

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

In re

VERENGO, INC.,¹

Debtor.

Chapter 11

Case No.: 16-12098 (____)

**DEBTOR’S MOTION FOR AN ORDER UNDER 11 U.S.C. §§ 105,
361, 362, 363(C), 364(C), 364(D), 364(E) AND 507 AND BANKRUPTCY
RULES 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTOR TO OBTAIN
POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTOR TO
CONTINUE TO USE CASH AND/OR CASH COLLATERAL,
(III) GRANTING ADEQUATE PROTECTION TO PREPETITION
SECURED PARTIES AND (IV) GRANTING RELATED RELIEF**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) hereby moves the Court (the “**Motion**”) for entry of interim (substantially in the form of Exhibit A hereto, the “**Interim Order**”) and final orders (the “**Final Order**,” and together with the Interim Order, the “**DIP Orders**”) pursuant to sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and Rules 4001-2, 4001-3, 9013-1(f) and (g) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”) seeking:

(I) authorization for the Debtor to obtain debtor-in-possession financing

in the form of a revolving credit facility in the aggregate principal amount of up to

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

\$2,000,000 (the “**DIP Credit Facility**,” extensions of credit under the DIP Credit Facility, the “**DIP Loans**”), among Verengo, as borrower (in such capacity the “**DIP Borrower**”), and Crius Solar Fulfillment, LLC (“**Crius Solar Fulfillment**,” or in such capacity, the “**DIP Lender**”); on the terms and conditions set forth in:

- the Interim Order and the Final Order; and
- the DIP Credit Agreement (substantially in the form annexed to this Motion as Exhibit B, and as hereafter amended, supplemented or otherwise modified, the “**DIP Credit Agreement**,” and, together with and all other agreements, documents and instruments executed and delivered in connection with the DIP Credit Agreement, as hereafter amended, supplemented or otherwise modified, the “**DIP Documents**”).

(II) authorization for the Debtor to execute and deliver the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform its obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(III) authorization for the Debtor to (a) continue to use cash and/or cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, “**Cash Collateral**”), pursuant to section 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined below), and (b) provide adequate protection to the following parties with respect to the applicable prepetition secured debt obligations:

- (i) the first lien lender (the “**First Lien Lender**”) under the Amended and Restated Business Financing Agreement, dated as of March 20, 2014 (as amended, supplemented or otherwise modified, the “**First Lien BFA**,” and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the “**First Lien Documents**”), between Verengo in its capacity as a borrower thereunder and Crius Solar Fulfillment as the lender thereunder (and successor to

Bridge Bank, National Association) (in such capacity, the “**First Lien Lender**”); and

- (ii) the second lien lenders (collectively, the “**Second Lien Lenders**”) under the Note Purchase Agreement, dated as of January 15, 2015, the Amended and Restated Note Purchase Agreement, dated as of September 24, 2015, and the Note Purchase Agreement, dated as of December 2, 2015 (as each may be amended, supplemented or otherwise modified, the “**Second Lien NPAs**,” and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the “**Second Lien Documents**”), each among Verengo in its capacity as issuer thereunder, Crius Solar Fulfillment, as lender thereunder and any other Second Lien Lenders party thereto from time to time (the First Lien Lenders and the Second Lien Lenders, collectively referred to as the “**Prepetition Secured Parties**”);

(IV) authorization for the DIP Lender to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement);

(V) authorization to grant liens to the DIP Lender on the proceeds of (a) the Debtor’s prepetition and postpetition commercial tort claims and (b) any claims and causes of action of the Debtor or its estate (but not on the actual claims and causes of action) arising under sections 502(d), 544, 545, 547, 548, 550, 551, or 553 of the Bankruptcy Code (collectively, the “**Avoidance Actions**”); and

(VI) the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined below) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and the limited waiver of section 552(b) and the equitable doctrine of marshaling and similar doctrines.

In support of this Motion, the Debtor respectfully represents as follows:

BANKRUPTCY RULE 4001 CONCISE STATEMENT

1. As required by Bankruptcy Rule 4001(c) and Local Bankruptcy Rule 4001-2, essential terms of the proposed DIP Credit Facility, DIP Loan Documents and the DIP Orders are as follows:²

- (a) **Maximum Borrowing Available:** \$2,000,000 (DIP Credit Agreement at Section 2.1(a));
- (b) **Interest Rate:** twelve percent (12%) per annum (DIP Credit Agreement at Section 2.3);
- (c) **Default Interest Rate:** two (2.00%) in excess of applicable interest rate (DIP Credit Agreement at Section 2.4);
- (d) **Maturity:** the earlier of (a) the date a plan is consummated in the chapter 11 case of the Debtor, (b) the date of consummation of a sale of all or substantially all of the assets of the Debtor, or (c) December 31, 2016 (DIP Credit Agreement at Section 2.5(b));
- (e) **Bankruptcy Rule 4001(c)(1)(B)(i): Grant of Priority or Lien on Property of Estate Under Section 364(c) or (d).** The DIP Orders and the DIP Loan Documents grant the DIP Lender the Superpriority Claims and the DIP Liens,³ which include: a first-priority lien on the Unencumbered Property, a second-priority lien on Non-Primed Liens, and a first priority senior priming lien on all Prepetition Collateral. The Superpriority Claim in favor of the DIP Lender shall be senior to all claims except for the Carve-Out. The DIP Liens also shall be senior to the Prepetition Secured Parties' Adequate Protection Liens. (Interim Order at ¶¶ 8-9).
- (f) **Bankruptcy Rule 4001(c)(1)(B)(ii): Adequate Protection or Priority for Prepetition Claims.** The DIP Orders provide the Prepetition Secured Parties the Adequate Protection Liens and the 507(b) Claims. The Adequate Protection Liens will be junior to the DIP Liens under section 364(d) of the Bankruptcy Code (Interim Order at ¶¶ 13, 15).
- (g) **Bankruptcy Rule 4001(c)(1)(B)(iii): Determination of Validity, Enforceability, and Priority of Prepetition Lien.** The DIP Orders

² This summary is qualified in its entirety by reference to the provisions of the DIP Credit Agreement. The DIP Credit Agreement will control in the event of any inconsistency between this motion and the DIP Agreement.

³ Capitalized terms used but not defined in this Motion shall have the meanings given such terms in the Interim DIP Order.

provide that the Prepetition Secured Parties have Prepetition Liens that are valid and enforceable against the Debtor's estate. The DIP Orders also provide that the Prepetition Liens are subordinate to the DIP Liens. (Interim Order at ¶ 4).

- (h) **Bankruptcy Rule 4001(c)(1)(B)(iv): Waiver of Automatic Stay.** The DIP Orders provide that the Debtor will waive the protections of the automatic stay to permit the DIP Lender to exercise all rights and remedies under the DIP Documents (defined below) and to grant the DIP Lender the liens and security interests contemplated by the DIP Documents, subject to a five (5) business day notice period. (Interim Order at ¶ 10(a)).
- (i) **Bankruptcy Rule 4001(c)(1)(B)(v): Waiver of Right to File Plan, Seek Extension of Time to File Plan, Request Use of Cash Collateral or Request Authority to Obtain Credit under Section 364 of the Bankruptcy Code.** None.
- (j) **Bankruptcy Rule 4001(c)(1)(B)(vi): Deadlines for Filing Plan, Approval of Disclosure Statement, Plan Confirmation.** None.
- (k) **Bankruptcy Rule 4001(c)(1)(B)(vii): Waiver or Modification of Applicability of Non-Bankruptcy Law Relating to Prepetition Lien or Foreclosure.** None.
- (l) **Bankruptcy Rule 4001(c)(1)(B)(viii): Release, Waiver or Limitation on Claim or Cause of Action by the Debtor.** The terms of the DIP Credit Facility include the following waivers and releases by the Debtor:
 - (i) The Debtor waives the right to discharge the DIP Obligations under section 1141(d) of the Bankruptcy Code (Interim Order at ¶ 18(d));
 - (ii) The DIP Borrower agrees (a) to pay or reimburse the DIP Lender for all its reasonable out-of-pocket costs and expenses incurred in connection with the development, negotiation, preparation and execution of the Loan Documents and any other documents prepared in connection herewith, and the consummation of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements of one lead counsel and one local counsel to the DIP Lender, (b) to pay or reimburse the DIP Lender for all its costs and expenses incurred in connection with, and to pay, indemnify, and hold the DIP Lender harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever arising out of or in connection with, the administration, enforcement or preservation of any rights under any Loan

Document and any such other documents, including, without limitation, reasonable fees and disbursements of counsel to the DIP Lender incurred in connection with the foregoing and in connection with advising the DIP Lender with respect to its rights and responsibilities under this Agreement and the documentation relating thereto, (c) to pay, indemnify, and to hold the DIP Lender harmless from any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document and any such other documents, and (d) to pay, indemnify, and hold the DIP Lender and its respective Affiliates, officers, directors, trustees, agents, attorneys and advisors harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable fees and disbursements of counsel) which may be incurred by or asserted against the DIP Lender or such Affiliates, officers, directors, trustees, agents, attorneys or advisors arising out of or in connection with any investigation, litigation or proceeding related to this Agreement, the other Loan Documents, the proceeds of the Loan and the transactions contemplated by or in respect of such use of proceeds, or any of the other transactions contemplated hereby, whether or not any of the DIP Lender or such Affiliates, officers, directors or trustees is a party thereto (all the foregoing, collectively, the “*indemnified liabilities*”); provided that the DIP Borrower shall not have any obligation hereunder with respect to indemnified liabilities of the DIP Lender or any of its Affiliates, officers, directors, trustees, agents, attorneys or advisors to the extent such indemnified liabilities are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct by the person seeking indemnification. (DIP Credit Agreement at Section 9.4);

- (iii) The DIP Orders contains the following waivers and releases by the Debtor:
 - A. The Debtor irrevocably waives any right to challenge or contest Prepetition Secured Parties’ liens on the Prepetition Collateral or the validity of the prepetition obligations or prepetition debt documents (Interim Order at ¶ 4), subject to the right of any official creditors’ committee or other party in interest to conduct an investigation and challenge such liens

and obligations as provided in paragraph 20 of the Interim Order; and

B. Subject to the entry of the Final DIP Order, the Debtor waives rights under section 506(c) of the Bankruptcy Code (Interim Order at ¶ 11).

- (m) **Bankruptcy Rule 4001(c)(1)(B)(ix): Indemnification of Any Entity.** As previously noted (see ¶ 1(1)(ii) above), the Debtor releases and agrees to indemnify the DIP Lender against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of, or in connection with the preparation for a defense of, any investigation, litigation or proceeding arising out of, related to or in connection with the DIP Loan, the transactions contemplated thereby, and any use made or proposed to be made with the proceeds thereof (DIP Credit Agreement at Section 9.4).
- (n) **Bankruptcy Rule 4001(c)(1)(B)(x): Release, Waiver or Limitation on 506(c) Rights.** As previously noted (*see* ¶ 1(1)(iii)(B) above), the Debtor waives rights under section 506(c) of the Bankruptcy Code (Interim Order at ¶ 11). Pursuant to Local Bankruptcy Rule 4001-2(a)(i)(C), including this waiver in the DIP Orders is justified under the circumstances because the DIP Lender would not provide the DIP Credit Facility and fund this estate without it. Accordingly, including this provision in the Final DIP Order provides a substantial benefit to the estate.
- (o) **Bankruptcy Rule 4001(c)(1)(B)(xi): Lien on Actions Under Sections 544, 545, 547, 548, 549, 553(b), 723(a), or 724(a).** The DIP Orders do not provide for liens on the Debtor's causes of action pursuant to chapter 5 of the Bankruptcy Code, or any other avoidance actions of any Debtor under the Bankruptcy Code (collectively, "**Avoidance Actions**") but do provide for a lien on the proceeds (the "**Avoidance Proceeds**") on such Avoidance Actions (Interim Order at ¶¶ 9(a) & 9(b)).

2. **Use of Cash Collateral.** As required by Bankruptcy Rule 4001(b) and Local Bankruptcy Rule 4001-2, the details of the DIP Orders relating to use of Cash Collateral are set forth below.

- (a) **Bankruptcy Rule 4001(c)(1)(B)(i): Name of Each Entity with Interest in the Cash Collateral.** Crius Solar Fulfillment, LLC.
- (b) **Bankruptcy Rule 4001(c)(1)(B)(ii): Use of the Cash Collateral.** The Debtor will use Cash Collateral specifically in accordance with the Budget

(defined below and attached as Exhibit C) and generally to the earlier to occur of (a) the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Credit Facility and (b) the acceleration of any DIP Loans and the termination of the DIP Credit Agreement.

