, 2020 at 5:00 p.m. (ET)** (the “**Stalking Horse Bid Deadline**”).

## 9. Evaluation of Qualifying Bids

The Debtor will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to the Consultation Parties.

The Debtor, in consultation with the Consultation Parties, shall make a determination regarding whether a timely submitted bid from a Qualifying Bidder is a Qualifying Bid.

No later than July 15, 2020, the Debtor shall: (i) notify all Qualifying Bidders whether their bids have been determined to be a Qualifying Bid; and (ii) determine, in consultation with the Consultation Parties, which of the Qualifying Bids, at such time, is the highest or best bid for purposes of constituting the opening bid of the Auction (the “**Baseline Bid**” and the Qualifying Bidder submitting the Baseline Bid, the “**Baseline Bidder**”), and shall promptly notify any Stalking Horse Purchaser and all Qualifying Bidders with Qualifying Bids of the Baseline Bid.

## 10. No Qualifying Bids

If no timely Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid are submitted on or before the Bid Deadline, the Debtor shall not hold an Auction and shall request at the Sale Hearing that the Court approve the Stalking Horse APA and the transactions contemplated thereunder.

## 11. Auction

If Debtor timely receives one or more Qualifying Bids other than any Stalking Horse Purchaser’s Qualifying Bid, then the Debtor shall conduct an auction (the “**Auction**”). Following the Auction, the Debtor will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or best bid for the Assets, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type and nature of any changes to the APA and any Stalking Horse APA requested by each bidder; (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtor and its estate

of such modifications or delay; (c) the total consideration to be received by the Debtor and its estate; (d) the transaction structure and execution risk, including conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtor's estate, taking into account any Break-Up Fee and any Expense Reimbursement agreed to in any applicable Stalking Horse APA; and (f) any other factors the Debtor may reasonably deem relevant.

The Auction shall be governed by the following procedures:

- (a) the Auction shall be held on **July 16, 2020 at 10:00 a.m. (ET)** at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801;
- (b) only a Stalking Horse Purchaser, the Lender and the other Qualifying Bidders with Qualifying Bids (together, the "**Auction Bidders**") shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear in person at the Auction, or through a duly authorized representative;
- (d) only the Debtor, the Auction Bidders, the Consultation Parties, and creditors of the Debtor, together with the professional advisors to each of the foregoing parties, may attend the Auction; provided that any such creditors provide counsel for the Debtor written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) the day prior to the Auction;
- (e) the Debtor and its professional advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) the Auction Bidders shall confirm that they have not engaged in any collusion with respect to the Bidding Procedures, the Auction or the Sale;
- (g) bidding shall commence at the amount of the Baseline Bid, and the Auction Bidders may submit successive bids in increments of at least 5% of the Baseline Bid, provided that: (i) each such successive bid must be a Qualifying Bid; (ii) if the then-highest and best bid was made by any Stalking Horse Purchaser, such bid shall be deemed to include the sum of the amount of (A) any Break-Up Fee and (B) any Expense Reimbursement; (iii) any successive bid made by any Stalking Horse Purchaser shall only be required to equal the sum of the amount of (A) the Baseline Bid or the then-highest and best bid, as applicable, and (B) 5% of the Baseline Bid, less the sum of the amount of (C) any Break-Up Fee and (D) any Expense Reimbursement; and (iv) the Debtor shall retain the right to modify the bid increment requirements at the Auction;
- (h) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record and in the presence of all of the Auction Bidders;

- (i) all material terms of the bid that is deemed to be the highest and best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtor shall use reasonable efforts to clarify any and all questions that the Auction Bidders may have regarding the Debtor's announcement of the then-current highest and best bid;
- (j) the Debtor and its professional advisors, in consultation with the Consultation Parties, may employ and announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time allotted to make subsequent bids) for conducting the Auction, provided that such rules are (i) not inconsistent with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware, or any applicable order of the Court entered in connection with the Chapter 11 Case, including, without limitation, the Bidding Procedures Order and the DIP Order, and (ii) disclosed to the Auction Bidders;
- (k) each Auction Bidder shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law;
- (l) the Lender, in its capacity as such, (i) shall have the continuing right to use the amounts then outstanding under the Postpetition Debt (as defined in the DIP Order), or any part thereof, to credit bid with respect to the Assets, and (ii) subject to Paragraph 10 of the DIP Order, shall have the continuing right to use the amounts then outstanding under the Prepetition Secured Debt (as defined in the DIP Order), or any part thereof, to credit bid with respect to the Assets;
- (m) the Auction Bidders shall have the right to make additional modifications to the Modified APA or any Stalking Horse APA, as applicable, in conjunction with each Qualifying Bid submitted in each round of bidding during the Auction, provided that (i) any such modifications on an aggregate basis and viewed in whole, shall not, in the Debtor's discretion, in consultation with the Consultation Parties, be less favorable to the Debtor and its estate than the terms of any Stalking Horse APA, and (ii) each Qualifying Bid shall constitute an irrevocable offer and shall be binding on the Auction Bidder submitting such bid until such party shall have submitted a subsequent Qualifying Bid at the Auction or the conclusion of the Sale Hearing, whichever occurs sooner, unless such bid is selected as the Successful Bid or the Back-Up Bid, which shall remain binding as provided for herein;

- (n) the Debtor and the Consultation Parties shall have the right to request any additional financial information that will allow the Debtor and the Consultation Parties to make a reasonable determination as to an Auction Bidder's financial and other capabilities to consummate the transactions contemplated by the Modified APA or any Stalking Horse APA, as applicable, as may be amended during the Auction, and any further information that the Debtor may believe is reasonably necessary to clarify and evaluate any bid made by an Auction Bidder during the Auction;
- (o) upon the conclusion of the Auction, the Debtor shall determine, in consultation with the Consultation Parties, and subject to Court approval, the offer or offers for the Assets that is or are the highest or best from among the Qualifying Bids submitted at the Auction (the "**Successful Bid**"). In making this decision, the Debtor shall consider, in consultation with the Consultation Parties, the amount of the purchase price, the assumption of liabilities, the likelihood of the bidder's ability to close a transaction and the timing thereof, the number, type and nature of any changes to the APA or any Stalking Horse APA, as applicable, requested by each bidder, and the net benefit to the Debtor's estate. The bidder submitting such Successful Bid at the Auction shall become the "**Successful Bidder**," and shall have such rights and responsibilities of the purchaser as set forth in the Modified APA or any Stalking Horse APA, as applicable. The Debtor may, in its sole discretion, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the Assets in the event that the Successful Bidder does not close the Sale;
- (p) within one (1) business day of the close of the Auction, the Successful Bidder shall supplement the Successful Bidder's Deposit such that the Deposit shall be equal to an amount that is ten (10%) percent of the Successful Bid; and
- (q) prior to the Sale Hearing, the Successful Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Successful Bid was made.

**THE SUCCESSFUL BID AND ANY BACK-UP BID SHALL CONSTITUTE AN IRREVOCABLE OFFER AND BE BINDING ON THE SUCCESSFUL BIDDER AND THE BACK-UP BIDDER, RESPECTIVELY, FROM THE TIME THE BID IS SUBMITTED UNTIL TWO (2) BUSINESS DAYS AFTER THE SALE HAS CLOSED. EACH QUALIFYING BID THAT IS NOT THE SUCCESSFUL BID OR THE BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.**

## **12. Sale Hearing**

The Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse APA) will be subject to approval by the Court. The hearing (the "**Sale Hearing**") to approve the Successful Bid and any Back-Up Bid (or if no Qualifying Bid other than that of any Stalking Horse Purchaser is received, then the Stalking Horse APA) shall take place on **July 23, 2020 at 3:00 p.m. (ET)**. The Sale Hearing may be adjourned by the Debtor from time to time without further notice to creditors or other parties in



interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, and/or by filing a hearing agenda or notice on the docket of the Chapter 11 Case.

At the Sale Hearing, the Debtor will seek entry of an order that, among other things: (i) authorizes and approves the Sale to the Stalking Horse Purchaser or, absent a Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder, pursuant to the terms and conditions set forth in the Stalking Horse APA or Modified APA submitted by the Successful Bidder, as applicable; (ii) finding that the Stalking Horse Purchaser or Successful Bidder, as applicable, is a good faith purchaser pursuant to section 363(m) of the Bankruptcy Code; (iii) as appropriate, exempting the Sale(s) and conveyance(s) of the Assets from any transfer tax, stamp tax or similar tax, or deposit under any applicable bulk sales statute; and (iv) except as otherwise provided in the DIP Order, directing that all cash proceeds generated from the sale of any Assets shall be paid to the Lender upon the closing of such sale(s) for application in accordance with the terms and conditions of the DIP Order, until the Aggregate Debt (as defined in the DIP Order) is paid in full.

### **13. Backup Bidder**

Notwithstanding any of the foregoing, in the event that the Successful Bidder fails to close the Sale on or before August 6, 2020 (or such date as may be extended by the Debtor, in consultation with the Consultation Parties), the Back-Up Bid will be deemed to be the Successful Bid, the Back-Up Bidder will be deemed to be the Successful Bidder, and the Debtor shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

### **14. Return of Deposits**

All Deposits shall be returned to each bidder not selected by the Debtor as the Successful Bidder no later than five (5) business days following the closing of the Sale. The deposit of the Successful Bidder or, if the Sale is closed with the Back-Up Bidder, the deposit of the Back-Up Bidder, shall be applied to the purchase price for the Sale. If the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Modified APA or any Stalking Horse APA, as applicable, the Debtor and its estate shall be entitled to retain the Deposit of the Successful Bidder (or, if the Sale is to be closed with the Back-Up Bidder, then the Back-Up Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform. For the avoidance of doubt, the Debtor's retention of a Deposit shall not constitute a waiver of any of the Debtor's legal or equitable rights relating to a Successful Bidder's or Back-Up Bidder's breach or failure to perform, and all such rights and remedies are preserved.

### **15. Notice and Consultation Parties**

- (a) The term "**Bidding Procedures Notice Parties**" as used in these Bidding Procedures shall mean: (i) Suitable Technologies, Inc., c/o Asgaard Capital LLC, 1934 Old Gallows Rd., Suite 350, Tysons Corner, VA 22183 (Attn: Charles C.

Reardon, Chief Restructuring Officer; creardon@asgaardcapital.com); (ii) counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq. and Robert Poppiti, Jr., Esq; rbrady@ycst.com and rpoppiti@ycst.com); and (iii) investment banking advisor to the Debtor, Stout Risius Ross Advisors, LLC, 2005 Market Street, Suite 2040, Philadelphia, PA 19103 (Attn: Luis Pillich; lpillich@stout.com).

- (b) The term “**Stalking Horse Notice Parties**” as used in these Bidding Procedures shall mean: (i) the Office of the United States Trustee for the District of Delaware; (ii) counsel to the Lender; (iii) all parties known by the Debtor to assert a lien on any of the Assets; (iv) all persons known or reasonably believed to have asserted an interest in any of the Assets; (v) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets within the one (1) year prior to the Petition Date; (vi) the Office of the United States Attorney for the District of Delaware; (vii) the Office of the Attorney General in each state in which the Debtor has operated; (viii) the Office of the Secretary of State in each state in which the Debtor has operated; (ix) all taxing authorities having jurisdiction over any of the Assets, including the Internal Revenue Service; (x) all environmental authorities having jurisdiction over any of the Assets, including the Environmental Protection Agency; (xi) the Federal Trade Commission; (xii) the United States Attorney General/Antitrust Division of Department of Justice; (xiii) all non-Debtor parties to any of the Assumed Contracts; and (xiv) all other parties that have filed a notice of appearance and demand for service of papers in the Chapter 11 Case as of the service date.
- (c) The term “**Consultation Parties**” as used in these Bidding Procedures shall mean: (i) any official committee of unsecured creditors appointed in the Chapter 11 Case (the “**Creditors’ Committee**”);<sup>3</sup> and (ii) the Lender, in its capacity as such, and notice to the Lender under these Bidding Procedures shall be sent to counsel for the Lender, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801 (Attn: Curtis S. Miller; cmiller@mnat.com).

For the avoidance of doubt, any consultation rights provided to the Consultation Parties by these Bidding Procedures shall not limit the Debtor’s discretion in any way and shall not include the right to veto any decision made by the Debtor in the exercise of its business judgment; provided, however, that the foregoing shall not impact any consent rights that the Lender may have under the final order [Docket No. 74] (the “**DIP Order**”) in the Chapter 11 Case approving the Debtor’s post-petition financing facility or the DIP Credit Agreement (as defined in the DIP Order).

In the event that any Consultation Party (including the Lender) or any member of any Creditors’ Committee or an affiliate of any of the foregoing submits a bid that is a Qualifying Bid, any obligation of the Debtor to consult with the bidding party established under these Bidding

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<sup>3</sup> As of the entry of the Bidding Procedures Order, no Creditors’ Committee had been appointed.

Procedures will be waived without further action; provided that the bidding party will have the same rights as any other Qualifying Bidder set forth above.

If a member of any Creditors' Committee submits a Qualifying Bid, any Creditors' Committee will continue to have consultation rights as set forth in these Bidding Procedures; provided that any Creditors' Committee shall exclude such member from any discussions or deliberations regarding the sale of the Assets and shall not provide any information regarding the sale of the Assets to such member.

**16. Reservation of Rights**

Notwithstanding any of the foregoing, the Debtor and its estate reserves the right to, after consultation with the Consultation Parties, modify these Bidding Procedures at or prior to the Auction, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all potential bidders (including, without limitation, the Bid Requirements), adjourn or cancel the Auction, and adjourn the Sale Hearing; provided, however, that any modification of these Bidding Procedures shall not be inconsistent with the Bankruptcy Code, the Bankruptcy Rules or the Local Rules, and shall be disclosed to each Qualified Bidder.

**Schedule 1**

APA

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 2020, (the “**Effective Date**”) is entered into by and between Suitable Technologies, Inc., a Delaware corporation (“**Seller**”), and \_\_\_\_\_, a \_\_\_\_\_ (“**Buyer**”).

WHEREAS, Seller is engaged in the business of developing, manufacturing, and selling a telepresence robot and technology platform (the “**Business**”);

WHEREAS, Seller commenced a voluntary case (the “**Bankruptcy Case**”) under title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) on February 26, 2020 (the “**Petition Date**”);

WHEREAS, Seller wishes to sell and assign to Buyer, and Buyer wishes to purchase and assume from Seller, certain specified assets and certain specified liabilities of the Business, all in the manner and subject to the terms and conditions set forth in this Agreement and in accordance with sections 105, 363, and 365 and other applicable provisions of the Bankruptcy Code;

WHEREAS, the Purchased Assets (as defined below) and Assumed Liabilities (as defined below) are assets and liabilities of Seller that are to be purchased by Buyer pursuant to the Sale Order (as defined below) all in the manner and subject to the terms and conditions set forth in this Agreement and the Sale Order and in accordance with the applicable provisions of the Bankruptcy Code; and

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

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

### ARTICLE I

#### DEFINITIONS

The following terms have the meanings specified or referred to in this Article I:

“**Action**” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity; provided, however, that the foregoing shall not include any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena or investigation of any nature, civil, criminal, administrative, regulatory or otherwise, whether at law or in equity by the Seller against any former or present director or officer of the Seller.

“**Affiliate**” of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. 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 and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

**“Agreement”** has the meaning set forth in the preamble.

**“Allocable Consideration”** has the meaning set forth in Section 2.6

**“Allocation Schedule”** has the meaning set forth in Section 2.6.

**“Alternative Transaction”** means a transaction or series of related transactions pursuant to which Seller accepts a bid for all or a substantial and material portion of the Purchased Assets or any group of assets that includes all or a substantial and material portion of the Purchased Assets, from a Person other than Buyer or any Affiliate of Buyer (or a group or joint venture that includes Buyer or any Affiliate of Buyer), as the highest or best offer, in accordance with the Bidding Procedures Order or otherwise, but shall exclude sales of goods or services of the Business conducted in the Ordinary Course.

**“Ancillary Documents”** means the Bill of Sale, the Assignment and Assumption Agreement, the Trademark Assignment Agreement, the Patent Assignment Agreement, the Confidentiality Agreement, and the other agreements, instruments and documents required to be delivered at the Closing.

**“Assigned Contracts”** has the meaning set forth in Section 2.1(b).

**“Assignment and Assumption Agreement”** has the meaning set forth in Section 3.2(a)(ii).

**“Assumed Liabilities”** has the meaning set forth in Section 2.3.

**“Auction”** means an auction conducted by Seller in accordance with the Bid Procedures.

**“Back-Up Bid”** has the meaning set forth in the Bid Procedures.

**“Back-Up Bidder”** has the meaning set forth in the Bid Procedures.

**“Bankruptcy Case”** has the meaning set forth in the Recitals.

**“Bankruptcy Code”** has the meaning set forth in the Recitals.

**“Bankruptcy Court”** has the meaning set forth in the Recitals.

**“Base Amount”** has the meaning set forth in Section 2.5.

**“Bid Procedures”** means the bidding procedures approved by the Bankruptcy Court for purposes of seeking bids for the purchase of the Purchased Assets at the Auction.

**“Bid Procedures Motion”** means a motion filed by Seller with the Bankruptcy Court to seek approval of the Bid Procedures.

**“Bidding Procedures Order”** means an order of the Bankruptcy Court that, among other things, establishes a date by which qualified bids meeting the requirements approved in the Bidding Procedures Order must be submitted by bidders and establishes procedures for the Auction process.

[**“Bidding Protection Order”** means an order of the Bankruptcy Court approving the designation of Buyer as a “stalking horse bidder”, the Break-Up Fee and Expense Reimbursement, which may be the Bidding Procedures Order if the Break-up Fee and Expense Reimbursement are authorized thereby.]<sup>1</sup>

**“Bill of Sale”** has the meaning set forth in Section 3.2(a)(i). **“Books and Records”** has the meaning set forth in Section 2.1(h).

[**“Break-Up Fee”** has the meaning set forth in Section 6.13(c).]

**“Business”** has the meaning set forth in the Recitals.

**“Business Day”** means any day except Saturday, Sunday or any other day on which commercial banks located in San Francisco, California are authorized or required by Law to be closed for business.

**“Buyer”** has the meaning set forth in the preamble.

**“Buyer Closing Certificate”** has the meaning set forth in Section 7.3(d).

**“Buyer Default Termination”** has the meaning set forth in Section 2.5(b).

**“Chancery Court Action”** means the civil action pending before the Court of Chancery in the State of Delaware, captioned Allison Huynh, derivatively on behalf of Suitable Technologies, Inc. v. Scott Hassan, Blue Ocean Robotics Holdings ApS, Beam Robots ApS, Beam Robots US Incorporated, C.A. No. 2019-0893-JTL.

**“Closing”** has the meaning set forth in Section 1.

**“Closing Date”** has the meaning set forth in Section 1.

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

**“Competing Bid”** has the meaning set forth in Section 6.13(a).

**“Confidentiality Agreement”** means the Confidentiality and Non-Disclosure Agreement between Seller and [\_\_\_\_\_], dated [\_\_\_\_\_, 2020].

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

**“Cure Claims”** has the meaning set forth in Section 2.8.

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<sup>1</sup> NTD: Bracketed provisions should only be included if tendering a stalking horse bid.

**“Default”** means (a) a violation, breach, or default, (b) the occurrence of an event that, with the passage of time, the giving of notice or both, would constitute a violation, breach, or default, or (c) the occurrence of an event that, with or without the passage of time, the giving of notice or both, would give rise to a right of damages, specific performance, termination, cancellation, renegotiation, or acceleration (including the acceleration of payment).

**“Deposit”** has the meaning set forth in Section 2.5(b).

**“DIP Order”** means the Final Order Authorizing Debtor to (A) Use Collateral, (B) Obtain Senior Secured Superpriority Postpetition Financing, and (C) Grant Adequate Protection and Provide Security and Other Relief as entered by the Bankruptcy Court on March 24, 2020.

**“Disclosure Schedules”** means the Disclosure Schedules delivered by Seller concurrently with the execution and delivery of this Agreement.

**“Dollars or \$”** means the lawful currency of the United States.

**“Effective Date”** has the meaning set forth in the preamble.

**“Encumbrance”** means any charge, claim (as defined in section 101(5) of the Bankruptcy Code), community property interest, pledge, condition, equitable interest, lien (statutory or other), option, security interest, mortgage, easement, encroachment, right of way, right of first refusal, other interest of any kind, or restriction of any kind, including any restriction on use, voting, transfer, receipt of income or exercise of any other attribute of ownership.

**“Escrow”** has the meaning set forth in Section 2.5(b).

**“Escrow Holder”** has the meaning set forth in Section 2.5(b).

**“Excluded Assets”** has the meaning set forth in Section 2.2.

**“Excluded Contracts”** has the meaning set forth in Section 2.2(b).

**“Excluded Liabilities”** has the meaning set forth in Section 2.4.

[**“Expense Reimbursement”** means a reimbursement to Buyer not to exceed \$[X]<sup>2</sup> of Buyer’s actual, reasonable and documented out-of-pocket expenses incurred in connection with the transactions contemplated by this Agreement, including professional fees.]

**“Governmental Authority”** means any federal, state, local or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, or any self-regulated organization or other non-governmental regulatory authority or quasi-governmental authority (to the extent that the rules, regulations or orders of such organization or authority have the force of Law), or any arbitrator, court or tribunal of competent jurisdiction.

**“Governmental Order”** means any order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority of competent jurisdiction.

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<sup>2</sup> NTD: Expense Reimbursement cannot exceed 1% of the Purchase Price.



**“Initial Deposit”** has the meaning set forth in Section 2.5(b).

**“Intellectual Property”** means any and all rights in, arising out of, or associated with any of the following in any jurisdiction throughout the world: (a) issued patents and patent applications (whether provisional or non-provisional), including divisionals, continuations, continuations-in-part, substitutions, reissues, reexaminations, extensions, or restorations of any of the foregoing, and other Governmental Authority-issued indicia of invention ownership (including certificates of invention, petty patents, and patent utility models) (**“Patents”**); (b) trademarks, service marks, brands, certification marks, logos, trade dress, trade names, and other similar indicia of source or origin, together with the goodwill connected with the use of and symbolized by, and all registrations, applications for registration, and renewals of, any of the foregoing (**“Trademarks”**); (c) copyrights and works of authorship, whether or not copyrightable, and all registrations, applications for registration, and renewals of any of the foregoing (**“Copyrights”**); (d) internet domain names and social media accounts or user names (including “handles”), whether or not Trademarks, all associated web addresses, URLs, websites and web pages, social media sites and pages, and all content and data thereon or relating thereto, whether or not Copyrights or copyrightable; (e) mask works, and all registrations, applications for registration, and renewals thereof; (f) industrial designs, and all Patents, registrations, applications for registration, and renewals thereof; (g) trade secrets, know-how, inventions (whether or not patentable), discoveries, improvements, technology, business and technical information, databases, data compilations and collections, tools, methods, processes, techniques and all rights therein (**“Trade Secrets”**); (h) computer programs, operating systems, applications, firmware and other code, including all source code, object code, application programming interfaces, data files, databases, protocols, specifications, and other documentation thereof (**“Software”**); and (i) all other intellectual or industrial property and proprietary rights.