- (c) **Bankruptcy Rule 4001(c)(1)(B)(iii) and (iv): Other Material Terms and Adequate Protection.** If approved by this Court:
- (i) **Amount.** The Debtor will be authorized to use Cash Collateral in accordance with the Budget until the earlier to occur of (a) the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Credit Facility and (b) the acceleration of any DIP Loans and the termination of the DIP Credit Agreement.
 - (ii) **Shortening Challenge Period.** The Debtor is not requesting a shortening of the challenge period. The challenge period is no later than the earlier of (i) 75 days after the Petition Date or (ii) 60 days after the formation, if formed, of a statutory committee of creditors. (Interim DIP Order at ¶ 19).
 - (iii) **Adequate Protection to the Prepetition Secured Parties; Adequate Protection Liens.** As security for payment of any claim of Prepetition Secured Parties for any diminution in value of the Prepetition Collateral (an “**Adequate Protection Claim**”), the Debtor has agreed to grant Adequate Protection Liens to the Prepetition Secured Parties on all of the DIP Collateral. The Prepetition Secured Parties’ Adequate Protection Liens shall be subordinate in priority and right to the DIP Liens.
 - (iv) **Superpriority Claim.** Prepetition Secured Parties will be granted Superpriority Claims as provided for in section 507(b) of the Bankruptcy Code; the Superpriority Claims granted to Prepetition Secured Parties shall be subordinate in priority and right to the Superpriority Claims granted to the DIP Lender.
 - (v) **Priority of Claims Among Prepetition Secured Parties and the DIP Lender.** The Adequate Protection Liens granted to Prepetition Secured Parties shall be subordinate in priority and right to the Adequate Protection Liens granted to the DIP Lender. The Adequate Protection Liens granted to the Second Lien Lenders shall further be subordinate in priority and right to the Adequate Protection Liens granted to the First Lien Lender. The rights of the Prepetition Secured Parties shall at all times remain subject to the Subordination Agreement.
 - (vi) **Payment of Fees and Expenses.** None, other than payment of the DIP Lender’s fees and expenses to reimburse the DIP Lender for

all of the costs and expenses of the DIP Lender in connection with the preparation, negotiation, execution and delivery of the DIP Documents and the DIP Credit Facility, any amendment or waiver to the DIP Documents or the DIP Credit Facility, the collection or other enforcement of the DIP Documents or the DIP Credit Facility, the perfection and priority of any liens, and the preservation of any and all rights of the DIP Lender under the DIP Documents and under the DIP Credit Facility, including, without limitation, all fees and expenses of all counsels to the DIP Lender in connection with any of the foregoing.

- (vii) **Modification of the Automatic Stay.** The automatic stay under section 362(a) of the Bankruptcy Code is modified by the DIP Orders as necessary to effectuate all of the terms and provisions of the DIP Orders, including without limitation, to: (a) permit the Debtor to grant the adequate protection provided for in the DIP Orders; (b) permit the Debtor to perform such acts as the Prepetition Secured Parties and the DIP Lender may request to assure the perfection and priority of the liens granted in the DIP Orders; and (c) permit the Debtor to incur all liabilities and obligations to the Prepetition Secured Parties and the DIP Lender under the DIP Order. (Interim Order at ¶ 17).

Status of the Case and Jurisdiction

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

4. On the Petition Date, the Debtor also filed motions or applications seeking certain typical “first day” orders. The factual background regarding the Debtor, including its current and historical business operations and the events precipitating this chapter 11 filing, is set forth in detail in the *Declaration of Dan Squiller in Support of Chapter 11 Petitions and First Day Motions* (the “**Squiller Declaration**”), filed concurrently herewith and fully incorporated herein by reference.

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

6. No request has been made for the appointment of a trustee or examiner, and an official committee of unsecured creditors (a “**Committee**”) has not yet been appointed in this case.

7. The Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This matter is core within the meaning of 28 U.S.C. § 157(b)(2).

8. The statutory and legal predicates for the relief sought herein are sections 105, 361, 362, 363(c), 364(c), 364(d), 364(e) and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001(c) and (d) and 9014 and Local Rules 4001-2, 4001-3, 9013-1(f) and (g).

Debtor’s Business Operations

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

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

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

Prepetition Capital Structure

A. Secured Loans

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

payment and covenant defaults. Immediately prior to the Petition Date, the loan was purchased from Bridge and is now held by the Crius Solar Fulfillment.

B. Spruce Loans

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

C. Related Party Debt

14. Additional secured notes (the “**Investor Notes**”), believed to be junior to both the Bridge Bank Loan and the Spruce Loan, are as follows:

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

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

Events Leading to Bankruptcy

15. In 2013, the Debtor began to experience quality problems with its installations in the eastern part of the US. Eventually, Verengo was suspended by the New York State Energy Research and Development Authority (NYSERDA), which prevented the Debtor from activating many of their installed systems until they were reinstalled. This resulted in additional costs to Verengo and reduced cash flow. In January 2015, all northeast operations were sold to NRG Energy, Inc.; contemporaneously, Northern and Central California operations were shut down. In addition, between 2012 and 2016 sales and marketing expenses for the origination part of the business were excessive and weighed on the Debtor's cash flow.

16. In 2016, the Debtor continued to experience reduced cash flow and strained liquidity as a result. As such, the Debtor implemented a focused business-to-business strategy, eliminating the unprofitable origination business and becoming an engineering, procurement and construction company. As a result of these initiatives, the Debtor reduced year-over-year operating expenditures by \$26.0 million and indirect costs by \$3.9 million. The Debtor also believes that its 2016 EBITDA will be positive by

December, with 2017's forecasted cost reductions driven by reduced supply chain costs and volume increase. The Debtor projects \$2.6MM of revenue from new accounts from August through December 2016.

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

18. Additionally, the Debtor has entered into a stalking horse purchase agreement with Crius Solar Fulfillment. The members of Crius Solar Fulfillment are Crius Energy, LLC, Angeleno Investors III—Verengo Solar, L.P. ("**Angelino**"), ClearSky Funding I LLC ("**ClearSky**"), and Spruce. Crius Solar Fulfillment was formed on or about September 22, 2016 to pursue the acquisition of the Bridge Loan and the provision of the DIP Credit Facility, as well as to serve as the stalking horse purchaser of the Debtor's assets. In connection with the formation of Crius Solar Fulfillment, Angeleno, ClearSky and Spruce contributed their holdings of the Spruce Loans and the Investor Notes held by them to Crius Solar Fulfillment.

19. Crius Solar Fulfillment intends to credit bid \$11.7 million comprised of (x) the amount outstanding under the DIP Credit Agreement at the time of closing, plus (y) the amount of the Secured Loan (as defined in the Stalking Horse Agreement) totaling \$2,272,000, plus (z) such amount of Senior Notes (as defined in the Stalking Horse Agreement) necessary to total, when combined with the credit bid amounts from clauses

(x) and (y), \$11.7 million, for the purchase of all or substantially all of Verengo's assets. The Debtor intends to seek approval of certain bid protections and bidding procedures to complete the marketing process and ensure that the Debtor realizes the highest and best value for its assets.

20. The Debtor intends to credit bid, subject to the entry of the Final Order and unless the Court orders otherwise, the full amount of the Prepetition First Lien Obligation and the Second Lien Obligations then outstanding, for the assets and property of the Debtor (to the extent such assets are Prepetition Collateral or secured by First Lien Adequate Protection Liens (but with respect thereto, solely to the extent of the value of the First Lien Adequate Protection Liens) or Second Lien Adequate Protection Liens (but with respect thereto, solely to the extent the value of the Second Lien Adequate Protection Liens), as applicable) as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

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

22. The DIP Lender has agreed to terms on which it will provide the Debtor with postpetition financing in the form of the DIP Credit Facility and the DIP Loans. The

DIP Credit Facility and the DIP Loans will provide the Debtor with liquidity as they pursue a sale of its assets under section 363 of the Bankruptcy Code.

RELIEF REQUESTED

23. The Debtor respectfully request the following relief from this Court:
- a. authorization for the Debtor to obtain debtor-in-possession financing in the form of the DIP Credit Facility in the aggregate principal amount of up to \$2,000,000;
 - b. authorization for the Debtor to execute and deliver the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform its obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;
 - c. authorization for the Debtor to (a) continue to use Cash Collateral and all other Prepetition Collateral, and (b) provide adequate protection to the First Lien Lender and the Second Lien Lenders;
 - d. authorization for the DIP Lender to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement);
 - e. authorization to grant liens to the DIP Lender on the proceeds of (a) the Debtor's prepetition and postpetition commercial tort claims and (b) any Avoidance Actions; and
 - f. the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined below) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and the limited waiver of section 552(b) and the equitable doctrine of marshaling and similar doctrines.

THE DIP CREDIT FACILITY

A. The Debtor's Need for Liquidity

24. The Debtor has a critical need to access the DIP Credit Facility and use the Prepetition Collateral, including the Cash Collateral, to continue operations and conduct a sale of its assets. Access to the DIP Credit Facility and the Debtor's use of Prepetition Collateral (including Cash Collateral) is necessary to ensure that the Debtor has sufficient

working capital and liquidity to, among other things, permit the orderly continuation of its business, preserve the going concern value of the Debtor, make payroll and satisfy other working capital and general corporate purposes of the Debtor (including costs related to the Case).

25. To maintain operations and ultimately restore confidence with those entities with whom the Debtor has done business, the Debtor needs access to additional financing in the form of the DIP Credit Facility. The financing will enable the Debtor to stabilize operations, continue servicing existing customers, and take on new jobs.

B. The Debtor's Decision to Enter into the DIP Loan Documents

26. Over the past eight to nine months, the Debtor has been unable to obtain sufficient equity or debt financing. The Debtor could not obtain any unsecured financing, nor could the Debtor and its advisors locate an entity willing to extend credit in exchange for a loan that would provide sufficient liquidity. Nor could the Debtor obtain an additional equity investment from any potential strategic partner, despite having engaged in an aggressive marketing campaign over the last several months to solicit investments in, or the purchase of, the Debtor.

27. Faced with this situation, the Debtor decided to enter into the DIP Loan Documents, and conducted extensive arms' length and good faith negotiations with the DIP Lender. The Debtor ultimately determined that the DIP Lender's proposal for postpetition financing was the most favorable under the circumstances, and adequately addressed the Debtor's reasonably foreseeable liquidity needs.

28. In making its decision to seek financing from the DIP Lender, the Debtor considered many factors. *First*, the Prepetition Secured Parties hold secured priority liens

on substantially all of the Debtor's assets, which liens the Debtor believes are legal, valid and binding obligations of the Debtor. *Second*, the DIP Lender's existing knowledge of the Debtor's business and the collateral provide significant benefits, including the speed with which the DIP Lender is able to close. *Third*, the Debtor did not believe that any lender would be willing to lend money to the Debtor on similar or less favorable terms to those contained in the DIP Loan Documents given the Debtor's inability to obtain alternative postpetition financing proposals from other lenders through (a) credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, (b) unsecured credit allowable under Bankruptcy Code sections 364(a) and 364(b), or (c) credit secured by liens on the Debtor's assets allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting priming liens under section 364(d)(1) of the Bankruptcy Code and the Superpriority Claims, in each case on the terms and conditions set forth in the Interim Order and the DIP Documents.

29. In the exercise of its sound business judgment, the Debtor believes that the proposal for the DIP Credit Facility provided by the DIP Lender is the most favorable under the circumstances and addresses the Debtor's working capital needs during the pendency of the Debtor's chapter 11 case.

30. The DIP Credit Facility will give the Debtor valuable additional time to pursue a sale of its assets while maintaining the going concern value of the Debtor's business. Thus, the Debtor determined that entry into the DIP Loan Documents was in the best interests of its estate, creditors and other parties in interest.

C. Provisions To Be Highlighted Pursuant to Local Rule 4001-2

31. The Debtor believes the following provisions of the Interim Order must be highlighted pursuant to Local Rule 4001-2:

a. Binding the Estate to Validity, Perfection, or Amount of Secured Creditor's Prepetition Lien. Interim Order ¶ 4. The Debtor is not requesting a shortening of the challenge period, which is no later than the earlier of (i) 75 days after the Petition Date or (ii) 60 days after the formation of a statutory committee of creditors. (Interim Order at ¶ 19).

b. Waiver of Rights of Estate Under Section 506(c) as to the Final DIP Order. Interim Order at ¶ 11 (preserving right to request a waiver of the provisions of section 506(c) of the Bankruptcy Code at Final DIP Hearing).

32. The provisions of the Interim Order were negotiated at arm's length and in good faith. The Interim Order enables the Debtor to obtain the financing necessary to maintain its operations and preserve and maximize the value of its estate.

D. DIP Superpriority Claims and DIP Liens to Secure the DIP Indebtedness

33. Subject only to the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations will constitute allowed senior administrative expense claims (the "**Superpriority Claims**") against the Debtor with priority over any and all administrative expenses, adequate protection and diminution in value claims (including all Adequate Protection Obligations) and all other claims against the Debtor or its estate, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code

be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and post-petition property of the Debtor, including, without limitation, any and all cash and Cash Collateral of the Debtor, other than the Avoidance Actions, but the Superpriority Claims shall have recourse to any Avoidance Proceeds).