**“Intellectual Property Agreements”** means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property Assets to which Seller is a party, beneficiary or otherwise bound.

**“Intellectual Property Assets”** means all Intellectual Property that is owned by Seller and used or held for use in the conduct of the Business, including those assets listed on Schedule 2.1(c) hereto, together with all (i) royalties, fees, income, payments, and other proceeds accrued after the Closing Date with respect to such Intellectual Property; and (ii) claims and causes of action with respect to such Intellectual Property, whether accruing before, on, or after the date hereof, including all rights to and claims for damages, restitution, and injunctive and other legal or equitable relief for past, present, or future infringement, misappropriation, or other violation thereof.

**“Inventory”** has the meaning set forth in Section 2.1(a).

**“IP Assignment Agreement”** has the meaning set forth in Section 3.2(a)(iii).

**“Law”** means any statute, law, ordinance, regulation, rule, code, order, constitution, treaty, common law, judgment, decree, other requirement or rule of law of any Governmental Authority.

**“Leased Equipment”** shall mean any equipment or hardware owned by Sellers and subject to leases between Sellers and third parties.

***“Liabilities”*** means any and all debts, Losses, liabilities, claims (including claims as defined in section 101(5) of the Bankruptcy Code), obligations or commitments of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.

***“Licensed Intellectual Property”*** means all Intellectual Property in which Seller holds any rights or interests granted by other Persons, including third party Intellectual Property made available to Seller under an open source license.

***“Losses”*** means losses, damages, liabilities, deficiencies, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys’ fees.

***“Material Adverse Effect”*** means a material adverse change in any of (a) the condition (financial or otherwise), performance, or operations of the Business taken as a whole; (b) the ability of the Seller to perform its obligations under the Sale Documents; or (c) the validity or enforceability of the Sale Documents or the rights and remedies of the Buyer under any of the Sale Documents; provided, however, that a Material Adverse Effect will not be deemed to include (i) changes as a result of the commencement of the Bankruptcy Case and the financial condition of the Seller or (ii) events or conditions arising from or related to changes in general business or economic conditions.

***“Material Contract”*** means any Assigned Contract that requires annual payments by the Seller to the counterparty of more than \$100,000 per year and the uncured breach of which would have or reasonably be likely to have a Material Adverse Effect.

***“Order”*** means any judgment, order, writ, decree, injunction or other determination whatsoever of any Governmental Authority of competent jurisdiction or any other entity or body whose finding, ruling or holding is legally binding or is enforceable as a matter of right (in any case, whether preliminary or final).

***“Ordinary Course”*** means the ordinary course of business consistent with recent past custom and practice, subject to any Orders of the Bankruptcy Court and Seller’s status as, and maintenance of the Business as, a debtor-in-possession.

***“Outside Date”*** has the meaning set forth in Section 3.1.

***“Permit”*** means any permits, licenses, franchises, approvals, authorizations, registrations, certificates, variances and similar rights obtained, or required to be obtained, from Governmental Authorities.

***“Permitted Encumbrances”*** means (a) liens for Taxes not yet due and payable or are due and payable but may not be paid as a result of the commencement of the Bankruptcy Cases or are being contested in good faith by appropriate procedures; (b) non-consensual statutory liens as described in Section 546(b) of the Bankruptcy Code arising or incurred in the ordinary course of business; and (c) non-exclusive licenses of Intellectual Property.

***“Person”*** means an individual, corporation, partnership, joint venture, limited liability company, Governmental Authority, unincorporated organization, trust, association or other entity.

***“Petition Date”*** has the meaning set forth in the Recitals.

***“Pre-Closing Tax Period”*** means any taxable period ending on or before the Closing Date and, with respect to any taxable period beginning before and ending after the Closing Date, the portion of such taxable period ending on and including the Closing Date.

***“Privileged Communications”*** means any records, information, ledgers, files, invoices, documents, work papers, work product, drafts, presentations, analysis, correspondence, summaries, or similar items that, in whole or part, constitutes privileged communications between Seller and Seller’s counsel or other professional advisors.

***“Purchase Price”*** has the meaning set forth in Section 2.5(a).

***“Purchased Assets”*** has the meaning set forth in Section 2.1.

***“Representative”*** means, with respect to any Person, any and all directors, managers, officers, employees, consultants, financial advisors, counsel, accountants and other agents or representatives of such Person.

***“Sale Documents”*** means this Agreement and the Ancillary Documents.

***“Sale Hearing”*** has the meaning set forth in the Bid Procedures.

***“Sale Order”*** has the meaning set forth in Section 6.13(b).

***“Successful Bid”*** has the meaning set forth in the Bid Procedures.

***“Successful Bidder”*** has the meaning set forth in the Bid Procedures.

***“Seller”*** has the meaning set forth in the preamble.

***“Seller Closing Certificate”*** has the meaning set forth in Section 7.2(d).

***“Seller’s Knowledge”*** or any other similar knowledge qualification, means the actual knowledge of Seller’s Chief Restructuring Officer.

***“Supplemental Deposit”*** has the meaning set forth in Section 2.5(b).

***“Tangible Personal Property”*** has the meaning set forth in Section 2.1(d).

***“Tax”*** or ***“Taxes”*** means all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

***“Tax Return”*** means any return, declaration, report, claim for refund, information return or statement or other document relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

## ARTICLE II

### PURCHASE AND SALE

2.1 **Purchase and Sale of Assets.** Pursuant to sections 105, 363, and 365 of the Bankruptcy Code and subject to the terms and conditions set forth herein and the Sale Order, at the Closing, Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase from Seller, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's right, title and interest in, to and under all of the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which are used or held for use in connection with, the Business (collectively, the "***Purchased Assets***"), including, without limitation, the following:

(a) all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories (including, without limitation the items listed on Schedule 2.1(a)), whether in the physical possession of Seller or another party, excluding Leased Equipment ("***Inventory***");

(b) all Contracts set forth on Schedule 2.1(b) (the "***Assigned Contracts***");

(c) all Intellectual Property Assets;

(d) all furniture, fixtures (excluding real property fixtures), equipment, machinery, tools, vehicles, office equipment, supplies, computers, telephones, assets leased to third parties pursuant to any Assigned Contracts, and other tangible personal property (including, without limitation the items listed on Schedule 2.1(d) but excluding Leased Equipment) (the "***Tangible Personal Property***");

(e) except as set forth in Section 2.2(n), all rights to any Actions of any nature available to or being pursued by Seller to the extent related to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;

(f) except as set forth in Section 2.2(h), Section 2.2(k), and Section 2.2(n), all claims, refunds, rights of recovery, rights of set-off, rights of recoupment, and related sums and fees;

(g) all of Seller's rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets;

(h) originals, or where not available, copies, of all books and records in the possession of Seller and maintained in the Ordinary Course, including, but not limited to, books of account and ledgers machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Authority), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements, except books and records relat

to corporate governance or tax matters (e.g., minute books, capitalization records and tax records), and books and records that constitute Privileged Communications (“***Books and Records***”); and

- (i) all goodwill and the going concern value of the Business.

2.2 **Excluded Assets**. Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the “***Excluded Assets***”):

- (a) cash and cash equivalents;
- (b) Contracts that are not Assigned Contracts (the “***Excluded Contracts***”);
- (c) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization or tax matters of Seller;
- (d) all benefit plans and assets attributable thereto;
- (e) the assets, properties and rights specifically set forth on Schedule 2.2(e);
- (f) deposits held by Seller in connection with any Excluded Contracts;
- (g) all accounts or notes receivable held by Seller, and any security, claim, remedy or other right related to any of the foregoing;
- (h) royalties, fees, income, payments, and other proceeds with respect to Intellectual Property that accrued prior to the Closing Date and any security, claim, remedy or other right related to any of the foregoing;
- (i) the rights which accrue or will accrue to Seller under this Agreement and the Ancillary Documents;
- (j) Licensed Intellectual Property (other than to the extent that Buyer assumes an Assigned Contract that constitutes an Intellectual Property Agreement under which Seller obtained rights to Licensed Intellectual Property);
- (k) all claims, cross claims, causes of action and other rights of Seller arising under Sections 542 through 553 of the Bankruptcy Code existing at Closing;
- (l) all insurance, utility, and tax deposits or refunds owing to Seller;
- (m) all insurance policies and insurance agreements, including, without limitation, any directors and officers insurance policies;
- (n) all actions, causes of actions or claims of Seller arising under any legal theory against any former officers and directors of the Company, including without limitation, the Chancery Court Action; and
- (o) books and records (i) that relate to corporate governance or tax matters of the Business, or (ii) that constitute Privileged Communications.

Buyer shall have the right, exercisable in Buyer's sole discretion at any time prior to the Bankruptcy Court hearing to consider the Sale Order, to designate any of the Purchased Assets as Excluded Assets; provided, however, that designating Purchased Assets as Excluded Assets shall not affect the Purchase Price.

2.3 **Assumed Liabilities.** Subject to the terms and conditions set forth herein, Buyer shall assume and agree to pay, perform and discharge only the following Liabilities of Seller (collectively, the "***Assumed Liabilities***"), and no other Liabilities:

(a) all Liabilities in respect of the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date and do not arise from any failure to perform, improper performance, warranty or other breach, default or violation by Seller on or prior to the Closing;

(b) all liabilities arising from the conduct of the Business or the use or operation of the Purchased Assets by Buyer from and after the Closing;

(c) the Cure Claims; and

(d) Taxes that arise out of the consummation of the transactions contemplated hereby that are the responsibility of Buyer pursuant to Section 6.10.

2.4 **Excluded Liabilities.** Notwithstanding the provisions of Section 2.3 or any other provision in this Agreement to the contrary, Buyer shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Seller of any kind or nature whatsoever other than the Assumed Liabilities (the "***Excluded Liabilities***"). Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Seller arising out of or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Ancillary Documents and the transactions contemplated hereby and thereby, including, without limitation, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Seller (or any stockholder or Affiliate of Seller) or relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period; or (ii) other Taxes of Seller (or any stockholder or Affiliate of Seller) of any kind or description (including any Liability for Taxes of Seller (or any stockholder or Affiliate of Seller) that becomes a Liability of Buyer under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) any Liabilities relating to or arising out of the Excluded Assets (unless and until such time as an Excluded Asset, with respect to the Liabilities relating to or arising out of such Excluded Asset, becomes a Purchased Asset pursuant to the terms of this Agreement);

(d) any Liabilities in respect of any pending or threatened Action arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date;

(e) any product Liability or similar claim for injury to a Person or property which arises out of or is based upon any express or implied representation, warranty, agreement or guaranty

made by Seller, or by reason of the improper performance or malfunctioning of a product, improper design or manufacture, failure to adequately package, label or warn of hazards or other related product defects of any products at any time manufactured or sold or any service performed by Seller prior to the Closing;

(f) any recall, design defect or similar claims of any products manufactured or sold or any service performed by Seller prior to the Closing;

(g) any Liabilities of Seller arising under or in connection with any benefit plan providing benefits to any present or former employee of Seller;

(h) any Liabilities of Seller for any present or former employees, officers, directors, retirees, independent contractors or consultants of Seller, including, without limitation, any Liabilities associated with any claims for wages or other benefits, bonuses, accrued vacation, workers' compensation, employee deferred compensation including stock option plans, grants and agreements, severance, retention, termination or other payments;

(i) except as set forth in Section 2.3(e), all trade accounts payable of Seller;

(j) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the Business' customers to Seller on or before the Closing; or (ii) are not validly and effectively assigned to Buyer pursuant to this Agreement;

(k) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Seller (including with respect to any breach of fiduciary obligations by same);

(l) any Liabilities under the Excluded Contracts;

(m) any Liabilities associated with debt, loans or credit facilities of Seller and/or the Business; and

(n) any Liabilities arising out of, in respect of or in connection with the failure by Seller to comply with any Law or Governmental Order.

## 2.5 **Purchase Price and Deposit.**

(a) The aggregate purchase price for the Purchased Assets shall be [ ] Dollars (\$ ) (the "**Base Amount**"), plus the assumption of the Assumed Liabilities (collectively, the "**Purchase Price**"). At the Closing, Buyer shall (i) pay the Base Amount minus the Deposit (as defined hereinafter) as provided in Section 3.2, and (ii) direct the Escrow Holder to disburse the Deposit to Seller.

(b) Concurrently with Buyer's delivery of this Agreement, Buyer shall deposit into an account (the "**Escrow**") maintained by an escrow holder identified and established by Seller (the "**Escrow Holder**"), in immediately available funds by wire transfer in an amount equal to ten percent (10%) of the Purchase Price (the "**Initial Deposit**"). If Buyer is declared the Successful Bidder at the Auction, Buyer shall, if necessary, within one (1) Business Day of the close of the Auction, supplement the Initial Deposit such that Buyer's deposit shall be equal to an amount that is ten (10%) percent of

the Successful Bid (the “**Supplemental Deposit**” and together with the Initial Deposit, the “**Deposit**”). Upon receipt of the Deposit, the Escrow Holder shall immediately place the Deposit into a non-interest-bearing escrow account. The Deposit shall become nonrefundable upon the earlier of (i) the entry of a final and non-appealable Order of the Bankruptcy Court approving Buyer as the Successful Bidder at the Sale Hearing and satisfaction by all parties of all conditions set forth in Section 7.2, and the absence of any restriction, limitation, or prohibition on Buyer’s right to acquire the Purchased Assets in the manner, and under the terms and conditions, set forth in this Agreement except where any such restriction, limitation, or prohibition is caused by an act or omission of Buyer, and (ii) Seller’s termination of the transaction contemplated by this Agreement by reason of a Buyer’s Default of this Agreement (a “**Buyer Default Termination**”). At the Closing, the Deposit shall be delivered to Seller and credited toward payment of the Purchase Price. In the event the Deposit becomes non-refundable by reason of a Buyer Default Termination and Seller is not then in Default of this Agreement, Escrow Holder shall immediately disburse the Deposit to Seller to be retained by Seller for Seller’s own account as part of damages resulting to Seller from such Buyer Default Termination. If this Agreement is terminated by reason of (i) Seller’s Default of this Agreement, (ii) the failure of a condition to Buyer’s obligations, or (iii) the approval by the Bankruptcy Court of an Alternative Transaction and Buyer is not then in Default of this Agreement and has not been designated as the Back-Up Bidder, the Escrow Holder shall retain the Deposit until five (5) Business Days after the earlier of (x) a determination by the Bankruptcy Court as to the Default of this Agreement or failure of a condition precedent referenced in subsections (i) or (ii) of this Section 2.5(b), as applicable, and (y) the closing of an Alternative Transaction.

**2.6 Allocation of Purchase Price.** Seller and Buyer agree that the Purchase Price and the Assumed Liabilities as well as any other items constituting the amount realized for Tax purposes (the “**Allocable Consideration**”) will be allocated among the Purchased Assets in a manner consistent with Section 1060 of the Code and any Treasury Regulations promulgated thereunder. Buyer will, no later than forty-five (45) days following the Closing Date, prepare and deliver to Seller a schedule setting forth the allocation of the Allocable Consideration in accordance with the preceding sentence (the “**Allocation Schedule**”). Buyer and Seller will endeavor for a period of not less than thirty (30) days to resolve any disputes related to the Allocation Schedule. Neither Buyer nor Seller will take any position that is contrary to or inconsistent with the Allocation Schedule for any Tax purpose, including with respect to any Tax Return (including amended Tax Returns). In the event that the Allocation Schedule is disputed by any Governmental Authority, the party receiving notice of such dispute will promptly notify the other party and the parties will consult in good faith as to how to resolve such dispute in a manner consistent with the agreed upon Allocation Schedule. Notwithstanding any provision of this Section 2.6 to the contrary, if Buyer and Seller are not able to agree to the Allocation Schedule, each party shall be allowed to use that party’s own formulation with respect to the allocation of the Purchase Price and the Assumed Liabilities.

**2.7 Third Party Consents.** Notwithstanding the Sale Order or the Bankruptcy Code, to the extent that Seller’s rights under any Contract or Permit constituting a Purchased Asset, or any other Purchased Asset, may not be assigned to Buyer without the consent of another Person which has not been obtained, this Agreement shall not constitute an agreement to assign the same if an attempted assignment would constitute a breach thereof or be unlawful, provided, however, that, subject to the satisfaction or waiver of the conditions contained in Article VII, the Closing shall occur notwithstanding the foregoing without any adjustment to the Purchase Price on account thereof, and Seller and Buyer, each at its own expense, shall use commercially reasonable efforts, and shall cooperate with each other, to obtain any such required consent(s) as promptly as possible.



2.8 **Cure Claims**. With respect to each of the Assigned Contracts assigned to Buyer on the Closing Date, Buyer shall pay on the Closing Date all amounts necessary to cure any monetary defaults (as distinct from curing all defaults or failures to comply with provisions thereunder that may not be cured by the mere payment of money) that are required to be paid pursuant to section 365 of the Bankruptcy Code in order to assume and assign the Assigned Contracts to Buyer, which amounts shall be reflected on Schedule 2.1(b), subject to approval of such amounts by the Bankruptcy Court (collectively, the “***Cure Claims***”). Within five (5) Business Days of the Closing Date, Buyer shall provide to Seller a written certification that all Cure Claims have been satisfied and paid in full by Buyer. Upon the reasonable request of Seller, Buyer shall provide to Seller any and all documentation evidencing the full payment and satisfaction of any Cure Claim.

### ARTICLE III

#### CLOSING; POST-CLOSING MATTERS

3.1 **Closing**. Subject to the terms and conditions of this Agreement, the consummation of the transactions contemplated by this Agreement (the “***Closing***”) shall take place remotely via the exchange of documents and signatures on the second Business Day after all of the conditions to Closing set forth in Article VII are either satisfied or waived (other than conditions which, by their nature, are to be satisfied on the Closing Date), but in no event later than August 6, 2020 (the “***Outside Date***”), or in such other manner as will be mutually acceptable between Buyer and Seller. The date on which the Closing is to occur is herein referred to as the “***Closing Date***”.

3.2 **Closing Deliverables**.

(a) At the Closing, Seller shall deliver to Buyer the following:

(i) A bill of sale in the form of Exhibit A hereto (the “***Bill of Sale***”) and duly executed by Seller, transferring the Tangible Personal Property included in the Purchased Assets to Buyer;

(ii) An assignment and assumption agreement in the form of Exhibit B hereto (the “***Assignment and Assumption Agreement***”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Purchased Assets and the Assumed Liabilities;

(iii) an IP assignment agreement in the form of Exhibit C hereto (the “***IP Assignment Agreement***”) and duly executed by Seller, effecting the assignment to and assumption by Buyer of the Intellectual Property Assets;

(iv) the Seller Closing Certificate;

(v) a copy of the Sale Order entered by the Bankruptcy Court;

(vi) joint instructions to the Escrow Holder to deliver the Deposit to Seller;

and

(vii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Buyer, as may be required to give effect to this Agreement.

(b) At the Closing, Buyer shall deliver to Seller the following:

- (i) the Base Amount minus the Deposit by wire transfer of immediately available funds to an account designated in writing by Seller to Buyer;
- (ii) the Assignment and Assumption Agreement, duly executed by the Buyer;
- (iii) the Buyer Closing Certificate;
- (iv) the certificate of the Secretary of Buyer required by Section 7.3(e); and
- (v) joint instructions to the Escrow Holder to deliver the Deposit to Seller.

#### ARTICLE IV

##### REPRESENTATIONS AND WARRANTIES OF SELLER

As a material inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated herein, subject to the entry of the Sale Order, Seller represents and warrants to Buyer that the statements contained in this Article IV, except as set forth in the correspondingly numbered Section of the Disclosure Schedules, are true and correct as of the date hereof.

4.1 **Organization and Qualification of Seller.** Seller is a corporation duly organized, validly existing and in good standing under the Laws of the state of Delaware and has full corporate power and authority to own, operate or lease the properties and assets now owned, operated or leased by it and to carry on the Business as currently conducted.

4.2 **Authority of Seller.** The execution and delivery of this Agreement by Seller, the sale of the Purchased Assets, and the performance of the obligations of Seller contemplated hereby have been duly and validly authorized by all necessary action. Seller has the right, power, authority, and legal capacity to enter into and perform this Agreement and the transaction contemplated hereby, and (assuming due authorization, execution, and delivery by Buyer) this Agreement constitutes the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

4.3 **No Conflicts; Consents.** The execution, delivery and performance by Seller of this Agreement and the Ancillary Documents to which it is a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) conflict with or result in a violation or breach of, or default under, any provision of the certificate of incorporation, bylaws or other organizational documents of Seller; (b) conflict with or result in a violation or breach of any provision of any Law or Governmental Order applicable to Seller, the Business or the Purchased Assets; or (c) except as set forth in Section 4.3 of the Disclosure Schedules, require the consent, notice or other action by any Person under, conflict with, result in a violation or breach of, constitute a default or an event that would constitute a default under, or result in the acceleration of any Material Contract; except in the cases of clauses (b) and (c), where the violation, breach, conflict, default, acceleration or failure to give notice would not have a Material Adverse Effect.

4.4 **Title to Purchased Assets.** Seller has good and valid title to, or a valid leasehold interest in, all of the Purchased Assets. All such Purchased Assets shall be sold to Buyer at Closing free and clear of Encumbrances except for Permitted Encumbrances.

4.5 **Legal Proceedings; Governmental Orders.** To Seller's Knowledge,

(a) except for the Chancery Court Action, there are no Actions pending against or by Seller (i) relating to or affecting the Business, the Purchased Assets or the Assumed Liabilities; or (ii) that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement, which, in each case, if determined adversely to Seller would result in a Material Adverse Effect; and

(b) there are no outstanding Governmental Orders and no unsatisfied judgments, penalties or awards against, relating to or affecting the Business which would have a Material Adverse Effect.

4.6 **Compliance With Laws.** To Seller's Knowledge, Seller has at all times been in material compliance with all Laws applicable to the conduct of the Business as currently conducted or the ownership and use of the Purchased Assets.

4.7 **Brokers.** Except for Seller's engagement of Stout Risius Ross Advisors, LLC, no broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Seller.

4.8 **No Other Representations and Warranties.** Except for the representations and warranties contained in this Article IV (including the related portions of the Disclosure Schedules), neither Seller nor any other Person has made or makes any other express or implied representation or warranty, either written or oral, on behalf of Seller, including any representation or warranty as to the accuracy or completeness of any information regarding the Business and the Purchased Assets furnished or made available to Buyer and its Representatives, management presentations or in any other form in expectation of the transactions contemplated hereby) or as to the future revenue, profitability or success of the Business, or any representation or warranty arising from statute or otherwise in law.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF BUYER

As a material inducement to Seller to enter into this Agreement and to consummate the transactions contemplated herein, subject to the entry of the Sale Order, Buyer represents and warrants to Seller that the statements contained in this Article V are true and correct as of the date hereof.

5.1 **Organization of Buyer.** Buyer is a [ ] duly organized, validly existing and in good standing under the Laws of the State of [ ].