34. Subject only to the Carve-Out, as security for the DIP Obligations, the Debtor will grant the DIP Lender the following DIP Liens on the DIP Collateral:

a. pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all Unencumbered Property; provided, that the Unencumbered Property shall not include the Avoidance Actions, but shall include any Avoidance Proceeds;

b. pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in all tangible and intangible prepetition and postpetition property of the Debtor or its estate (other than the Prepetition Collateral), whether now existing or hereafter acquired, other than the Avoidance Actions, but shall include any Avoidance Proceeds, that is subject to any Non-Primed Liens;

c. pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming lien on, and security interest in, all Prepetition Collateral, which liens shall be senior in all respects to the security interests in, and liens on, the Prepetition Collateral of each of the Prepetition Secured Parties (including the applicable Adequate Protection Liens granted to such Prepetition Secured Party) and to all liens which already are junior to the liens of the Prepetition Secured Parties, but shall be junior to any Non-Primed Liens on the Prepetition Collateral.⁴

⁴ As defined in the Interim Order, "Non-Primed Liens" include valid, perfected and unavoidable liens in existence immediately prior to the Petition Date that are permitted under the First Lien BFA, or valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case excluding the liens of the Prepetition Secured Parties and liens which already are junior to the liens of the Prepetition Secured Parties.

E. Carve-Out

35. The DIP Credit Facility Liens and the Superpriority Claims are subordinate only to the following (the “**Carve-Out**”): (i) any fees payable to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to section 1930(a) of title 28 of the United States Code, and any interest on such fees payable pursuant to section 3717 of title 31 of the United States Code, (ii) the reasonable fees and expenses up to \$10,000 incurred by a trustee appointed in the Debtor’s case under section 726(b) of the Bankruptcy Code (irrespective of whether the Carve-Out Notice (as defined below) has been delivered), and (iii) up to \$50,000 of allowed fees, expenses and disbursements of professionals retained by order of this Court (including any Committee) incurred after the occurrence of a Carve-Out Event (defined below) plus all unpaid professional fees, expenses and disbursements allowed by this Court for professionals employed by the estates and retained by order of this Court (collectively, the “**Estate Professionals**”) up to the amount provided for such Estate Professionals on a line item basis in the Budget (including any previously unused amounts) that were incurred prior to the occurrence of a Carve-Out Event (regardless of when such fees, expenses and disbursements become allowed by order of this Court). For the purposes hereof, a “**Carve-Out Event**” shall occur upon the occurrence and during the continuance of an Event of Default under the DIP Credit Agreement upon (i) delivery of a written notice thereof by the DIP Lender to the Debtor (a “**Carve-Out Notice**”) or (ii) in respect of which the Debtor has knowledge and fails to provide notice to the DIP Lender within five (5) days of obtaining such knowledge; provided that, no Carve-Out Event shall be deemed to have occurred if any such Event of Default is subsequently waived by the DIP Lender. So long as no Carve-Out Event shall have occurred and be continuing, the Carve-Out shall not be reduced by

the payment of fees, expenses and disbursements of professionals retained by order of this Court, and allowed by this Court and payable under sections 328, 330 and 331 of the Bankruptcy Code. Upon the occurrence of a Carve-Out Event, the right of the Debtor to pay professional fees incurred under clause (iii) above without reduction of the Carve-Out in clause (iii) above shall terminate (unless the underlying Event of Default or termination event is subsequently waived by the DIP Lender). Upon the occurrence of the Carve-Out Event, the Debtor shall provide immediate notice by facsimile and email to the U.S. Trustee and to all retained professionals informing them that a Carve-Out Event has occurred and that the Debtor's ability to pay professionals is subject to the Carve-Out. Further, the Carve-Out shall not include professional fees and disbursements incurred in connection with the investigation, initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Lender or any of the Prepetition Secured Parties (whether in such capacity or otherwise) or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents, the First Lien BFA or the Second Lien NPAs, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lender; (c) attempts to prevent, hinder or otherwise delay any of the DIP Lender's assertion, enforcement or realization upon any DIP Collateral (as defined below) in accordance with the DIP Documents and the Final Order other than to seek a determination that an Event of Default has not occurred or is not continuing; or (d)

paying any amount on account of any claims arising before the commencement of the Case unless such payments are approved by an order of the Court and contained in the Budget; provided that, notwithstanding anything to the contrary, no more than an aggregate of \$25,000 of the Prepetition Collateral (including any Cash Collateral), the DIP Loans, the DIP Collateral or the Carve-Out may be used by the Committee to investigate the validity, enforceability or priority of the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations or the liens on the Prepetition Collateral securing the Prepetition First Lien Obligations or the Prepetition Second Lien Obligations, or investigate any Claims and Defenses.

F. Objections by Parties in Interest

36. Except as set forth herein and in the Interim Order, all of the provisions of the Interim Order shall be final and binding on the Debtor (including, without limitation, its successors and assigns), the Debtor's shareholders, and all creditors and other parties in interest, including any chapter 11 or chapter 7 trustee hereinafter appointed. Any Committee and any party-in-interest with requisite standing (other than the Debtor) shall have until the earlier of (i) 75 days after the Petition Date or (ii) 60 days after the formation, if formed, of a Committee to file, on behalf of the Debtor's estate, and to serve upon counsel for the DIP Lender and Prepetition Secured Parties, an adversary complaint respecting the Debtor's stipulations and admissions contained in paragraph 4 of the Interim Order.

BASIS FOR RELIEF REQUESTED

The DIP Credit Facility Should Be Authorized

37. Approval of the DIP Credit Facility will provide the Debtor with immediate and ongoing access to borrowing availability to fund its bankruptcy case and

pursue a sale of its assets. The Debtor needs access to the DIP Credit Facility in order to preserve the value of its assets and to maximize value for its creditors. Accordingly, the timely approval of the relief requested herein is imperative.

38. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, the court may authorize the debtor to obtain credit or incur debt (a) with priority over any and all administrative expenses, as specified in section 503(b) or 507(b) of the Bankruptcy Code, (b) secured by a lien on property of the estate that is not otherwise subject to a lien, or (c) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364. The Debtor proposes to obtain the financing set forth in the DIP Orders and the DIP Documents by providing, *inter alia*, superpriority claims, security interests, and liens pursuant to section 364(c)(1), (2), (3) and section 364(d) of the Bankruptcy Code.

39. The Debtor's liquidity needs can be satisfied only if the Debtor is immediately authorized to borrow under the DIP Credit Facility and to use such proceeds to fund operations. The Debtor has been unable to procure sufficient financing in the form of unsecured credit allowable under section 503(b)(1), as an administrative expense under section 364(a) or (b), or in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1). The Debtor has not been able to obtain a DIP Credit Facility or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein.

40. Bankruptcy courts grant a debtor considerable deference in acting in accordance with its business judgment. *See, e.g., Bray v. Shenandoah Fed. Sav. & Loan Assn. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986); *In re Ames Dept. Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“cases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest”); *see also In re Funding Sys. Asset Mgmt. Corp.*, 72 B.R. 87 (Bankr. W.D. Pa. 1987); *In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985).

41. Furthermore, section 364(d) does not require that a debtor seek alternative financing from every possible lender; rather, the debtor simply must demonstrate sufficient efforts to obtain financing without the need to grant a senior lien. *In re Snowshoe Co.*, 789 F.2 1085, 1088 (4th Cir. 1986) (demonstrating that credit was unavailable absent the senior lien by establishment of unsuccessful contact with other financial institutions in the geographic area); *In re 495 Central Park Ave, Co.*, 136 B.R. 626, 631 (Bankr. S.D.N.Y. 1992) (debtor testified to numerous failed attempts to procure financing from various sources, explaining that “most lend money only in return for a senior secured position”); *In re Aqua Assocs.*, 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991 (debtor adequately established that some degree of priming of loan was necessary if debtor were to obtain funding).

42. The Debtor believes that its assets are fully encumbered and the Debtor has been unable to procure the required funding absent granting the proposed superpriority claims and liens. The Debtor submits that the circumstances of this case require the Debtor to obtain financing pursuant to section 364(c) and section 364(d) of the Bankruptcy Code and, accordingly, the DIP Orders and the DIP Documents reflect the exercise of its sound business judgment.

43. The terms and conditions of the DIP Documents are fair and reasonable, and were negotiated by well-represented, independent parties in good faith and at arms' length. Accordingly, the DIP Lender and all obligations incurred under the DIP Loan Documents should be accorded the benefits of section 364(e) of the Bankruptcy Code.

The Use of Cash Collateral Should Be Approved

44. Under section 363(c)(2) of the Bankruptcy Code, a debtor in possession may not use cash collateral unless “(a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and a hearing, authorizes such use ... in accordance with the provisions of this section.” 11 U.S.C. § 363(c)(2). Use of cash collateral is authorized if the holders of interests in such cash collateral consent or are provided adequate protection for such interests. *See* 11 U.S.C. § 363(e).

45. The Debtor requires the use of the Cash Collateral in order to, among other things, permit the orderly continuation of its business, preserve the going concern value of the Debtor, make adequate protection payments, make payroll and satisfy other working capital and general corporate purposes of the Debtor (including costs related to the Case). Absent such relief, the Debtor will be unable to preserve the value of its assets, with damaging consequences for the Debtor and its estate and creditors.

46. The Debtor submits that, under the circumstances here, its request to use Cash Collateral should be approved. The Prepetition Secured Parties have consented to (or have been deemed to have consented to) being primed provided that the relief requested herein is granted.⁵ Absent such authority, the Debtor would not have access to any additional liquidity, which would immediately and irreparably harm the business. In addition, the Debtor believes that the adequate protection proposed herein and in the Interim Order is fair and reasonable and is sufficient to satisfy the requirements of section 363(c) of the Bankruptcy Code. Accordingly, the Debtor's request to use the Cash Collateral in the operation of its businesses and administration of the chapter 11 case should be approved.

Section 364(e) Protections

47. The terms and conditions of the DIP Orders are fair and reasonable, and were negotiated by well-represented, independent parties in good faith and at arms' length. Accordingly, the DIP Lender, the Prepetition Secured Parties, and all obligations incurred by the Debtor under the DIP Orders should be accorded the benefits of section 364(e) of the Bankruptcy Code.

The Proposed Adequate Protection Should Be Authorized

48. Section 363(e) of the Bankruptcy Code provides that, "on request of an entity that has an interest in property used . . . or proposed to be used . . . by [a debtor in possession], the court, with or without a hearing, shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest." 11 U.S.C. § 363(e).

⁵ Pursuant to that certain Second Amended and Restated Subordination Agreement, dated as of December 2, 2015, governing the relationship between the First Lien Lender and the Second Lien Lenders, if the First Lien Lender consents to the use of cash collateral, the Second Lien Lenders are deemed to have consented to the use of cash collateral.

Section 361 of the Bankruptcy Code delineates the forms of adequate protection, which include periodic cash payments, additional liens, adequate protection liens, and other forms of relief. 11 U.S.C. § 361. What constitutes adequate protection must be decided on a case-by-case basis. *See In re O'Connor*, 808 F.2d 1393, 1396 (10th Cir. 1987); *In re Martin*, 761 F.2d 472 (8th Cir. 1985); *In re Shaw Indus., Inc.*, 300 B.R. 861, 865 (Bankr. W.D. Pa. 2003). The focus of the requirement is to protect a secured creditor from diminution in the value of its interest in the particular collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (internal citation omitted).

49. The Prepetition Secured Parties have agreed to the Debtor’s use of the Cash Collateral and the Debtor’s entry into the DIP Documents in consideration for the adequate protection provided under the DIP Orders. Accordingly, the adequate protection proposed herein to protect the First Lien Lender’s and the Second Lien Lenders’ interest in the Prepetition Collateral (including the Cash Collateral) is fair and reasonable and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code.

The Automatic Stay Should Be Modified on a Limited Basis

50. The relief requested herein contemplates a modification of the automatic stay (to the extent applicable) to permit the Debtor to (i) grant the security interests, liens, and superpriority claims described above with respect to the DIP Lender and Prepetition Secured Parties, as the case may be, and to perform such acts as may be requested to assure the perfection and priority of such security interests and liens; (ii) permit the DIP Lender to exercise, upon the occurrence of and during the continuance of an event of

default, all rights and remedies under the DIP Loan Documents; and (iii) implement the terms of the proposed DIP Orders.

51. Stay modifications of this kind are ordinary and standard features of post-petition debtor financing facilities and, in the Debtor's business judgment, are reasonable and fair under the present circumstances.

Interim Approval Should Be Granted

52. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a final hearing.

53. Pursuant to Bankruptcy Rules 4001(b) and (c), the Debtor requests that the Court conduct an expedited preliminary hearing on this motion and (a) authorize the Debtor to borrow under the DIP Credit Facility on an interim basis, pending entry of the Final Order, in order to avoid immediate and irreparable harm and prejudice to the Debtor's estate and all parties in interest, and (b) schedule a hearing to consider entry of the Final Order.