5.2 **Authority of Buyer.** Buyer has full corporate power and authority to enter into this Agreement and the Ancillary Documents to carry out its obligations hereunder and thereunder and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer

of this Agreement and any Ancillary Document, the performance by Buyer of its respective obligations hereunder and thereunder and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action on the part of Buyer. This Agreement has been duly executed and delivered by Buyer, and (assuming due authorization, execution and delivery by Seller) this Agreement constitutes a legal, valid and binding obligation of Buyer enforceable against Buyer in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally. When each Ancillary Document to which Buyer is or will be a party has been duly executed and delivered by Buyer (assuming due authorization, execution and delivery by each other party thereto), such Ancillary Document will constitute a legal and binding obligation of Buyer enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar laws affecting creditors' rights and remedies generally.

5.3 **No Conflicts; Consents.** The execution, delivery, and performance by Buyer of this Agreement and the Ancillary Documents to which Buyer is or will be a party, and the consummation of the transactions contemplated hereby and thereby, do not and will not: (a) violate or conflict with any provision of the [articles of incorporation, bylaws], or other organizational or governing documents of Buyer; (b) violate or conflict with any provision of any Law or Governmental Order applicable to Buyer; or (c) require the consent, notice, declaration, or filing with or other action by any Person or require any permit, license, or Governmental Order.

5.4 **Brokers.** No broker, finder or investment banker is entitled to any brokerage, finder's or other fee or commission in connection with the transactions contemplated by this Agreement or any Ancillary Document based upon arrangements made by or on behalf of Buyer.

5.5 **Sufficiency of Funds.** Buyer has sufficient cash on hand to enable it to make payment of the Purchase Price and consummate the transactions contemplated by and in the timeframe set forth in this Agreement.

5.6 **Legal Proceedings.** There are no Actions pending or, to Buyer's knowledge, threatened against or by Buyer that challenge or seek to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement; and no event has occurred or circumstances exist that may give rise or serve as a basis for any such Action.

5.7 **"As Is" Transaction.** BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ARTICLE IV ABOVE, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS INCLUDING EXPENSES TO BE INCURRED IN CONNECTION WITH THE PURCHASED ASSETS, THE PHYSICAL CONDITION OF ANY PERSONAL PROPERTY COMPRISING A PART OF THE PURCHASED ASSETS OR WHICH IS THE SUBJECT OF ANY OTHER LEASE OR OTHER CONTRACT TO BE ASSUMED BY BUYER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR OTHER MATTER RELATING TO THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS WHICH ARE THE SUBJECT OF ANY REAL PROPERTY LEASE TO BE ASSUMED BY BUYER AT THE CLOSING, THE ZONING OF ANY SUCH REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF PROPERTY, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR

ANY OTHER PORTION OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. BUYER FURTHER ACKNOWLEDGES THAT BUYER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AS BUYER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE IV, BUYER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, BUYER WILL ACCEPT THE PURCHASED ASSETS AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.” FURTHERMORE BUYER HEREBY EXPRESSLY ACKNOWLEDGES THAT THE ASSIGNMENT AND ASSUMPTION OF THE ASSIGNED CONTRACTS FORMING PART OF THE PURCHASED ASSETS WILL BE CONSUMMATED IN ACCORDANCE WITH THE TERMS OF THIS AGREEMENT NOTWITHSTANDING ANY AND ALL OUTSTANDING DEFAULTS AND OTHER CLAIMS FOR FAILURES TO COMPLY WITH THE PROVISIONS OF SUCH CONTRACTS, CERTAIN OF WHICH DEFAULTS OR CLAIMS MAY NOT BE SUBJECT TO CURE OR WAIVER.

## ARTICLE VI

### COVENANTS

6.1 **Conduct of Business Prior to the Closing.** From the date hereof until the Closing, except as consented to in writing by Buyer (which consent shall not be unreasonably withheld or delayed), Seller shall use commercially reasonable efforts to maintain and preserve intact the Purchased Assets in the Ordinary Course.

6.2 **Access to Information.**

(a) From and after the date of this Agreement until the Closing Date, Seller shall, upon reasonable advance notice and subject to any operating restrictions, curfews, and lockdown orders or advisories issued by any Governmental Authority, afford Buyer’s officers, independent public accountants, counsel, consultants and other representatives, reasonable access during normal business hours to the Purchased Assets and all records pertaining to the Purchased Assets in Seller’s possession and under Seller’s control; provided, however, notwithstanding the foregoing (x) Buyer shall not be entitled to access to any materials containing Privileged Communications, and (y) prior to Closing, without the prior written consent of Seller, which may be withheld for any reason, Buyer shall not contact any suppliers to, or customers of, the Business and Buyer shall have no right to perform invasive or subsurface investigations of the property used or occupied by Buyer. Buyer shall, and shall cause its Representatives to, abide by the terms of the Confidentiality Agreement with respect to any access or information provided pursuant to this Section 6.2. Reasonable access to Records shall include (i) the right of Buyer’s professionals to copy, at Buyer’s expense, such documents and records as Buyer may request in furtherance of the purposes described above and (ii) Seller’s copying and delivering to Buyer such documents or records as Buyer may request, but only to the extent Buyer furnishes Seller

with reasonably detailed written descriptions of the materials to be so copied and Buyer reimburses Seller for the reasonable costs and expenses thereof.

(b) Buyer may not communicate with any counterparty to any Contracts, including Assigned Contracts, without the prior written consent of Seller.

### 6.3 **Notice of Certain Events.**

(a) From the date hereof until the Closing, Seller shall promptly notify Buyer in writing of:

(i) any fact, circumstance, event or action the existence, occurrence or taking of which (A) has had a Material Adverse Effect, (B) has resulted in any representation or warranty made by Seller hereunder not being true and correct or (C) has resulted in the failure of any of the conditions set forth in Section 7.2 to be satisfied;

(ii) any notice or other communication from any Governmental Authority in connection with the transactions contemplated by this Agreement; and

(iii) any Actions commenced or, to Seller's Knowledge, threatened against, relating to or involving or otherwise affecting the Business, the Purchased Assets or the Assumed Liabilities that, if pending on the date of this Agreement, would have been required to have been disclosed pursuant to Section 4.5 or that relates to the consummation of the transactions contemplated by this Agreement.

(b) Buyer's receipt of information pursuant to this Section 6.3 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (including Section 8.1(b)) and shall not be deemed to amend or supplement the Disclosure Schedules.

6.4 **Employees and Employee Benefits.** Seller shall be solely responsible, and Buyer shall have no obligation whatsoever for, any compensation or other amounts payable to any current or former employee, officer, director, independent contractor or consultant of Seller, including, without limitation, hourly pay, commission, bonus, salary, accrued vacation, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time on or prior to the Closing Date.

6.5 **Confidentiality.** Buyer acknowledges and agrees that the Confidentiality Agreement remains in full force and effect and, in addition, covenants and agrees to keep confidential, in accordance with the provisions of the Confidentiality Agreement (other than as may be permitted or required under this Agreement), information provided to, or reviewed or accessed by, Buyer or its Representatives pursuant to this Agreement. If this Agreement is, for any reason, terminated prior to the Closing, the Confidentiality Agreement and the provisions of this Section 6.5 shall nonetheless continue in full force and effect. Upon execution of this Agreement, Buyer agrees, and Buyer shall cause, its Representatives to be bound by and comply with the Confidentiality Agreement. Buyer shall be responsible for any breach by any of its Representatives of the terms of the Confidentiality Agreement.

6.6 **Books and Records.** In order to facilitate the resolution of any claims made against or incurred by Seller, the continuing administration of the Bankruptcy Cases (including the pursuit of any avoidance, preference or similar actions), or for any other reasonable purpose, for a period of three (3) years after the Closing, Buyer shall: retain the Books and Records relating to periods prior to the Closing in a manner reasonably consistent with the prior practices of Seller; and upon reasonable notice, afford Seller's Representatives reasonable access (including the right to make, at Seller's expense, photocopies), during normal business hours, to such Books and Records.

6.7 **Closing Conditions.** From the date hereof until the Closing, each party hereto shall use commercially reasonable efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth in Article VII hereof.

6.8 **Bulk Sales Laws.** The parties hereby waive compliance with the provisions of any bulk sales, bulk transfer or similar Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Purchased Assets to Buyer.

6.9 **Receivables.** From and after the Closing, if Seller receives or collects any funds that constitute a Purchased Asset, Seller shall remit such funds to Buyer within a reasonable period of time after its receipt thereof. From and after the Closing, if Buyer or any of Buyer's Affiliates receives or collects any funds that constitutes an Excluded Asset, Buyer or its Affiliate shall remit any such funds to Seller within five (5) Business Days after its receipt thereof.

6.10 **Transfer Taxes.** Any sales, purchases, transfer, stamp, documentary stamp, use, or similar taxes that may be payable by reason of the sale of the Purchased Assets under this Agreement or the transactions contemplated herein shall be borne and timely paid by Buyer.

6.11 **Prorations.** Rent, Taxes (other than Taxes imposed or assessed on income), utilities, and prepaid expenses related to the Purchased Assets shall be prorated between Seller and Buyer as of the Closing Date; provided that, for the avoidance of doubt, all property Taxes shall be pro-rated based on the period to which the tax applies without regard to the date of assessment. All Rent, Taxes (other than Taxes imposed or assessed on income), utilities, and prepaid expenses related to the Purchased Assets due in respect of periods prior to and including the Closing Date (other than Cure Claims) shall be the obligations of Seller, and all Rent, Taxes (other than Taxes imposed or assessed on income), utilities, and prepaid expenses related to the Purchased Assets due in respect of periods after the Closing Date shall be the obligations of and shall be paid in full or otherwise satisfied by Buyer; provided that amounts that Buyer is obligated to pay under this Section 6.11 shall be treated as a credit to Seller at Closing (and paid by Buyer to Seller) to the extent that the amount either (i) was already paid by Seller prior to the Closing or (ii) is a Tax for which the Sale Order provides for such obligation to attach to the Base Amount, in which case such Tax obligation shall be retained by Sellers. Rent shall be prorated on the basis of a thirty (30) day month.

6.12 **Further Assurances.** Following the Closing, each of the parties hereto shall, and Buyer shall cause its Affiliates to, execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated by this Agreement and the Ancillary Documents.

### 6.13 Bankruptcy Court Matters.

(a) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Seller of higher or better competing bids (each a “**Competing Bid**”). From the Effective Date and until the designation of a Successful Bidder, Seller is permitted to cause Seller’s Representatives to initiate contact with, solicit, or encourage submission of any inquiries, proposals, or offers by, any Person (in addition to Buyer and Buyer’s Affiliates and Representatives) in connection with any sale or other disposition of the Purchased Assets. In addition, Seller may respond to any inquiries or offers to purchase all or any part of the Purchased Assets or equity interests in Seller and perform any and all other acts related thereto that are required under the Bankruptcy Code, the Bidding Procedures Order, or other applicable Law, including supplying information relating to the Business and the assets of Seller to prospective purchasers.

(b) If Buyer is designated as the Successful Bidder, Seller will seek an order of the Bankruptcy Court pursuant to the Bidding Procedures Motion (the “**Sale Order**”) that (i) approves the sale of the Purchased Assets to Buyer, and authorizes Seller to proceed with the sale of the Purchased Assets to Buyer, on the terms and conditions set forth in this Agreement, (ii) includes a finding that Buyer is a good faith purchaser of the Purchased Assets within the meaning of section 363(m) of the Bankruptcy Code and is entitled to the protections of section 363(m) of the Bankruptcy Code, (iii) states that the sale of the Purchased Assets to Buyer shall be free and clear of all Encumbrances other than Permitted Encumbrances and except as otherwise expressly provided in this Agreement, (iv) provides that cash proceeds generated from the transactions contemplated by this Agreement shall be paid to the Lender (as defined in the DIP Order) in accordance with the terms and conditions of the DIP Order, until such time as the Aggregate Debt (as defined in the DIP Order) has been paid in full, and (v) approves Seller’s assumption and assignment to Buyer of the Assigned Contracts pursuant to section 365 of the Bankruptcy Code subject to Buyer’s ability to demonstrate to the Bankruptcy Court adequate assurance of future performance under the Assigned Contracts. Within one (1) Business Day of the execution of this Agreement, Buyer shall provide Seller a copy of such financial and other information supporting Buyer’s ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code and, if applicable, section 365(b)(3) of the Bankruptcy Code, including Buyer’s financial wherewithal and willingness to perform under the Assigned Contracts, in a form that allows Seller to serve such information on any counterparties to the Assigned Contracts within one (1) business day after Seller’s receipt of such information. Both Buyer’s and Seller’s obligations to consummate the transactions contemplated in this Agreement are conditioned upon the Bankruptcy Court’s entry of the Sale Order.

(c) [In the event that this Agreement is terminated pursuant to Section 8.1(e) and Seller otherwise closes an Alternative Transaction with the Successful Bidder, Seller shall pay to Buyer a cash amount equal to \$[\_\_\_\_\_] <sup>3</sup> (the “**Break-Up Fee**”) and the Expense Reimbursement as set forth below from the proceeds of the Alternative Transaction. The Break-Up Fee and Expense Reimbursement will be due and payable upon the closing of an agreement providing for an Alternative Transaction with the Successful Bidder. Notwithstanding anything to the contrary contained in this Agreement, upon payment of the Break-Up Fee and the Expense Reimbursement in accordance herewith, Seller and Seller’s Representatives shall be fully released and discharged from any Liability under or resulting from this Agreement, and neither Buyer nor any other Person shall have any other remedy or cause of action under or relating to this Agreement, including for reimbursement of expenses. Notwithstanding this Section 6.13(c), if Buyer is the Back-Up Bidder and Buyer closes

<sup>3</sup> NTD: Break-Up Fee cannot exceed 2% of the purchase price.



under this Agreement as a result of a failure of an Alternative Transaction to close, then Seller shall have no obligation to pay, and Buyer shall not be entitled to receive, the Expense Reimbursement or Break-Up Fee.][Intentionally Omitted.]

(d) Seller and Buyer agree that, in the event that Buyer is not the Successful Bidder at the Auction, and the Alternative Transaction with the Successful Bidder does not close, if and only if Buyer is the Back-Up Bidder, Buyer shall promptly consummate the transactions set forth in this Agreement upon the terms and conditions as set forth herein, including the Purchase Price as the same may be modified by Buyer at the Auction. Buyer's obligation to remain as the Back-Up Bidder shall not terminate until the closing of the Alternative Transaction with the Successful Bidder. Buyer acknowledges that time is of the essence in achieving Closing and shall undertake all commercially reasonable efforts to reach Closing in a timely manner.

## ARTICLE VII

### CONDITIONS TO CLOSING

7.1 **Conditions to Obligations of All Parties.** The obligations of each party to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment, at or prior to the Closing, of each of the following conditions:

(a) The Bankruptcy Court shall have entered the Sale Order in the Bankruptcy Case, authorizing the transactions set forth in this Agreement and approving this Agreement under sections 105(a), 363, and 365, of the Bankruptcy Code, in form and substance reasonably acceptable to Seller and Buyer, and as of the Closing Date the Sale Order shall be in full force and effect, shall not then be stayed, and shall not have been vacated or reversed; and

(b) No injunction, stay, or similar Order issued by any Governmental Authority shall be in effect that restrains, enjoins, stays, or prohibits the consummation of the transactions set forth in this Agreement.

7.2 **Conditions to Obligations of Buyer.** The obligations of Buyer to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Buyer's waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Seller contained in Section 4.1, Section 4.2, and Section 4.7, the representations and warranties of Seller contained in Article IV of this Agreement delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Seller contained in Section 4.1, Section 4.2, and Section 4.7 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects).

(b) Seller shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Seller shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Seller shall have delivered to Buyer duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.2(a).

(d) Buyer shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Seller, that each of the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied (the “***Seller Closing Certificate***”).

7.3 **Conditions to Obligations of Seller.** The obligations of Seller to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Seller’s waiver, at or prior to the Closing, of each of the following conditions:

(a) Other than the representations and warranties of Buyer contained in Section 5.1, Section 5.2 and Section 5.4, the representations and warranties of Buyer contained in this Agreement delivered pursuant hereto shall be true and correct in all respects (in the case of any representation or warranty qualified by materiality or Material Adverse Effect) or in all material respects (in the case of any representation or warranty not qualified by materiality or Material Adverse Effect) on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects). The representations and warranties of Buyer contained in Section 5.1, Section 5.2 and Section 5.4 shall be true and correct in all respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date.

(b) Buyer shall have duly performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement and each of the Ancillary Documents to be performed or complied with by it prior to or on the Closing Date; *provided, that*, with respect to agreements, covenants and conditions that are qualified by materiality, Buyer shall have performed such agreements, covenants and conditions, as so qualified, in all respects.

(c) Buyer shall have delivered to Seller duly executed counterparts to the Ancillary Documents and such other documents and deliveries set forth in Section 3.2(b).

(d) Seller shall have received a certificate, dated the Closing Date and signed by a duly authorized officer of Buyer, that each of the conditions set forth in Section 7.3(a) and Section 7.3(b) have been satisfied (the “***Buyer Closing Certificate***”).

(e) Seller shall have received a certificate of the Secretary (or equivalent officer) of Buyer certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Buyer authorizing the execution, delivery and performance of this Agreement and the Ancillary Documents and the consummation of the transactions contemplated hereby and thereby, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the transactions contemplated hereby and thereby.

- (f) The Bankruptcy Court shall have entered the Bidding Procedures Order.

## ARTICLE VIII

### TERMINATION

8.1 **Termination**. This Agreement may be terminated at any time prior to the Closing:

- (a) by the mutual written consent of Seller and Buyer;
- (b) by Buyer by written notice to Seller if:

- (i) Buyer is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Seller pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure has not been cured by Seller within five (5) days of Seller's receipt of written notice of such breach from Buyer; or

- (ii) any of the conditions set forth in Section 7.1 or Section 7.2 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of Buyer to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing;

- (c) by Seller by written notice to Buyer if:

- (i) Seller is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Buyer pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Article VII and such breach, inaccuracy or failure has not been cured by Buyer within five (5) days of Buyer's receipt of written notice of such breach from Seller; or

- (ii) any of the conditions set forth in Section 7.1 or Section 7.3 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by the Outside Date, unless such failure shall be due to the failure of Seller to perform or comply with any of the covenants, agreements or conditions hereof to be performed or complied with by it prior to the Closing; or

- (d) by Buyer or Seller by written notice in the event that (i) there shall be any Law that makes consummation of the transactions contemplated by this Agreement illegal or otherwise prohibited or (ii) any Governmental Authority shall have issued a Governmental Order restraining or enjoining the transactions contemplated by this Agreement, and such Governmental Order shall have become final and non-appealable.

- (e) automatically, if Seller enters into a definitive agreement with respect to an Alternative Transaction[, subject to Buyer's right to payment of Break-Up Fee and Expense Reimbursement in accordance with the provision of Section 6.13(c), and such Alternative Transaction closes] and the Bankruptcy Court enters an Order approving an Alternative Transaction; provided, however, that if the Auction is held and Buyer is designated as the Back-Up Bidder than this Agreement shall not terminate pursuant to this Section 8.1(e) until the closing of the Alternative Transaction with the Successful Bidder.

(f) the Bankruptcy Court enters an Order that otherwise precludes the consummation of the transactions set forth herein on the terms and conditions set forth in this Agreement, subject to any limitations set forth in the Bidding Procedures Order.

8.2 **Effect of Termination.** In the event of the termination of this Agreement in accordance with this Article VIII, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except:

(a) as set forth in this Article VIII, Section 2.5(b), and Section 6.5 hereof; and

(b) that nothing herein shall relieve any party hereto from liability for any willful breach of any provision hereof.

## ARTICLE IX

### MISCELLANEOUS

9.1 **Expenses.** Except as otherwise expressly provided herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses, whether or not the Closing shall have occurred. Each party shall be responsible for the payment of one-half of any expenses or fees payable to the Escrow Holder. [Subject to Bankruptcy Court approval, the Break-Up Fee and Expense Reimbursement shall constitute allowed administrative expense claims against the Seller with priority over all administrative expense claims and unsecured claims against the Seller.]

9.2 **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by email of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Notwithstanding anything to the contrary herein, any and all notices, requests, consents, claims, demands, waivers and other communications hereunder not otherwise transmitted by email shall additionally transmit such communications by email to any and all respective parties on the date such notice, request, consent, claim, demand, waiver, or other communication was otherwise transmitted (with confirmation of transmission). Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 9.2):

If to Seller:	Suitable Technologies, Inc. c/o Asgaard Capital LLC 1934 Old Gallows Road, Suite 350 Vienna, VA 22182 United States Attention: Charlie Reardon, CRO Email: creardon@asgaardcapital.com
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9.6 **Entire Agreement.** This Agreement and the Ancillary Documents constitute the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and therein, and supersede all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements in the body of this Agreement and those in the Ancillary Documents, the Exhibits, the Schedules and Disclosure Schedules (other than an exception expressly set forth as such in the Disclosure Schedules), the statements in the body of this Agreement will control, except as otherwise provided in the Sale Order.

9.7 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns. Neither party may assign its rights or obligations hereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld or delayed. Buyer shall provide Seller with information reasonably requested by Seller in connection with the assignment by Buyer's rights and obligations hereunder. No assignment shall relieve the assigning party of any of its obligations hereunder.

9.8 **No Third-party Beneficiaries.** This Agreement is for the sole benefit of the parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other Person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

9.9 **Amendment and Modification; Waiver.** This Agreement may only be amended, modified or supplemented by an agreement in writing signed by each party hereto. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

9.10 **Governing Law; Submission to Jurisdiction; Waiver of Jury Trial.**

(a) THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING AS TO MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE.

(b) BUYER AND SELLER AGREE THAT THE BANKRUPTCY COURT SHALL HAVE EXCLUSIVE JURISDICTION OVER ALL DISPUTES AND OTHER MATTERS RELATING TO (i) THE INTERPRETATION AND ENFORCEMENT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT TO THIS AGREEMENT; AND (ii) THE PURCHASED ASSETS AND ASSUMED LIABILITIES ASSUMED PURSUANT TO OR ARISING OUT OF THIS AGREEMENT OR ANY ANCILLARY DOCUMENT EXECUTED PURSUANT TO THIS AGREEMENT, AND BUYER EXPRESSLY CONSENTS TO AND AGREES NOT TO CONTEST SUCH EXCLUSIVE JURISDICTION. EACH OF THE PARTIES

HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

9.11 **Counterparts**. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGE FOLLOWS]

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

**SELLER:**  
SUITABLE TECHNOLOGIES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



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

**BUYER:**

[\_\_\_\_\_]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SCHEDULE 2.1(a) – INVENTORY ITEMS**

(To be attached)

**SCHEDULE 2.1(b) – ASSIGNED CONTRACTS AND CURES**

**SCHEDULE 2.1(c) – INTELLECTUAL PROPERTY ASSETS**

**SCHEDULE 2.1(d) – IDENTIFIED TANGIBLE PERSONAL PROPERTY**

(To be attached)

**SCHEDULE 2.2(e) – EXCLUDED ASSETS**

Net operating losses of the Seller

**[TBD]**

**EXHIBIT A**

**BILL OF SALE**

This BILL OF SALE (this "Bill of Sale"), is executed and delivered as of [\_\_\_\_\_, 2020, by SUITABLE TECHNOLOGIES, INC. ("Seller") for the benefit of \_\_\_\_\_, a \_\_\_\_\_ ("Buyer").