54. The Debtor has an urgent and immediate need for cash to continue to operate. Currently, the Debtor does not have sufficient funds with which to fund its bankruptcy and protect and maintain the value of its assets. Absent authorization from the Court to obtain secured credit, as requested, on an interim basis pending a final hearing on the motion, the Debtor will be immediately and irreparably harmed. The interim relief requested is critical to facilitating the Debtor's reorganization efforts.

55. The Debtor further submit that because the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor for the reasons set forth herein, Bankruptcy Rule 6003 has been satisfied.

56. To successfully implement the foregoing, the Debtor seeks a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen (14) day stay under Bankruptcy Rule 6004(h).

Notice

57. Notice of this Motion has been given to the following parties or, in lieu thereof, to its counsel, if known: (a) the Office of the United States Trustee; (b) the Debtor's twenty-three (23) largest unsecured creditors; (c) counsel to the Debtor's prepetition secured lenders; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service and state taxing authorities for states in which the Debtor conducts business; (g) the Debtor's existing banks; (h) following formation, if formed, of the Committee; (i) those parties who have filed a notice of appearance in these cases; and (j) counsel to Crius Solar Fulfillment, LLC. As the Motion is seeking "first day" relief, within two (2) business days of the hearing on the Motion, the Debtor will serve copies of the Motion and any order entered respecting the Motion in accordance with the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE, the Debtor respectfully requests that the Court enter an order granting the Motion, substantially in the form annexed hereto, and grant such other and further relief as the Court deems just and proper.

Dated: September 23, 2016
Wilmington, Delaware

BAYARD, P.A.

/s/ Scott D. Cousins
Scott D. Cousins (No. 3079)
Evan T. Miller (No. 5364)
222 Delaware Avenue, Suite 900
Wilmington, Delaware 19801
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Email: scousins@bayardlaw.com
emiller@bayardlaw.com

*Proposed Attorney for Debtor
and Debtor-in-Possession*

Exhibit A

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

In re

VERENGO, INC.,¹

Debtor.

Chapter 11

Case No.: 16-12098 ()

INTERIM ORDER UNDER 11 U.S.C. §§ 105, 361, 362, 363(c), 364(c), 364(d), 364(e) AND 507 AND BANKRUPTCY RULES 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING THE DEBTOR TO CONTINUE TO USE CASH AND/OR CASH COLLATERAL, (III) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES AND (IV) GRANTING RELATED RELIEF

Upon the motion, dated September 23, 2016 (the “**Motion**”) of Verengo, Inc. (“**Verengo**”), the debtor and debtor in possession (the “**Debtor**”) in the above-captioned chapter 11 case (the “**Case**”), commenced on September 23, 2016 (the “**Petition Date**”) under sections 105, 361, 362, 363(c), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (as amended, the “**Bankruptcy Code**”), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the “**Bankruptcy Rules**”), and Rule 4001-2, 4001-3, 9013-1(f) and (g) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (this “**Court**”) seeking:

(I) authorization for the Debtor to obtain debtor-in-possession financing in the form of a revolving credit facility in the aggregate principal amount of up to \$2,000,000 (the “**DIP Credit Facility**,” extensions of credit under the DIP Credit Facility, the “**DIP**

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

Loans”), among Verengo, as borrower (in such capacity the “**DIP Borrower**”), and Crius Solar Fulfillment, LLC (in such capacity, the “**DIP Lender**”); on the terms and conditions set forth in:

- this interim order (this “**Order**” or the “**Interim Order**”) and any final order (the “**Final Order**”); and
- the DIP Credit Agreement (substantially in the form annexed to the Motion as Exhibit B, and as hereafter amended, supplemented or otherwise modified, the “**DIP Credit Agreement**,” and, together with and all other agreements, documents and instruments executed and delivered in connection with the DIP Credit Agreement, as hereafter amended, supplemented or otherwise modified, the “**DIP Documents**”).

(II) authorization for the Debtor to execute and deliver the DIP Credit Agreement and the other DIP Documents to which it is a party and to perform its obligations thereunder and such other and further acts as may be necessary or appropriate in connection therewith;

(III) authorization for the Debtor to (a) continue to use cash and/or cash collateral (as such term is defined in section 363(a) of the Bankruptcy Code, “**Cash Collateral**”), pursuant to section 363 of the Bankruptcy Code, and all other Prepetition Collateral (as defined below), and (b) provide adequate protection to the following parties with respect to the applicable prepetition secured debt obligations:

- (i) the first lien lender under the Amended and Restated Business Financing Agreement, dated as of March 20, 2014 (as amended, supplemented or otherwise modified, the “**First Lien BFA**”, and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the “**First Lien Documents**”), between Verengo in its capacity as a borrower thereunder and Crius Solar Fulfillment, LLC as the lender thereunder (and successor to Bridge Bank, National Association) (in such capacity, the “**First Lien Lender**”);
- (ii) the second lien lenders (collectively, the “**Second Lien Lenders**”) under the Note Purchase Agreement, dated as of January 15, 2015, the Amended and Restated Note Purchase Agreement, dated as of September 24, 2015, and the Note

Purchase Agreement, dated as of December 2, 2015 (as each may be amended, supplemented or otherwise modified, the “**Second Lien NPAs**”, and, together with all security, pledge and guaranty agreements and all other documentation executed in connection with any of the foregoing, each as amended, supplemented or otherwise modified, the “**Second Lien Documents**”), each among Verengo in its capacity as issuer thereunder, Angeleno Investors III, L.P., ClearSky Power & Technology Fund I LLC, and any other Second Lien Lenders party thereto from time to time (the First Lien Lender and the Second Lien Lenders, collectively referred to as the “**Prepetition Secured Parties**”);

(IV) authorization for the DIP Lender to exercise remedies under the DIP Documents upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement);

(V) authorization to grant liens to the DIP Lender on the proceeds of (a) the Debtor’s prepetition and postpetition commercial tort claims and (b) any claims and causes of action of the Debtor or its estate (but not on the actual claims and causes of action) arising under sections 502(d), 544, 545, 547, 548, 550, 551, or 553 of the Bankruptcy Code (collectively, the “**Avoidance Actions**”); and

(VI) the waiver by the Debtor of any right to seek to surcharge against the DIP Collateral (as defined below) or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code and the limited waiver of section 552(b) and the equitable doctrine of marshaling and similar doctrines.

A hearing on the Motion having been held by this Court on September [___], 2016 (the “**Hearing**”) to consider interim approval of the Motion pursuant to the terms of this Interim Order, and upon the record made by the Debtor at the Hearing, including without limitation, the admission into evidence of the *Declaration of Dan Squiller in Support of the Debtor’s Chapter 11 Petition and Request for First Day Relief* filed on the Petition Date, and the other evidence

submitted or adduced and the arguments of counsel made at the Hearing, and after due deliberation and consideration and sufficient cause appearing therefor;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. *Jurisdiction.* This Court has core jurisdiction over the Case, the Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. *Notice.* Notice of the Motion and the relief requested therein was served by the Debtor on: (a) the Office of the United States Trustee; (b) the Debtor's twenty (20) largest unsecured creditors; (c) counsel to the First Lien Lender; (d) counsel to the Second Lien Lenders; (e) the United States Attorney's Office for the District of Delaware; (f) the Internal Revenue Service and state taxing authorities for states in which the Debtor conducts business; (g) the Debtor's existing banks; (h) following formation, if formed, the official committee of unsecured creditors (the "**Committee**"); (i) those parties who have filed a notice of appearance in these cases; and (j) counsel to the DIP Lender (collectively, the "**Notice Parties**"). Under the circumstances, the notice given by the Debtor of the Motion and the relief requested therein constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c), and no further notice of the relief sought is necessary or required.

3. *Interim Approval of Motion.* The relief requested in the Motion is granted only on an interim basis as set forth herein. Except as otherwise expressly provided in this Interim Order, any objection to the entry of this Interim Order that has not been withdrawn, waived, resolved or settled, is hereby denied and overruled by the Court with respect to the relief granted by this Interim Order, without prejudice to objections that may be interposed to the final approval of the Motion.

4. *Debtor's Stipulations.* The Debtor admits, stipulates, and agrees to the following without prejudice to the rights of any Committee and any other party to challenge such admissions, stipulations, acknowledgments or agreements (but subject to the limitations thereon contained in paragraphs 20 and 21):

(a) as of the Petition Date, the Debtor was truly and justly indebted and liable to the First Lien Lender, without defense, counterclaim or offset of any kind, in the aggregate principal amount of not less than \$2,272,000 in respect of loans and other extensions of credit made pursuant to the First Lien BFA, plus any accrued and unpaid interest thereon, fees, costs, expenses (including fees and expenses of attorneys), charges, and indemnities related thereto as provided in the First Lien Documents, plus all other outstanding amounts that would constitute Obligations under and as defined in the First Lien BFA, whether or not evidenced by any note, agreement or instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable as provided in the First Lien Documents; (collectively, the "**Prepetition First Lien Obligations**");

(b) the liens and security interests granted by the Debtor to the First Lien Lender to secure the Prepetition First Lien Obligations (the "**Prepetition First Liens**") are (i) valid, binding, perfected, enforceable, first priority liens on and security interests in the Debtor's personal property constituting Collateral (as defined in the First Lien BFA Agreement and including all Cash Collateral, the "**Prepetition Collateral**"), (ii) not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise, and (iii) subject and

subordinate only to, after giving effect to this Interim Order, the Carve-Out (as defined below) and the liens and security interests granted to secure the DIP Loans and the First Lien Adequate Protection Obligations (as defined below);

(c) the Prepetition First Lien Obligations (i) constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and (ii) are not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise;

(d) as of the Petition Date, the Debtor was truly and justly indebted to the Second Lien Lenders, without defense, counterclaim or offset of any kind, in the aggregate principal amount, plus accrued and unpaid interest thereon, of not less than \$30,164,369.59 million in respect of the notes issued under the Second Lien NPAs, plus any accrued and unpaid fees and expenses (including fees and expenses of attorneys and advisors) related thereto as provided in the Second Lien Documents, plus all other outstanding amounts under the Second Lien NPAs, whether or not evidenced by any note, agreement or instrument, whether or not contingent, whenever arising, accrued, accruing, due, owing or chargeable as provided in the Second Lien Documents (collectively, the “**Prepetition Second Lien Obligations**”);

(e) the liens and security interests granted by the Debtor to the Second Lien Lenders to secure the Prepetition Second Lien Obligations (the “**Prepetition Second Liens**”, and together with the Prepetition First Liens, the “**Prepetition Liens**”) are (i) valid,

binding, perfected, enforceable, second priority (subject to permitted exceptions under the Second Lien NPAs) liens on and security interests in the Prepetition Collateral constituting Collateral, (ii) not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination (except as set forth in the Subordination Agreement (defined below)), cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise, and (iii) subject and subordinate only to (A) after giving effect to this Interim Order, the Carve-Out and the liens and security interests granted to secure the DIP Loans and the Adequate Protection Obligations (as defined below), (B) the liens securing the Prepetition First Lien Obligations with respect to the Collateral (as defined in the Subordination Agreement) and (C) certain liens permitted under any of the Second Lien Documents;

(f) the Prepetition Second Lien Obligations (i) constitute the legal, valid and binding obligations of the Debtor, enforceable in accordance with their terms (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), and (ii) are not subject to any avoidance, recharacterization of debt as equity, disallowance, reduction, attachment, contest, attack, rejection, recoupment, reduction, defense, counterclaim invalidation, offset, recovery, subordination (except as set forth in the Subordination Agreement (defined below)), cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise;

(g) the First Lien Lender, the Second Lien Lenders, and Verengo are parties to that certain Second Amended and Restated Subordination Agreement, dated as of December 2, 2015 (as amended, supplemented or otherwise modified, the "**Subordination**

Agreement”), which sets forth the relative lien priorities and other rights and remedies of the First Lien Lender and the Second Lien Lenders with respect to, among other things, the Prepetition Collateral and such Subordination Agreement is binding and enforceable against the parties thereto in accordance with its terms; and

(h) the Budget (as defined below) includes all reasonable, necessary, and foreseeable expenses to be incurred in the ordinary course of business in connection with the operation of the Debtor’s business for the period set forth in the Budget.

5. *Findings Regarding the DIP Loans.*

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Debtor has a critical need to obtain the DIP Loans and to use the Prepetition Collateral, including the Cash Collateral, in order to, among other things, permit the orderly continuation of its business, preserve the going concern value of the Debtor, make adequate protection payments, make payroll and satisfy other working capital and general corporate purposes of the Debtor (including costs related to the Case).

(c) The Debtor is unable to obtain financing on more favorable terms from sources other than the DIP Lender pursuant to, and for the purposes set forth in, the DIP Documents and is unable to obtain adequate unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor is also unable to obtain secured credit allowable under sections 364(c)(1), 364(c)(2) and 364(c)(3) of the Bankruptcy Code without granting priming liens under section 364(d)(1) of the Bankruptcy Code and the Superpriority Claims (as defined below), in each case on the terms and conditions set forth in this Interim Order and the DIP Documents.