WHEREAS, on the terms and subject to the conditions of the Asset Purchase Agreement, dated as [\_\_\_\_\_, 2020, by and between Seller and Buyer (as modified, amended, or supplemented, the "Asset Purchase Agreement"), Seller agreed to, on the Closing Date, sell, convey, transfer, assign, and deliver to Buyer the Purchased Assets free and clear of all Encumbrances except for Permitted Encumbrances.

NOW, THEREFORE, for the consideration set forth in the Asset Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged:

1. Defined Terms. All initially capitalized terms used but not defined herein have the meaning ascribed to such terms in the Asset Purchase Agreement.

2. Transfer of Purchased Assets. On the terms and subject to the conditions set forth in the Asset Purchase Agreement, Seller hereby sells, conveys, transfers, assigns, and delivers to Buyer, and Buyer's successors and assigns, all of the right, title, and interest of Seller in and to the Purchased Assets owned by Seller free and clear of all Encumbrances.

3. Further Assurances. If Buyer shall consider or be advised that any deeds, bills of sale, instruments of conveyance, assignments, assurances, or any other actions or things are necessary or desirable to vest, perfect, or confirm ownership (of record or otherwise) in Buyer, Buyer's right, title, or interest in, to, or under any or all of the Purchased Assets transferred and conveyed by Seller hereunder, Seller shall execute and deliver all deeds, bills of sale, instruments of conveyance, powers of attorney, assignments, and assurances and take and do all such other actions and things as may be reasonably requested by Buyer in order to vest, perfect, or confirm any and all right, title, and interest in, to, and under such rights, properties, or assets in Buyer, in each case at Buyer's cost and expense.

4. Binding on Successors; No Third Party Beneficiaries. This Bill of Sale shall be binding upon and inure to the benefit of the parties hereto and the successors in interest and permitted assigns of such parties. This Bill of Sale is not intended to confer any rights or remedies upon any Person other than the parties hereto.

5. Counterparts. This Bill of Sale may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A manual signature on this Bill of Sale or other documents to be delivered pursuant to this Bill of Sale, an image of which shall have been transmitted electronically, will constitute an original signature for all purposes. The delivery of copies of this Bill of Sale or other documents to be delivered pursuant to this Bill of Sale, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Bill of Sale or such other document for all purposes.

6. Governing Law. THIS BILL OF SALE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED THIS BILL OF SALE SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING AS TO MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Seller has executed this Bill of Sale as of the day and year first above written.

**SELLER:**  
SUITABLE TECHNOLOGIES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT B

### ASSIGNMENT AND ASSUMPTION AGREEMENT

This ASSIGNMENT AND ASSUMPTION AGREEMENT (this “Agreement”) is executed and delivered as of [\_\_\_\_], 2020, by and between SUITABLE TECHNOLOGIES, INC. (“Seller”), as debtor and debtor-in-possession, to [\_\_\_\_], a [\_\_\_\_] (“Buyer”), pursuant to the Asset Purchase Agreement (as hereinafter defined).

WHEREAS, on the terms and subject to the conditions of the Asset Purchase Agreement, dated as [\_\_\_\_], 2020, by and between Buyer and Seller (as modified, amended, or supplemented, the “Asset Purchase Agreement”), Sellers agreed to, on the Closing Date, sell, convey, transfer, assign, and deliver to Buyer the Purchased Assets free and clear of all Encumbrances except for Permitted Encumbrances.

NOW, THEREFORE, for the consideration set forth in the Asset Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound hereby, agree as follows:

7. Defined Terms. All initially capitalized terms used but not defined herein have the meaning given them in the Asset Purchase Agreement.

8. Assignment of Assigned Contracts and Assumed Permits. On the terms and subject to the conditions set forth in the Asset Purchase Agreement, Seller hereby sells, conveys, transfers, assigns, and delivers to Buyer, and Buyer’s successors and assigns, all right, title and interest of Sellers in and to (a) the Assigned Contracts set forth on attached Exhibit A; and (b) the Permits set forth on attached Exhibit B (“Assumed Permits”).

9. Assumption of Assumed Liabilities. On the terms and subject to the conditions set forth in the Asset Purchase Agreement, hereby assumes and agrees to discharge or perform when due (in accordance with the respective terms and subject to the respective conditions of the Assigned Contracts and the Assumed Permits in the case of the Assigned Contracts and the Assumed Permits), the Assigned Contracts, the Assumed Permits, and all other liabilities of Sellers that constitute Assumed Liabilities. Other than the obligations under the Assigned Contracts, the Assumed Permits, and the other liabilities of Sellers that constitute Assumed Liabilities, Buyer has not assumed any liability of any nature or kind whatsoever of Sellers.

10. Binding on Successors; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the respective successors in interest and permitted assigns of such parties. This Agreement is not intended to confer any rights or remedies upon any person or entity other than the parties hereto.

11. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A manual signature on this Agreement or other documents to be delivered pursuant to this Agreement, an image of which shall have been transmitted electronically, will constitute an original signature for all purposes. The delivery of copies of this Agreement or other documents to be delivered pursuant to this Agreement, including executed signature pages where required, by electronic

transmission will constitute effective delivery of this Agreement or such other document for all purposes.

12. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING AS TO MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned hereby execute this Assignment and Assumption Agreement the day and year first above written.

**BUYER:**

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SELLER:**  
SUITABLE TECHNOLOGIES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Exhibit A  
Assigned Contracts

Exhibit B  
Assumed Permits

## EXHIBIT C

### INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT

This INTELLECTUAL PROPERTY ASSIGNMENT AGREEMENT (this “Agreement”), is executed and delivered as of [\_\_\_\_], 2019, by SUITABLE TECHNOLOGIES, INC. (“Seller”), as debtor and debtor-in-possession, for the benefit of [\_\_\_\_], a [\_\_\_\_] (“Buyer”), pursuant to the Asset Purchase Agreement (as hereinafter defined).

WHEREAS, on the terms and subject to the conditions of the Asset Purchase Agreement, dated as [\_\_\_\_], 2020, by and between Buyer and Seller (as modified, amended, or supplemented, the “Asset Purchase Agreement”), Seller agreed to, on the Closing Date, sell, convey, transfer, assign, and deliver to Buyer the Purchased Assets free and clear of all Encumbrances except for Permitted Encumbrances;

WHEREAS, a Seller is the owner of each of the trademarks (including those which may be entitled to be registered in additional territories), trademark registrations and trademark applications (including any and all goodwill symbolized thereby) set forth on Schedule A hereto, (the “Trademarks”); and

WHEREAS, a Seller is the owner of each of the registered patents and patent applications set forth on Schedule B hereto (the “Patents” and together with the Trademarks, collectively, the “Purchased Intellectual Property”).

NOW, THEREFORE, for the consideration set forth in the Asset Purchase Agreement and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller, intending to be legally bound hereby, agrees as follows:

1. Defined Terms. All initially capitalized terms used but not defined herein have the meaning given them in the Asset Purchase Agreement.

2. Assignment. On the terms and subject to the conditions set forth in the Asset Purchase Agreement, each Seller hereby sells, conveys, transfers, assigns, and delivers to Buyer, and Buyer’s successors and assigns,

i) all right, title and interest of such Seller in and to the Purchased Intellectual Property including all rights therein provided by international conventions and treaties, and the right to sue for past, present and future infringement thereof (“Transferred Rights”);

ii) any and all rights to sue at law or in equity for any infringement, imitation, impairment, distortion, dilution or other unauthorized use or conduct in derogation of the Transferred Rights occurring prior to the Closing, including the right to receive all proceeds and damages therefrom;

iii) any and all rights to royalties, profits, compensation, license fees or other payments or remuneration of any kind relating to the Transferred Rights arising from and after the date of this Assignment; and

iv) any and all rights to obtain renewals, reissues, and extensions of registrations or other legal protections pertaining to the Transferred Rights.

Buyer, its successors and assigns, shall hold the rights to the foregoing for and during the existence of such Transferred Rights, and all renewals, reissues and extensions thereof, as fully and as entirely as the same would have been held and enjoyed by Assignor had this Agreement not been made.

3. Further Assurances. Seller shall, at the cost and expense of Buyer, timely execute and deliver any additional documents and perform such additional acts reasonably necessary or desirable to record and perfect the interest of Buyer in and to the Purchased Intellectual Property, and shall not enter into any agreement in conflict with this Agreement.

4. Binding on Successors; No Third Party Beneficiaries. This Agreement shall be binding upon and inure to the benefit of the parties hereto and the respective successors in interest and permitted assigns of such parties. This Agreement is not intended to confer any rights or remedies upon any person or entity other than the parties hereto.

5. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. A manual signature on this Agreement or other documents to be delivered pursuant to this Agreement, an image of which shall have been transmitted electronically, will constitute an original signature for all purposes. The delivery of copies of this Agreement or other documents to be delivered pursuant to this Agreement, including executed signature pages where required, by electronic transmission will constitute effective delivery of this Agreement or such other document for all purposes.

6. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH FEDERAL BANKRUPTCY LAW, TO THE EXTENT APPLICABLE, AND WHERE STATE LAW IS IMPLICATED THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE, WITHOUT GIVING EFFECT TO THE CHOICE OF LAW PRINCIPLES THEREOF, INCLUDING AS TO MATTERS OF CONSTRUCTION, VALIDITY, AND PERFORMANCE.

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, the Seller has caused this Assignment to be executed by its duly authorized representative.

**SELLER:**  
SUITABLE TECHNOLOGIES, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) SS:  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me by means of physical presence this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by \_\_\_\_\_, as \_\_\_\_\_ of Suitable Technologies, Inc., a Delaware corporation and a debtor and debtor-in-possession pursuant to 11 U.S.C. §§ 1107 and 1108, on behalf of said corporation. He is personally known to me or produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
Name:  
My Commission Expires:

SCHEDULE A  
Trademarks

SCHEDULE B  
Patents

**Exhibit 2**

Sale Notice

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

In re:

SUITABLE TECHNOLOGIES, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-10432 (MFW)

**Ref. Docket Nos. 91 and \***

**NOTICE OF PROPOSED SALE OF ASSETS, BIDDING  
PROCEDURES, AUCTION, AND SALE HEARING**

**PLEASE TAKE NOTICE** that the above-captioned debtor and debtor-in-possession (the “**Debtor**”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), on February 26, 2020 (the “**Petition Date**”), in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Debtor is seeking to sell (the “**Sale**”) all or substantially all of its assets (the “**Assets**”), free and clear of all liens, claims, encumbrances, and other interests.

**PLEASE TAKE FURTHER NOTICE** that by order dated April \*, 2020 [Docket No. \*] (the “**Bidding Procedures Order**”),<sup>2</sup> the Bankruptcy Court approved certain “**Bidding Procedures**” that govern the Sale. All interested parties should carefully read the Bidding Procedures Order and the Bidding Procedures. Copies of the Bidding Procedures Order and the Bidding Procedures are available free of charge upon request to the Debtor’s claims and noticing agent, Donlin, Recano & Company, Inc. (the “**Noticing Agent**”), via telephone at 1-877-322-4952 or via email at [stiinfo@donlinrecano.com](mailto:stiinfo@donlinrecano.com), and are available for download at <https://www.donlinrecano.com/Clients/sti/Index> under the tab “Sale Related Documents.” A separate notice will be provided to counterparties to executory contracts and unexpired leases with the Debtor that may be assumed and assigned in connection with the Sale. **Any interested bidder should contact Luis Pillich (610-937-2357; [lpillich@stout.com](mailto:lpillich@stout.com)) at Stout Risius Ross Advisors, LLC, the Debtor’s investment banking advisor.**

- The deadline to submit a stalking horse bid for any Assets is **June 4, 2020 at 5:00 p.m. (ET)**.
- The deadline for the Debtor to execute one or more asset purchase agreements with a Stalking Horse Purchaser(s) (each, a “**Stalking Horse APA**”) is **June 29, 2020** (the “**Stalking Horse Designation Deadline**”). In the event the Debtor enters into any Stalking Horse APA, within two (2) business days of the Stalking Horse Designation Deadline, the Debtor shall file with the Court and serve by regular mail on the Stalking Horse Notice Parties a notice with certain information relating to the Stalking Horse Purchaser and the Stalking Horse Asset Purchase Agreement (the “**Stalking Horse Notice**”). Once the Stalking Horse Notice is filed, it will be available from the Noticing Agent in the manner indicated in the second paragraph of this Notice.

<sup>1</sup> The last four digits of the Debtor’s United States federal tax identification number are 7816. The Debtor’s mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

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

- The deadline to submit any other bid for any Assets is **July 13, 2020 at 5:00 p.m. (ET)**.
- Any objections to the Sale or the relief requested in connection with the Sale (a “**Sale Objection**”), other than a Contract Objection (which shall be governed by the Assumption and Assignment Procedures) must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of this Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, **on or before 4:00 p.m. (ET) on July 16, 2020** (the “**Sale Objection Deadline**”), and proof of service of such Sale Objection upon the Objection Notice Parties shall be filed with the Court as and when required by the Local Rules; and (e) be served upon the Objection Notice Parties. The “**Objection Notice Parties**” are as follows: (i) counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq. (rbrady@ycst.com) and Robert F. Poppiti, Jr., Esq. (rpoppiti@ycst.com)); (ii) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Case;<sup>3</sup> (iii) counsel to the Lender, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801 (Attn: Curtis S. Miller (cmiller@mnat.com)); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)); and (v) counsel to the Stalking Horse Purchaser(s), if any.
- An auction for the Assets, unless cancelled or adjourned in accordance with the Bidding Procedures Order, will be held on **July 16, 2020 at 10:00 a.m. (ET)**, at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801. The Auction may be attended by only the Debtor, the Auction Bidders, the Consultation Parties, and creditors of the Debtor, together with the professional advisors to each of the foregoing parties; provided that any such creditors provide counsel for the Debtor written notice of their intent to attend the Auction no later than 5:00 p.m. (ET) the day prior to the Auction.
- As soon as reasonably practicable after the completion of the Auction, the Debtor shall file with the Court a notice identifying the Successful Bidder, which shall set forth, among other things, (i) the Successful Bidder and Back-Up Bidder (if any) and the amounts of the same, (ii) the Selected Assumed Contracts, and (iii) the proposed assignee(s) of such Selected Assumed Contracts (a “**Notice of Successful Bidder**”). Once the Notice of Successful Bidder is filed, it will be available from the Noticing Agent in the manner indicated in the second paragraph of this Notice.
- Unless adjourned in accordance with the Bidding Procedures Order, the Bankruptcy Court will conduct a hearing (the “**Sale Hearing**”) to consider the Sale on **July 23, 2020 at 3:00 p.m. (ET)**.

**PLEASE TAKE FURTHER NOTICE THAT IF A SALE OBJECTION IS NOT FILED AND SERVED ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, THE OBJECTING PARTY MAY BE BARRED FROM OBJECTING TO THE SALE AND BEING HEARD AT THE SALE HEARING, AND THE BANKRUPTCY COURT MAY ENTER THE SALE ORDER WITHOUT FURTHER NOTICE TO SUCH PARTY.**

Dated: \*, 2020  
Wilmington, DE

YOUNG CONAWAY STARGATT & TAYLOR, LLP

<sup>3</sup> As of the date hereof, no such committee has been appointed.

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Robert S. Brady (No. 2847)  
Robert F. Poppiti, Jr. (No. 5052)  
Jaclyn C. Marasco (No. 6477)  
Betsy L. Feldman (No. 6410)  
Rodney Square  
1000 North King Street  
Wilmington, DE 19801  
Telephone: (302) 576-3572  
Facsimile: (302) 571-1256  
Emails: rbrady@ycst.com  
rpoppiti@ycst.com  
jmarasco@ycst.com  
bfeldman@ycst.com

*Counsel to the Debtor*

**Exhibit 3**

Assumption Notice



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

In re:

SUITABLE TECHNOLOGIES, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 20-10432 (MFW)

**Ref. Docket Nos. 91 and \***

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT  
AND CURE AMOUNTS WITH RESPECT TO EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES OF THE DEBTOR**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “**Bankruptcy Code**”), on February 26, 2020, in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”). The Debtor is seeking to assume and assign certain of its executory contracts and unexpired leases in connection with the sale (the “**Sale**”) of all or substantially all of its assets (the “**Assets**”). The Debtor is seeking Court approval of such Sale and assumptions and assignments pursuant to a motion, dated April 1, 2020 [Docket No. 91] (the “**Motion**”).

By order, dated April \*, 2020 [Docket No. \*] (the “**Bidding Procedures Order**”),<sup>2</sup> the Bankruptcy Court approved certain “**Bidding Procedures**” that govern the sale of the Assets to the highest or best bidders. Copies of the Motion and the Bidding Procedures Order are available free of charge for download at <https://www.donlinrecano.com/Clients/sti/Index> under the tab “Sale Related Documents,” or from the Debtor’s claims and noticing agent, Donlin, Recano & Company, Inc. (the “**Noticing Agent**”), via telephone at 1-877-322-4952 or via email at [stiinfo@donlinrecano.com](mailto:stiinfo@donlinrecano.com).

**You are receiving this Notice because you may be a party to an unexpired lease or an executory contract that is potentially to be assumed and assigned (collectively, the “Contracts”), in connection with such Sale. A list of the Contracts is attached hereto as Exhibit A.**

**The Debtor has determined the cure amounts owing (the “Cure Amounts”) under each Contract, and have listed the applicable Cure Amounts on Exhibit A attached hereto. The Cure Amounts are the only amounts proposed to be paid upon any assumption and assignment of the Contracts, in full satisfaction of all amounts outstanding under the Contracts.**

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<sup>1</sup> The last four digits of the Debtor’s United States federal tax identification number are 7816. The Debtor’s mailing address is 921 East Charleston Road, Palo Alto, CA 94303.

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

To the extent that a Counterparty to a Contract objects to (i) the assumption and assignment of such party's Contract, (ii) the applicable Cure Amount, or (iii) the provision of adequate assurance of future performance, the Counterparty must file and serve an objection (a "Contract Objection"). Any Contract Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Bankruptcy Court, 824 N. Market Street, 3rd Floor, Wilmington, Delaware 19801, on or before 4:00 p.m. (ET) on July 16, 2020 (the "Contract Objection Deadline"), and proof of service of such Contract Objection upon the Objection Notice Parties (as defined below) shall be filed with the Court as and when required by the Local Rules; (iv) be served upon the Objection Notice Parties; and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated cure amount and the legal and factual bases for any unliquidated cure amount that the Counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assumed Contract, along with the specific nature and dates of any alleged defaults, the pecuniary losses, if any, resulting therefrom, and the conditions giving rise thereto.

[In accordance with the Bidding Procedures Order, the Debtor has executed an asset purchase agreement (a "**Stalking Horse APA**") with a Stalking Horse Purchaser, and filed and served by regular mail on all counterparties to the Contracts and the other Stalking Horse Notice Parties a notice with certain information relating to the Stalking Horse Purchaser and the Stalking Horse Asset Purchase Agreement (the "**Stalking Horse Notice**"). The Stalking Horse Notice is also available from the Noticing Agent in the manner indicated in the second paragraph of this Notice. **Any objections to adequate assurance of performance by the Stalking Horse Purchaser shall be filed by the Contract Objection Deadline, and served on the Objection Notice Parties.**] OR [As of the filing of this Notice, there is no Stalking Horse Purchaser.]

Subject to the terms of the Bidding Procedures Order, an auction (the "**Auction**") for the Assets, including the Contracts, will be conducted on July 16, 2020 at 10:00 a.m. (ET), at the offices of Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801. After the Auction, the Debtor will file and serve a notice on all Contract counterparties that identifies the Successful Bidder for the Assets, including any Contracts that will be assumed and assigned to the Successful Bidder. Service of such notice on the Contract Counterparties shall be by overnight mail and, if available, electronic mail. Any counterparty to a Contract that wishes to receive such notice by email should provide their email address in writing to counsel to the Debtor. **Any objections to adequate assurance of future performance by a Successful Bidder other than a Stalking Horse Purchaser shall be filed not later than July 21, 2020 at 4:00 p.m. (ET), and served on the Objection Notice Parties.**

The "**Objection Notice Parties**" are as follows: (i) counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Robert S. Brady, Esq. (rbrady@ycst.com) and Robert F. Poppiti, Jr., Esq. (rpoppiti@ycst.com)); (ii) counsel to any official committee of unsecured creditors appointed in the Chapter 11 Case; (iii) counsel to the Lender, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, DE 19801 (Attn: Curtis S. Miller (cmiller@mnat.com)); (iv) the Office of the United States Trustee for the District of Delaware, 855 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Juliet M. Sarkessian (juliet.m.sarkessian@usdoj.gov)); and (v) counsel to the Stalking Horse Purchaser(s), if any.

If no Contract Objection is timely received with respect to a Cure Amount, (i) a non-Debtor party to a Contract shall be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Contract, (ii) the Cure Amount set forth on Exhibit A attached hereto shall be controlling, notwithstanding anything to the contrary in any Contract, or any other document, and the non-Debtor party to a Contract shall be deemed to have consented to the Cure Amount, and (iii) the non-Debtor party to a Contract shall be forever barred and estopped from asserting any other claims related to such Contract against the Debtor and its estate or the applicable transferee, or the property of any of them.

If no timely objection is received as to adequate assurance of future performance with respect to a Contract, the non-Debtor party to such Contract shall be deemed to have consented to the assumption, assignment, and/or transfer of the applicable Contract to the proposed assignee, and shall be forever barred and estopped from asserting or claiming that any conditions to such assumption, assignment, and/or transfer must be satisfied under such applicable Contract or that any related right or benefit under such applicable Contract cannot or will not be available to the proposed assignee.

The Debtor will seek to assume and assign the Contracts that have been selected by a Successful Bidder (collectively, the “Selected Assumed Contracts”) at a hearing before the Honorable Mary F. Walrath, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Fifth (5th) Floor, Courtroom #4, Wilmington, Delaware 19801 (a “Sale Hearing”) on July 23, 2020 at 3:00 p.m. (ET), or such other date as determined by the Debtor in accordance with the terms of the Bidding Procedures Order. To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the Cure Amount (any such dispute, a “Cure Dispute”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtor or fixed by the Court; provided, however, that if the Contract Objection relates solely to a Cure Dispute, the Selected Assumed Contract may be assumed by the Debtor and assigned to [the Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then to the Successful Bidder], provided that the cure amount that the Counterparty asserts is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code (or such lower amount as agreed to by the Counterparty) is deposited in a segregated account by the Debtor [or the Stalking Horse Purchaser or in the event the Stalking Horse Purchaser is not the Successful Bidder, then the Successful Bidder], pending the Court’s adjudication of the Cure Dispute or the parties’ consensual resolution of the Cure Dispute.

Dated: \*, 2020  
Wilmington, DE

YOUNG CONAWAY STARGATT & TAYLOR, LLP

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Robert S. Brady (No. 2847)  
Robert F. Poppiti, Jr. (No. 5052)  
Jaclyn C. Marasco (No. 6477)  
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bfeldman@ycst.com

*Counsel to the Debtor*

**Exhibit A to Assumption Notice**