(d) The terms of the DIP Loans, the terms of the Adequate Protection Obligations and Adequate Protection Liens granted to the Prepetition Secured Parties, as applicable, and the terms on which the Debtor may continue to use the Prepetition Collateral (including the Cash Collateral) pursuant to this Interim Order are fair and reasonable, reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Documents and the use of the Prepetition Collateral (including the Cash Collateral) have been the subject of extensive negotiations conducted in good faith and at arm's length among the Debtor, the DIP Lender, the Prepetition Secured Parties, and all of the Debtor's obligations and indebtedness arising under or in connection with the DIP Documents, this Interim Order and the DIP Loans (collectively, the "**DIP Obligations**") shall be deemed to have been extended by the DIP Lender in "good faith" as such term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections set forth therein, and shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified on appeal or otherwise.

(f) The First Lien Lender has consented to the Debtor's use of Cash Collateral and the other Prepetition Collateral on the terms and conditions provided in this Interim Order, and the Debtor's entry into the DIP Documents in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents. For the avoidance of doubt, this consent includes without limitation the granting of the DIP Liens on a priming basis under section 364(d) of the Bankruptcy Code.

(g) The Second Lien Lenders have consented or are deemed under the Subordination Agreement to have consented to the Debtor's use of Cash Collateral and the other Prepetition Collateral, and the Debtor's entry into the DIP Documents in accordance with and subject to the terms and conditions in this Interim Order and the DIP Documents. For the avoidance of doubt, this consent includes without limitation the granting of the DIP Liens on a priming basis under section 364(d) of the Bankruptcy Code.

(h) Each of the Prepetition Secured Parties has acted in good faith regarding the DIP Loans and the Debtor's continued use of the Prepetition Collateral (including the Cash Collateral) to fund the administration of the Debtor's estate and continued operation of its business (including payment of the Adequate Protection Obligations and the granting of the Adequate Protection Liens), in accordance with the terms hereof. The Prepetition Secured Parties are entitled to the adequate protection provided in this Interim Order as and to the extent set forth herein pursuant to §§ 361, 362 and 363 of the Bankruptcy Code. Based on the Motion and on the record presented to the Court, the terms of the proposed adequate protection arrangements and of the use of the Prepetition Collateral (including the Cash Collateral) are fair and reasonable, reflect the Debtor's prudent exercise of business judgment and constitute reasonably equivalent value and fair consideration for the use of Cash Collateral; *provided* that nothing in this Interim Order or the other DIP Documents shall (x) be construed as the affirmative consent by any of the Prepetition Secured Parties for the use of Cash Collateral other than on the terms set forth in this Interim Order and in the context of the DIP Loans authorized by this Interim Order, (y) be construed as a consent by any party to the terms of any other financing or any other lien encumbering the Prepetition Collateral (whether senior or junior) or (z) prejudice, limit or otherwise impair

the rights of any of the Prepetition Secured Parties, subject to any applicable provisions of the Subordination Agreement, to seek new, different or additional adequate protection or assert the interests of any of the Prepetition Secured Parties and nothing herein prejudices, limits, or otherwise impairs the rights of any party in interest to oppose such relief.

(i) The Debtor has requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2). The borrowing of the DIP Loans and the use of the Prepetition Collateral (including the Cash Collateral) in accordance with this Interim Order and the DIP Documents are in the best interest of the Debtor's estate.

6. *Budget.* The Budget is achievable and will allow the Debtor to operate in the Case without the accrual of unpaid administrative expenses. The DIP Lender and the Prepetition Secured Parties are relying upon the Debtor's compliance with the Budget in accordance with this Interim Order in determining to enter into DIP Loan Documents and authorize the use of Cash Collateral.

7. *Interim Authorization of the DIP Loans and the DIP Documents.*

(a) The Debtor is hereby authorized (i) to enter into and perform under the DIP Documents and (ii) to borrow under the DIP Credit Agreement up to an aggregate principal amount of \$1,500,000 of the DIP Loans, the proceeds of which shall be used for only the purposes permitted under the DIP Documents, including, without limitation, working capital and other general corporate purposes of the Debtor (including costs related to the Case), and to pay interest, fees and expenses in connection with the DIP Loans and the Adequate Protection Obligations.

(b) In furtherance of the foregoing and without further approval of this Court, the Debtor is authorized and empowered to perform all acts and to execute and deliver

all instruments and documents that the DIP Lender determines to be reasonably required or necessary for the Debtor's performance of their obligations under the applicable DIP Documents, including without limitation:

- (i) the execution, delivery and performance of the DIP Documents;
- (ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents, in each case in accordance with the terms of the applicable DIP Documents and in such form as the Debtor and the DIP Lender may agree, and no further approval of this Court shall be required for any amendment, waiver, consent or other modification to and under the DIP Documents (and any fees, paid-in-kind fees and other expenses (including any attorneys', accountants', appraisers' and financial advisors' fees), amounts, charges, costs, indemnities and other obligations paid in connection therewith) that do not (A) shorten the maturity of the DIP Loans, or (B) increase the principal amount of, or the rate of interest payable on, the DIP Loans;
- (iii) the non-refundable payment to the DIP Lender of all fees (which fees shall be, and shall be deemed to have been, approved upon entry of this Interim Order and upon payment thereof, shall not be subject to any contest, attack, rejection, recoupment, reduction, defense, counterclaim, offset, subordination, recharacterization, avoidance or other claim, cause of action or other challenge of any nature under the Bankruptcy Code, under applicable non-bankruptcy law or otherwise) and any amounts due (or that may become due) in respect of the indemnification obligations referred to in the DIP Credit

Agreements and reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in the DIP Documents (and the reasonable fees and expenses of counsel for the DIP Lender, incurred on or prior to the date hereof) as provided in this Interim Order without the need to file retention motions or fee applications, or to provide notice to any party,

(iv) the payment of all prepetition and postpetition fees, costs and expenses of the professionals to the DIP Lender. Invoices for payment of such fees and expenses set forth in this paragraph 8(b)(iv) may be in summary form and redacted to protect against privilege and confidential issues and shall be provided to counsel for the Debtor, counsel to any Committee, if appointed, and the U.S. Trustee (collectively, the “**Fee Notice Parties**”). If no objection to the payment of the requested fees and expenses are made in writing by the Fee Notice Parties within ten (10) calendar days after delivery of such invoices, then, without further order of, or application to, the Court or notice to any other party, such fees and expenses shall be promptly paid by the Debtor. If an objection (solely as to reasonableness) is made by any of the Fee Notice Parties within the ten-day objection period to the payment of the requested fees and expenses, then only the disputed portion of such fees and expenses shall not be paid until the objection is resolved by the applicable parties in good faith or by order of the Court, and the undisputed portion shall be promptly paid by the Debtor; and

(v) the performance of all other acts required under or in connection with the DIP Documents.

(c) Upon the execution thereof, the DIP Documents shall constitute valid, binding and unavoidable obligations of the Debtor, enforceable against the Debtor in accordance with the terms of this Interim Order and the DIP Documents. No obligation, payment, transfer or grant of security by the Debtor under the DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable nonbankruptcy law (including without limitation, under sections 502(d) or 548 of the Bankruptcy Code or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, Uniform Voidable Transactions Act, or similar statute or common law), or subject to any defense, reduction, setoff, recoupment, recharacterization, subordination, disallowance, impairment, cross-claim or counterclaim.

8. *DIP Superpriority Claims.*

(a) Except to the extent expressly set forth in this Interim Order in respect of the Carve-Out, pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed senior administrative expense claims (the **“Superpriority Claims”**) against the Debtor with priority over any and all administrative expenses, adequate protection and diminution in value claims (including all Adequate Protection Obligations) and all other claims against the Debtor or its estate, now existing or hereafter arising, of any kind whatsoever, including without limitation, all administrative expenses of the kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 726, 1113 or 1114 of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual

lien, levy or attachment, which allowed Superpriority Claims shall for purposes of section 1129(a)(9)(A) of the Bankruptcy Code be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code and shall be payable from and have recourse to all pre- and post-petition property of the Debtor, including, without limitation, any and all cash and Cash Collateral of the Debtor, other than the Avoidance Actions, but, subject to the entry of a Final Order, the Superpriority Claims shall have recourse to any proceeds or other property recovered, unencumbered or otherwise from Avoidance Actions, whether by judgment, settlement or otherwise (“**Avoidance Proceeds**”). Any payments, distributions or other proceeds received on account of such Superpriority Claims shall be promptly delivered to the DIP Lender to be applied on account of the DIP Obligations in such order as is specified in the DIP Documents. The Superpriority Claims shall be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(b) For purposes hereof, the “**Carve-Out**” shall mean (i) any fees payable to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to section 1930(a) of title 28 of the United States Code, and any interest on such fees payable pursuant to section 3717 of title 31 of the United States Code in such amount as agreed to by the U.S. Trustee or as determined by the Court, (ii) the reasonable fees and expenses up to \$10,000 incurred by a trustee appointed in the Debtor’s case under section 726(b) of the Bankruptcy Code (irrespective of whether the Carve-Out Notice (as defined below) has been delivered), and (iii) up to \$50,000 of allowed fees, expenses and disbursements of professionals retained by order of this Court (including any Committee) incurred after the occurrence of a Carve-Out Event (defined below) plus all unpaid professional fees, expenses and disbursements allowed

by this Court for professionals employed by the estates and retained by order of this Court (collectively, the “**Estate Professionals**”) up to the amount provided for such Estate Professionals on a line item basis in the Budget (including any previously unused amounts) that were incurred prior to the occurrence of a Carve-Out Event (regardless of when such fees, expenses and disbursements become allowed by order of this Court). For the purposes hereof, a “**Carve-Out Event**” shall occur upon the occurrence and during the continuance of an Event of Default under the DIP Credit Agreement upon (i) delivery of a written notice thereof by the DIP Lender to the Debtor (a “**Carve-Out Notice**”) or (ii) in respect of which the Debtor has knowledge and fails to provide notice to the DIP Lender within five (5) days of obtaining such knowledge; provided that, no Carve-Out Event shall be deemed to have occurred if any such Event of Default is subsequently waived by the DIP Lender. So long as no Carve-Out Event shall have occurred and be continuing, the Carve-Out shall not be reduced by the payment of fees, expenses and disbursements of professionals retained by order of this Court, and allowed by this Court and payable under sections 328, 330 and 331 of the Bankruptcy Code. Upon the occurrence of a Carve-Out Event, the right of the Debtor to pay professional fees incurred under clause (iii) above without reduction of the Carve-Out in clause (iii) above shall terminate (unless the underlying Event of Default or termination event is subsequently waived by the DIP Lender) upon the occurrence of the Carve-Out Event, the Debtor shall provide immediate notice by facsimile and email to the U.S. Trustee and to all retained professionals informing them that a Carve-Out Event has occurred and that the Debtor’s ability to pay professionals is subject to the Carve-Out.

(c) Notwithstanding the foregoing, the Carve-Out shall not include, apply to or be available for any fees or expenses incurred by any party in connection with (a) the

investigation (except as permitted pursuant to paragraph 20 below), initiation or prosecution of any claims, causes of action, adversary proceedings or other litigation (i) against any of the DIP Lender or any of the Prepetition Secured Parties (whether in such capacity or otherwise) or (ii) challenging the amount, validity, perfection, priority or enforceability of or asserting any defense, counterclaim or offset to, the obligations and the liens and security interests granted under the DIP Documents, the First Lien BFA or the Second Lien NPAs, including, in each case, without limitation, for lender liability or pursuant to section 105, 510, 544, 547, 548, 549, 550, or 552 of the Bankruptcy Code, applicable non-bankruptcy law or otherwise; (b) attempts to modify any of the rights granted to the DIP Lender; (c) attempts to prevent, hinder or otherwise delay any of the DIP Lender's assertion, enforcement or realization upon any DIP Collateral (as defined below) in accordance with the DIP Documents and the Final Order other than to seek a determination that an Event of Default has not occurred or is not continuing; or (d) paying any amount on account of any claims arising before the commencement of the Case unless such payments are approved by an order of the Court and contained in the Budget.

(d) Following entry of this Interim Order, so long as the Debtor is entitled to make draws under the DIP Credit Agreement and no DIP Event of Default shall have occurred, the Debtor shall be authorized to transfer funds to the Bayard, PA Client Trust Account (the "Expense Reserve Account") on a weekly basis, the fees and expenses of the Estate Professionals that may be paid pursuant to, but subject to the amounts contained in, the Budget (as defined below) for such week. Such funds shall be held for the benefit of the Estate Professionals, to be applied to the fees and expenses of such Estate Professionals (to the extent such forth in the Budget for the applicable Estate Professional) that are approved

for payment pursuant to one or more orders of the Bankruptcy Court. Any fees and expenses payable to Estate Professionals shall be paid first out of the Expense Reserve Account, and all amounts deposited in the Expense Reserve Account shall reduce, on a dollar for dollar basis, the Carve-Out and Carve-Out Amounts. To the extent that the fees and expenses of the Estate Professionals performed prior to the Termination Date and allowed pursuant to one or more orders of the Bankruptcy Court are less than the amounts funded into the Expense Reserve Account, the excess amounts in the Expense Reserve Account shall be remitted to the DIP Lender to reduce the obligations under the DIP Credit Agreement.

9. *DIP Liens.* As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtor (or recordation or other filing) of security agreements, control agreements, pledge agreements, financing statements, mortgages or other similar documents, or the possession or control by the DIP Lender of any property, the following security interests and liens are hereby granted by the Debtor to the DIP Lender (all property identified in clauses (a), (b) and (c) of this paragraph 9 being collectively referred to as the “**DIP Collateral**”), but subject and subordinate to the Carve-Out (all such liens and security interests granted to the DIP Lender pursuant to this Interim Order, the “**DIP Liens**”) and having the priorities set forth in this paragraph 9:

(a) First Lien on Unencumbered Property. Pursuant to section 364(c)(2) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority lien on, and security interest in, all tangible and intangible prepetition and postpetition property of the Debtor or its estate, whether existing on or as of the Petition Date or thereafter acquired, that is not subject to either (i) valid, perfected, non-avoidable and enforceable liens in existence on or as of the Petition Date, or (ii) valid liens perfected

subsequent to the Petition Date as permitted by section 546(b) of the Bankruptcy Code, (collectively, the “**Unencumbered Property**”); provided, that the Unencumbered Property shall not include the Avoidance Actions, but, subject to the entry of a Final Order, shall include any Avoidance Proceeds.

(b) Liens Junior to Certain Existing Liens. Pursuant to section 364(c)(3) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected junior lien on, and security interest in all tangible and intangible prepetition and postpetition property of the Debtor or its estate (other than the property described in paragraph 9(c) below, as to which the DIP Liens will have the priority as described in such clause), whether now existing or hereafter acquired, other than the Avoidance Actions, but, but subject to the entry of a Final Order, shall include any Avoidance Proceeds, that is subject to any valid, perfected and unavoidable liens in existence immediately prior to the Petition Date that are permitted under the First Lien BFA or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected after the Petition Date as permitted by section 546(b) of the Bankruptcy Code, in each case excluding the liens of the Prepetition Secured Parties and liens which already are junior to the liens of the Prepetition Secured Parties (collectively, the “**Non-Primed Liens**”), which security interests and liens in favor of the DIP Lender shall be junior to the Non-Primed Liens.

(c) Liens Priming the Liens of the Prepetition Secured Parties and All Liens Junior Thereto. Pursuant to section 364(d)(1) of the Bankruptcy Code, a valid, binding, continuing, enforceable, fully-perfected first priority, senior priming lien on, and security interest in, all Prepetition Collateral. The DIP Liens on the Prepetition Collateral shall be senior in all respects to the security interests in, and liens on, the Prepetition

Collateral of each of the Prepetition Secured Parties (including the applicable Adequate Protection Liens granted to such Prepetition Secured Party) and to all liens which already are junior to the liens of the Prepetition Secured Parties, but shall be junior to any Non-Primed Liens on the Prepetition Collateral.

(d) Liens Senior to Certain Other Liens. No claim or lien having a priority senior to or *pari passu* with those granted by this Interim Order to the DIP Lender shall be granted or allowed while any portion of the DIP Obligations remains outstanding, and the DIP Liens shall not be (i) subject or subordinate to (A) any lien or security interest that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or (B) any liens arising after the Petition Date or (ii) subordinated to or made *pari passu* with any other lien or security interest under sections 363 or 364 or any other section of the Bankruptcy Code or otherwise, including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit (including any regulatory body), commission, board, or court for any liability of the Debtor.

10. *Protection of DIP Lender's Rights*

(a) The automatic stay under section 362 of the Bankruptcy Code is vacated and modified to the extent necessary to permit the DIP Lender to enforce and exercise (a) immediately upon the occurrence and during the continuance of an Event of Default, all rights and remedies under the applicable DIP Documents and applicable law, other than those rights and remedies against the applicable DIP Collateral as provided in clause (b) below, and (b) upon the occurrence and during the continuance of an Event of Default, and the giving of five (5) business days' prior written notice to the Debtor (with a copy to counsel to the Debtor, counsel to the Committee, if any, and the U.S. Trustee) (which

period shall run concurrently with any notice period provided under the DIP Documents), all rights and remedies against the DIP Collateral provided for in the applicable DIP Documents, applicable law and this Interim Order; provided that, during the foregoing five (5) business-day period the only issue that may be raised by the Debtor in opposition to the exercise of rights and remedies by the DIP Lender shall be whether an Event of Default has in fact occurred and is continuing, and other than as set forth in the prior clause of this proviso, the Debtor and the Prepetition Secured Parties hereby waive their right to seek any relief, whether under section 105 of the Bankruptcy Code or otherwise, that would in any way impair, limit or restrict, or delay the exercise or benefit of, the rights and remedies of the DIP Lender under the DIP Documents or this Interim Order. In no event shall the DIP Lender be subject to the equitable doctrine of “marshaling” or any similar doctrine with respect to the DIP Collateral. The DIP Lender’s delay or failure to exercise rights and remedies under the DIP Documents or this Interim Order shall not constitute a waiver of the DIP Lender’s rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the DIP Credit Agreement.

(b) No rights, protections or remedies of the DIP Lender granted by the provisions of this Interim Order or the DIP Documents shall be limited, modified or impaired in any way by (i) any actual or purported withdrawal of the consent of any party to the Debtor’s authority to continue to use Cash Collateral, (ii) any actual or purported termination of the Debtor’s authority to continue to use Cash Collateral or (iii) the terms of any other order or stipulation related to the Debtor’s continued use of Cash Collateral or the provision of adequate protection to any party.

(c) The DIP Lender shall not be subject to any obligations under the Subordination Agreement. None of the DIP Credit Agreement, the DIP Documents, or the DIP Obligations shall be subject to the terms of the Subordination Agreement.

11. *Limitation on Charging Expenses Against Collateral.* Upon entry of a Final Order, except to the extent of the Carve-Out, no expenses of administration of the Case or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral or the Prepetition Collateral (or any collateral secured by the First Lien Adequate Protection Liens (as defined below) or Second Lien Adequate Protection Liens (as defined in below)), as the case may be, pursuant to section 506(c) of the Bankruptcy Code or any similar principle of law, without the prior written consent of the DIP Lender, and no such consent shall be implied from any other action or inaction by the DIP Lender.

12. *Limitations under Section 552(b) of the Bankruptcy Code and Marshaling.*

(a) Upon entry of a Final Order, the Prepetition Secured Parties shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code (provided, however, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to any of the Prepetition Secured Parties with respect to (i) proceeds, products, offspring or profits of any of the Prepetition Collateral or (ii) the extension of the Adequate Protection Liens (as defined below) to cover proceeds of the Prepetition Collateral in each case solely to the extent necessary to satisfy any Adequate Protection Obligations or 507(b) Claims (as defined below) (without waiving any parties’ rights with respect to the applicability of the exception (except as provided above) or further request for a waiver thereof).

(b) Upon entry of a Final Order, in no event shall the Prepetition Collateral, the First Lien Adequate Protection Liens, the Second Lien Adequate Protection Liens, or any Prepetition Secured Party be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the Prepetition Collateral or the collateral secured by the First Lien Adequate Protection Liens or Second Lien Adequate Protection Liens.

13. *Adequate Protection for the First Lien Lenders.* The First Lien Lender is entitled, pursuant to sections 361, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of its interests in the Prepetition Collateral, including Cash Collateral, in an amount equal to the aggregate diminution in value of its interests in the Prepetition Collateral, and including without limitation, claims on account of any diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of any Cash Collateral and any other Prepetition Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and further including claims on account of the priming of the First Lien Lender’s liens on the Prepetition Collateral by the DIP Liens (such claims, collectively, the “**First Lien Adequate Protection Obligations**”). As adequate protection, the First Lien Lender is hereby granted the following:

(a) **First Lien Adequate Protection Liens.** As security for the payment of the First Lien Adequate Protection Obligations, the First Lien Lender is hereby granted (effective and perfected upon the date hereof and without the necessity of the execution by the Debtor of security agreements, pledge agreements, mortgages, financing statements or other agreements) a valid, perfected security interest in and lien on all of the DIP Collateral (the “**First Lien Adequate Protection Liens**”), subject and subordinate only to (i) the DIP Liens, (ii) the Carve-Out, and (iii) the Non-Primed Liens.

(b) First Lien Section 507(b) Claims. The First Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the “**First Lien 507(b) Claims**”), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330, 331, 363, 503 and 507(a) of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out and (ii) the Superpriority Claims granted in respect of the DIP Obligations. Unless otherwise expressly agreed to in writing by the DIP Lender, the First Lien Lender shall not receive or retain any payments, property or other amounts in respect of the First Lien 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash in accordance with the DIP Documents and the Carve-Out amount is funded (only to the extent not previously paid).

14. *Use of Prepetition Collateral (Including Cash Collateral).*

(a) The Debtor is hereby authorized to use the Prepetition Collateral, including the Cash Collateral, during the period from the Petition Date through and including the Termination Date (as defined below) (the “**Specified Period**”) for working capital and general corporate purposes (including costs related to the Case) in accordance with the terms and conditions of this Interim Order and the Budget (as defined below); provided that: (i) the Prepetition Secured Parties are granted adequate protection as set forth herein; (ii) the Debtor shall not be permitted to transfer any Cash Collateral (or any other Collateral) to fund any affiliate of the Debtor that has not filed a chapter 11 case; and (iii) except on the terms of this Interim Order, the Debtor is not authorized to use the Cash Collateral. By virtue of the First Lien Lender’s consent to the Debtor’s use of Cash Collateral as set forth in this Interim Order,

pursuant and subject to the Subordination Agreement and this Interim Order, the Second Lien Lenders are deemed to have consented to such use of the Cash Collateral. As used herein, “**Termination Date**” means the earlier to occur of (a) the Maturity Date (as defined in the DIP Credit Agreement) of the DIP Credit Facility and (b) the acceleration of any DIP Loans and the termination of the DIP Credit Agreement.

(b) Except as otherwise expressly provided herein, the Debtor may use cash and borrow under the DIP Credit Agreement during the Specified Period solely up to the amounts (subject to the variances described below), at the times, and for the purposes identified in the budget attached hereto as Schedule 1 (the “**Budget**”), as such Budget may be amended and/or extended² with the prior written consent of the DIP Lender. Copies of any amendments to the DIP Credit Agreement or Budget agreed to between the Debtor and the DIP Lender will be provided to counsel for the Committee, if any, and the U.S. Trustee. The Debtor shall not, without the prior consent of the DIP Lender, except to the extent permitted in this paragraph, use cash during the Specified Period such that in any given week the Debtor’s: (A) (i) Total Receipts (the “**Receipts**”), and (ii) Total Disbursements (the “**Disbursements**”), each on a cumulative basis commencing on the Petition Date and ending on October 14, 2016, is in an amount in excess of twenty-five percent (25%) (1) below the cumulative amount of Receipts or (2) above the cumulative amount of Disbursements for the relevant weekly period; and (B) (i) Total Receipts, and (ii) Total Disbursements, each on a cumulative basis commencing on October 15, 2016, is in an amount in excess of ten percent (10%) (1) below the cumulative amount of Receipts or (2) above the cumulative amount of Disbursements for the relevant weekly period.

² As used in this Order, the Budget means Schedule 1 as the same may be amended and/or extended in accordance with the approval provisions of this Order.

(c) On or before 5:00 p.m. (Prevailing Eastern Time) of Wednesday of each week, commencing September 26, 2016, the Debtor shall deliver to the DIP Lender, (i) a comparison of actual results for the weekly period ending one week before such date of all items contained in the Budget to the amounts originally contained in the Budget, and (ii) a cumulative comparison of the actual results for the period from the Petition Date through the end of the week for the weekly period ending one week before such date of results of all items contained in the Budget to the amounts originally contained in the Budget.

15. *Adequate Protection for the Second Lien Lenders.* The Second Lien Lenders are entitled, pursuant to sections 361, 363(c)(2) and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral, including the Cash Collateral in an amount equal to the aggregate diminution in value of their interests in the Prepetition Collateral, including without limitation, claims on account of any diminution resulting from the sale, lease or use by the Debtor (or other decline in value) of any Cash Collateral and any other Prepetition Collateral, and the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code, and further including claims on account of the priming of the Second Lien Lenders' liens on the Prepetition Collateral by the DIP Liens (such claims, collectively, the "**Second Lien Adequate Protection Obligations**") and collectively with the First Lien Adequate Protection Obligations, the "**Adequate Protection Obligations**"). As adequate protection, the Second Lien Lenders are hereby granted the following:

(a) Second Lien Adequate Protection Liens. As security for the payment of the Second Lien Adequate Protection Obligations, the Second Lien Lenders are hereby granted (effective and perfected upon the date hereof and without the necessity of the execution by the Debtor of security agreements, pledge agreements, mortgages, financing

statements or other agreements) a valid, perfected security interest in and lien on all of the DIP Collateral (the “**Second Lien Adequate Protection Liens**” and collectively with the First Lien Adequate Protection Liens, the “**Adequate Protection Liens**”), subject and subordinate only to (i) the DIP Liens, (ii) the Carve-Out, (iii) the First Lien Adequate Protection Liens, (iv) the Prepetition First Liens and (v) the Non-Primed Liens, and subject further to the terms of the Subordination Agreement.

(b) **Second Lien Section 507(b) Claims.** The Second Lien Adequate Protection Obligations shall constitute superpriority claims as provided in section 507(b) of the Bankruptcy Code (the “**Second Lien 507(b) Claims**” and collectively with the First Lien 507(b) Claims, the “**507(b) Claims**”), with priority in payment over any and all administrative expenses of the kinds specified or ordered pursuant to any provision of the Bankruptcy Code, including without limitation, sections 326, 328, 330 and 331 of the Bankruptcy Code, subject and subordinate only to (i) the Carve-Out, (ii) the Superpriority Claims granted in respect of the DIP Obligations and (iii) the First Lien 507(b) Claims, and subject further to the terms of the Subordination Agreement. Unless otherwise expressly agreed to in writing by the DIP Lender, the Second Lien Lenders shall not receive or retain any payments, property or other amounts in respect of the Second Lien 507(b) Claims unless and until all DIP Obligations shall have indefeasibly been paid in full in cash in accordance with the DIP Documents, the Carve-Out amount is funded (only to the extent not previously paid), and the First Lien 507(b) Claims shall have been paid in full in cash.

16. *Reservation of Rights.* Notwithstanding any other provision hereof, but subject to the terms of the Subordination Agreement, the grant of adequate protection pursuant to the terms of this Interim Order is without prejudice to the right of any of the Prepetition Secured Parties to

seek modification of the grant of adequate protection provided hereby so as to provide different or additional adequate protection, and without prejudice to the right of the Debtor or any other party in interest (subject to the terms of the Subordination Agreement) to contest any such modification. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including, without limitation, section 506(b) thereof, the Court finds that the adequate protection provided herein, including, without limitation, in the form of the Adequate Protection Obligations and Adequate Protection Liens is reasonable and sufficient to protect the interests of the Prepetition Secured Parties; *provided* that any of the Prepetition Secured Parties may request further or different adequate protection, and the Debtor or any other party may, consistent with the terms of the Subordination Agreement (the terms of which, for the avoidance of any doubt, shall not be affected or modified in any way by this Interim Order), the First Lien BFA or any of the Second Lien NPAs, contest any such request; *provided further* that any such additional or modified adequate protection shall at all times be subordinate and junior to the DIP Liens and DIP Superpriority Claims and, with respect to any additional or modified adequate protection for the Second Lien Lenders, such adequate protection shall at all times be subordinate and junior to the First Lien Adequate Protection Liens, the First Lien Adequate Protection Obligations, and any claims of the First Lien Lender arising from the First Lien Documents. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Prepetition Secured Party or the DIP Lender.

17. *Automatic Effectiveness of Liens; Perfection of DIP Liens and Adequate Protection Liens.*

(a) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby vacated and modified to effectuate all of the terms and provisions of the DIP Orders, including without limitation, to: (a) permit the Debtor to grant the adequate protection provided for in this Interim Order; (b) permit the Debtor to perform such acts as the Prepetition Secured Parties and the DIP Lender may request to assure the perfection and priority of the liens granted in this Interim Order; and (c) permit the Debtor to incur all liabilities and obligations to the Prepetition Secured Parties and the DIP Lender under this Interim Order.

(b) The DIP Lender, the First Lien Lender and the Second Lien Lenders, as applicable, are hereby authorized, but not required, to file or record financing statements, intellectual property filings, mortgages, notices of lien or similar instruments in any jurisdiction, take possession of or control over, or take any other action in order to validate and perfect the DIP Liens or the applicable Adequate Protection Liens granted to them hereunder, subject to the terms of the Subordination Agreement. Whether or not the DIP Lender, the First Lien Lender or the Second Lien Lender, in their respective sole discretion, choose to file such financing statements, intellectual property filings, mortgages, notices of lien or similar instruments, take possession of or control over, or otherwise confirm perfection of the DIP Liens and the applicable Adequate Protection Liens, such DIP Liens and such Adequate Protection Liens shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or, other than as set forth in the Subordination Agreement, subordination as of the date of entry of this Interim Order.

(c) A certified copy of this Interim Order may, in the discretion of the DIP Lender, the First Lien Lender or the Second Lien Lenders, as the case may be, be filed with

or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording, subject to payment of any necessary filing fees.

(d) The Debtor shall execute and deliver to the DIP Lender, the First Lien Lender or Second Lien Lenders, as the case may be, all such agreements, financing statements, instruments and other documents as the DIP Lender, the First Lien Lender or the Second Lien Lenders, as the case may be, may reasonably request to evidence, confirm, validate or perfect the DIP Liens and the applicable Adequate Protection Liens.

18. *Preservation of Rights Granted Under the Interim Order.*

(a) Other than the DIP Liens and the Superpriority Claims, and subject to the terms of the Subordination Agreement, no claim or lien having a priority senior to or *pari passu* with those granted by this Interim Order to the Prepetition Agents shall be granted or allowed while any portion of the Adequate Protection Obligations remain outstanding, and the Adequate Protection Liens shall not be subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtor's estate under section 551 of the Bankruptcy Code or, except as set forth in the Subordination Agreement, subordinated to or made *pari passu* with any other lien or security interest, whether under section 364(d) of the Bankruptcy Code or otherwise.

(b) Unless all DIP Obligations shall have been indefeasibly paid in full in cash (or as otherwise may be allowed under the DIP Credit Agreement), it shall constitute an Event of Default under the DIP Credit Agreement if the Debtor seeks, or if there is entered, any modification of this Interim Order without the prior written consent of the DIP Lender,

and no such consent shall be implied by any other action, inaction or acquiescence by the DIP Lender or an order is entered converting or dismissing the Case. The Debtor's right to use Prepetition Collateral (including Cash Collateral) shall terminate if the Debtor seeks, or if there is entered, any modification of this Interim Order, whether directly or by entry of any other order having the same effect, that adversely affects any lien, claim, right, or other protection (including without limitation Adequate Protection) granted to or for the benefit of any Prepetition Secured Party without the prior written consent of such Prepetition Secured Party (consistent with the terms of the Subordination Agreement), and no such consent shall be implied by any other action, inaction, or acquiescence by any Prepetition Secured Party, or an order is entered converting or dismissing any of the Case.

(c) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacatur shall not affect (i) the validity, priority or enforceability of any DIP Obligations or the Adequate Protection Obligations incurred prior to the effective date of such reversal, stay, modification or vacatur or (ii) the validity, priority or enforceability of the DIP Liens or the Adequate Protection Liens. Notwithstanding any such reversal, stay, modification or vacatur, any use of any Cash Collateral, any DIP Obligations or any Adequate Protection Obligations incurred by the Debtor to the DIP Lender or to the Prepetition Secured Parties, as the case may be, prior to the effective date of such reversal, stay, modification or vacatur shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and the Prepetition Secured Parties shall be entitled to all of the rights, remedies, privileges and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order, the DIP

Documents (with respect to all DIP Obligations), the Adequate Protection Obligations and uses of any Cash Collateral.

(d) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Liens, the 507(b) Claims and all other rights and remedies of the DIP Lender and the Prepetition Secured Parties granted by this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code or dismissing the Case, or (ii) the entry of an order confirming a plan of reorganization in any of the Case and, pursuant to section 1141(d)(4) of the Bankruptcy Code, the Debtor has waived any discharge as to any remaining DIP Obligations or Adequate Protection Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in the Case, in any successor cases, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Adequate Protection Liens, the DIP Obligations, the Adequate Protection Obligations, the Superpriority Claims, the 507(b) Claims, and the other administrative claims granted pursuant to this Interim Order, and all other rights and remedies of the DIP Lender and the Prepetition Secured Parties granted by this Interim Order and the DIP Documents shall continue in full force and effect until all DIP Obligations are indefeasibly paid in full in cash (or otherwise satisfied in accordance with the DIP Credit Agreement) and all Adequate Protection Obligations are indefeasibly paid in full in cash or otherwise satisfied in accordance with this Interim Order.

19. *Effect of Stipulations on Third Parties.*

(a) The stipulations and admissions contained in paragraph 4 of this Interim Order, shall be binding upon the Debtor under all circumstances. The stipulations and admissions contained in paragraph 4 of this Interim Order shall be binding upon all parties in interest unless: (a) any party-in-interest that successfully seeks and obtains standing to do so has timely filed an adversary proceeding or contested matter or the Committee has timely filed an adversary proceeding or contested matter (subject to the limitations contained herein, including without limitation, in this paragraph 19(a)) by no later than with respect to any Committee appointed in the Case, the date that is 60 days after the formation or with respect to other parties in interest, no later than 75 days after the Petition Date; provided that any such deadline is subject to extension as may be specified by this Court for cause shown, or if the applicable Prepetition Secured Party agrees to such an extension with respect to any Claims and Defenses in respect of the First Lien Obligations or the Second Lien Obligations, as applicable, challenging the validity, enforceability, priority or extent of (A) the Prepetition First Lien Obligations or the liens on Prepetition Collateral securing the Prepetition First Lien Obligations or (B) the Prepetition Second Lien Obligations or the liens on the Prepetition Collateral securing the Prepetition Second Lien Obligations (collectively, the “Claims and Defenses”); and (b) an order is entered and becomes final in favor of the plaintiff sustaining any such challenge in any such timely filed adversary proceeding or contested matter; provided that, as to the Debtor, all such Claims and Defenses are hereby irrevocably waived, released and relinquished as of the Petition Date. If no such adversary proceeding or contested matter is timely filed in respect of the Prepetition First Lien Obligations or the Prepetition Second Lien Obligations, as the case may be, (x) the Prepetition First Lien Obligations and the Prepetition Second Lien Obligations, as the case

may be, shall constitute finally and irrevocably allowed claims, not subject to counterclaim, setoff, subordination (except as set forth in the Subordination Agreement), recharacterization of debt as equity, defense or avoidance, for all purposes in the Case and any subsequent chapter 7 case, (y) the liens on the Prepetition Collateral securing the Prepetition First Lien Obligations and the Prepetition Second Lien Obligations, as the case may be, shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, perfected and of the priority specified in paragraphs 4(b) and 4(e), as applicable, not subject to defense, counterclaim, recharacterization of debt as equity, subordination (except as set forth in the Subordination Agreement) or avoidance and (z) the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations, as the case may be, and the liens on the Prepetition Collateral granted to secure the Prepetition First Lien Obligations and the Prepetition Second Lien Obligations, as the case may be, shall not be subject to any other or further challenge by any party-in-interest (including the Committee), and such party-in-interest shall be enjoined from seeking to exercise the rights of the Debtor's estates, including without limitation, any successor thereto (including, without limitation, any estate representative or a chapter 7 or 11 trustee appointed or elected for the Debtor). If any such adversary proceeding or contested matter is timely filed, the stipulations and admissions contained in paragraph 4 of this Interim Order shall nonetheless remain binding and preclusive (as provided in the third sentence of this paragraph) on all parties-in-interest (including the Committee), except as to any such findings and admissions that were expressly and successfully challenged in such adversary proceeding or contested matter.

(b) For avoidance of doubt, any trustee appointed or elected in the Case shall, until the expiration of the period provided in paragraph 19(a) of this Interim Order for

asserting Claims and Defenses and thereafter for the duration of any adversary proceeding or contested matter timely commenced pursuant to paragraph 19(a) of this Interim Order (whether commenced by such trustee or commenced by another party in interest on behalf of the Debtor's estate) be deemed to be a party "other than the Debtor" and shall not, for purposes of such adversary proceeding or contested matter, be bound by the acknowledgements, admissions, confirmations, stipulations and waivers of the Debtor in this Interim Order that are the subject of, or specifically raised in connection with, such adversary proceeding or contested matter.

20. *Limitation on Use of DIP Loans, DIP Collateral and Prepetition Collateral.* The Debtor shall use the DIP Loans, the DIP Collateral and the Prepetition Collateral (including any Cash Collateral) solely as provided in this Interim Order and the DIP Documents. Notwithstanding anything herein or in any other order of this Court to the contrary, no DIP Loans, no DIP Collateral, no Prepetition Collateral (including any Cash Collateral) and no portion of the Carve-Out may be used to (a) object, contest, challenge or raise any defense to, the amount, validity, perfection, priority, extent or enforceability, of any amount due under the DIP Documents, the First Lien Documents, the Second Lien Documents, or the liens or claims granted under this Interim Order, (b) assert any Claims and Defenses, (c) prevent, hinder or otherwise delay the DIP Lender's assertion, enforcement or realization on the DIP Collateral in accordance with the DIP Documents or this Interim Order, (d) seek to modify any of the rights granted to the DIP Lender or the Prepetition Secured Parties hereunder or under the DIP Documents, the First Lien Documents, or the Second Lien Documents, in the case of each of the foregoing clauses (a) through (d), without such party's prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i)

approved by an order of this Court and (ii) permitted under the DIP Documents; provided that, notwithstanding anything to the contrary herein, no more than an aggregate of \$25,000 of the Prepetition Collateral (including any Cash Collateral), the DIP Loans, the DIP Collateral or the Carve-Out may be used by the Committee to investigate the validity, enforceability or priority of the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations or the liens on the Prepetition Collateral securing the Prepetition First Lien Obligations or the Prepetition Second Lien Obligations, or investigate any Claims and Defenses.

21. *Interim Order Governs.* In the event of any inconsistency between the provisions of this Interim Order or the DIP Documents, the provisions of this Interim Order shall govern.

22. *Binding Effect; Successors and Assigns.* The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties-in-interest in the Case, including without limitation, the DIP Lender, the Prepetition Secured Parties, and the Debtor and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the Debtor, an examiner with expanded powers appointed pursuant to section 1104 of the Bankruptcy Code, or any other fiduciary appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor) and shall inure to the benefit of the DIP Lender, the Prepetition Secured Parties and the Debtor and their respective successors and assigns; provided that, except to the extent expressly set forth in this Interim Order, the DIP Documents, or the Subordination Agreement, the DIP Lender and the Prepetition Secured Parties shall have no obligation to permit the use of the DIP Loans or any Cash Collateral or extend any financing to any chapter 7 trustee or similar responsible person appointed for the estate of the Debtor.

23. *Limitation of Liability.* By entering into the DIP Agreement, making any loan under the DIP Agreement or permitting the use of any Cash Collateral, the DIP Lender and the Prepetition Secured Parties shall not solely by reason thereof be deemed to be in control of the operations of the Debtor or to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtor. Furthermore, nothing in this Interim Order or in the DIP Documents shall in any way be construed or interpreted to impose or allow the imposition upon the DIP Lender or any Prepetition Secured Party of any liability for any claims arising from the pre-petition or post-petition activities of the Debtor.

24. *Subordination Agreement.* Nothing in this Interim Order shall amend or otherwise modify the terms or enforceability of the Subordination Agreement, including without limitation, the relative rights of all liens (including the liens that are granted or primed by this Interim Order), any rights as unsecured creditors of the Debtor as set forth therein, any approval provisions contained therein, and any turnover provisions contained therein, and the Subordination Agreement shall each remain in full force and effect. The rights of the Prepetition Secured Parties shall at all times remain subject to the Subordination Agreement.

25. *Credit Bidding.*

(a) The DIP Lender shall have the right to credit bid up to the full amount of the DIP Obligations in any sale of the DIP Collateral (including, without limitation, sales occurring under Section 363 of the Bankruptcy Code or included as part of any plan of reorganization subject to confirmation of such reorganization plan) as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

(b) Subject to entry of the Final Order and unless the Court orders otherwise, the full amount of the Prepetition First Lien Obligations and the Second Lien Obligations then outstanding may be used to “credit bid” for the assets and property of the Debtor (to the extent such assets are Prepetition Collateral or secured by First Lien Adequate Protection Liens (but with respect thereto, solely to the extent of the value of the First Lien Adequate Protection Liens) or Second Lien Adequate Protection Liens (but with respect thereto, solely to the extent of the value of the Second Lien Adequate Protection Liens), as applicable) as provided for in section 363(k) of the Bankruptcy Code, without the need for further Court order authorizing the same and whether such sale is effectuated through section 363(k) or 1129(b) of the Bankruptcy Code, by a chapter 7 trustee under section 725 of the Bankruptcy Code, or otherwise.

26. *Proofs of Claim.* The Prepetition Secured Parties will not be required to file proofs of claim in the Case or any converted case with respect to any obligations under the First Lien Documents, the Second Lien Documents, any other claims or liens granted hereunder or created hereby. The First Lien Lender and the Second Lien Lenders are hereby authorized and entitled, in their sole discretion, but not required, to file (and amend and/or supplement, as they see fit, as may be permitted by the Bankruptcy Rules) proofs of claims in the Case in respect of the Prepetition First Lien Obligations, the Prepetition Second Lien Obligations or the Adequate Protection Obligations. Any proof of claim so filed shall be deemed to be in addition and not in lieu of any other proof of claim that may be filed by any of the Prepetition Secured Parties and/or in addition to the stipulated liens and claims set forth in this Interim Order. The Debtor shall request that any order entered by the Court in relation to the establishment of a bar date in the

Case will provide that the Prepetition Secured Parties shall have no obligation to comply with the bar date.

27. *Rules of Construction.* For the avoidance of doubt, the rules of construction contained in Bankruptcy Code section 102 shall be applicable to this Interim Order (except for the rule of construction contained in section 102(5)).

28. *Objections to Entry of Final Order.* Any responses or objections to the entry of the Final Order must: (a) be made in writing; (b) state with particularity the grounds therefor; (c) conform to the Bankruptcy Rules and the Local Bankruptcy Rules for the District of Delaware; (d) be filed with the United States Bankruptcy Court for the District of Delaware; and (e) be served upon (i) counsel to the Office of the United States Trustee, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn: Mark Kenney (Mark.Kenney@usdoj.gov)); (ii) Verengo, Inc., 20285 So. Western Ave., Suite 200, Torrance, CA 90501 (Attn.: Dan Squiller (dan.squiller@verengosolar.com)); (iii) proposed counsel to the Debtor, Bayard, P.A., 222 Delaware Avenue, Suite 900, Wilmington, DE 19801 (Attn: Scott D. Cousins (SCousins@bayardlaw.com) and Evan T. Miller (EMiller@bayardlaw.com)); and (iv) counsel to the Stalking Horse Purchaser: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Paul V. Shalhoub (pshalhoub@willkie.com) and A. Mark Getachew (mgetachew@willkie.com)) and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware, 19801 (Attn: Matthew B. Lunn (mlunn@ycst.com)). The deadline by which objections to the Motion and entry of the Final Order must be filed and received by proposed counsel to the Debtor is [_____], 2016 at 4:00 p.m. (prevailing Eastern Time) (the “**Objection Deadline**”).

29. *Final Hearing.* A final hearing, if required, on the Motion will be held on [_____] (prevailing Eastern Time). If no objections are filed and served to the entry of the Final Order on or before the Objection Deadline, the Court may enter the Final Order without further notice or hearing.

30. *Retention of Jurisdiction.* The Court has and will retain jurisdiction and power to enforce this Interim Order in accordance with its terms and to adjudicate any and all matters arising from or related to the interpretation or implementation of this Interim Order.

31. *Effectiveness.* This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim Order.

Dated: _____, 2016

Wilmington, Delaware

THE HONORABLE [_____]
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Budget

Verengo, Inc.
Cash Projection 2016
As of 9/22/2016

	Projection 9/23/2016	Projection 9/30/2016	Projection 10/7/2016	Projection 10/14/2016	Projection 10/21/2016	Projection 10/28/2016	Projection 11/4/2016	Projection 11/11/2016	Projection 11/18/2016	Projection 11/25/2016	Projection 12/2/2016	Projection 12/9/2016	Projection 12/16/2016	Projection 12/23/2016	Projection 12/30/2016	9/23 - 12/31 Total	Terminal
Beginning Cash	552,000	(111,000)	(371,000)	(1,005,000)	(972,000)	(1,382,000)	(1,455,000)	(1,645,000)	(1,193,000)	(1,275,000)	(899,000)	(1,000,000)	(793,000)	(889,000)	(701,000)	552,000	
Receipts																	
Accounts Receivable	6,000	6,000	27,000	42,000	57,000	103,000	163,000	200,000	185,000	170,000	8,000	8,000	8,000	8,000	8,000	999,000	
Backlog/New Sales	14,000	14,000	32,000	47,000	62,000	108,000	390,000	427,000	412,000	397,000	459,000	459,000	459,000	459,000	459,000	4,198,000	
Letter of Credit Release	17,000	-	-	200,000	-	-	-	-	93,000	75,000	-	-	-	-	-	385,000	
Refunds/Asset Sales/Sub-rent	(1) 1,000	41,000	23,000	281,000	1,000	1,000	23,000	-	-	324,000	22,000	-	-	-	290,000	1,007,000	81,093
DIP Financing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Receipts	38,000	61,000	82,000	570,000	120,000	212,000	576,000	627,000	690,000	966,000	489,000	467,000	467,000	467,000	757,000	6,589,000	81,093
Operating Disbursements																	
Payroll & Benefits	(2) (12,000)	-	(328,000)	(33,000)	(317,000)	-	(349,000)	-	(362,000)	-	(366,000)	-	(377,000)	(5,000)	(351,000)	(2,500,000)	
Critical Consultants	(18,000)	(21,000)	(24,000)	(21,000)	(24,000)	(22,000)	(23,000)	(20,000)	(20,000)	(21,000)	(20,000)	(20,000)	(20,000)	(20,000)	(21,000)	(315,000)	
Subcontractor, Materials and Oth Job Costs	(446,000)	(245,000)	(250,000)	(117,000)	(127,000)	(128,000)	(110,000)	(128,000)	(142,000)	(198,000)	(113,000)	(125,000)	(121,000)	(163,000)	(197,000)	(2,610,000)	
Commissions & Referrals	(3,000)	(19,000)	(30,000)	(7,000)	(17,000)	(13,000)	(21,000)	(6,000)	(21,000)	(12,000)	(20,000)	(5,000)	(20,000)	(11,000)	(20,000)	(225,000)	
General & Administrative	(77,000)	(22,000)	(10,000)	(33,000)	(6,000)	(24,000)	(6,000)	(16,000)	(18,000)	(26,000)	(4,000)	(10,000)	(22,000)	(7,000)	(24,000)	(305,000)	
Insurance	(32,000)	-	(3,000)	(283,000)	(23,000)	-	(3,000)	-	(3,000)	(160,000)	(3,000)	(3,000)	(3,000)	-	(164,000)	(677,000)	
Rent & Utilities	(74,000)	(2,000)	(54,000)	(6,000)	(8,000)	(2,000)	(54,000)	-	(6,000)	(10,000)	(54,000)	-	-	(8,000)	(8,000)	(286,000)	
CA Sales & Use Tax	-	-	-	-	-	(41,000)	(40,000)	-	-	(50,000)	-	-	-	(65,000)	-	(196,000)	
Wind down costs	(1) -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(81,093)
Total Disbursements	(662,000)	(309,000)	(699,000)	(500,000)	(522,000)	(230,000)	(606,000)	(170,000)	(572,000)	(477,000)	(580,000)	(160,000)	(563,000)	(279,000)	(785,000)	(7,114,000)	(81,093)
BANKRUPTCY COST AND PROFESSIONAL FEES																	
Financial Advisory	-	-	-	-	-	-	-	-	-	(100,000)	-	-	-	-	-	(100,000)	
DE Bankruptcy Attorney	-	-	-	-	-	-	(150,000)	-	-	-	-	(100,000)	-	-	(190,000)	(440,000)	
Claims Agent	(5,000)	(5,000)	-	(5,000)	-	(5,000)	-	(5,000)	-	(5,000)	-	-	-	-	-	(30,000)	
Creditors Committee	-	-	-	-	-	(50,000)	-	-	-	-	-	-	-	-	-	(50,000)	
US Trustee Fees	-	-	-	(7,000)	-	-	-	-	-	-	-	-	-	-	(13,000)	(20,000)	
Travel	(6,000)	-	-	-	(8,000)	-	-	-	-	(8,000)	-	-	-	-	(10,000)	(32,000)	
Utility Motions	(21,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(21,000)	
Other Professional Support	(7,000)	(7,000)	(17,000)	-	-	-	(10,000)	-	-	-	(10,000)	-	-	-	(15,000)	(66,000)	
Investment Bank	-	-	-	(25,000)	-	-	-	-	(200,000)	-	-	-	-	-	-	(225,000)	
Total Bankruptcy Costs	(39,000)	(12,000)	(17,000)	(37,000)	(8,000)	(55,000)	(160,000)	(5,000)	(200,000)	(113,000)	(10,000)	(100,000)	-	-	(228,000)	(984,000)	-
Net Cash Flow	(663,000)	(260,000)	(634,000)	33,000	(410,000)	(73,000)	(190,000)	452,000	(82,000)	376,000	(101,000)	207,000	(96,000)	188,000	(256,000)	(1,509,000)	-
Ending Cash	(111,000)	(371,000)	(1,005,000)	(972,000)	(1,382,000)	(1,455,000)	(1,645,000)	(1,193,000)	(1,275,000)	(899,000)	(1,000,000)	(793,000)	(889,000)	(701,000)	(957,000)	(957,000)	
Cash Needed for the Week (assumes previous we	111,000	260,000	634,000	-	377,000	73,000	190,000	-	-	-	-	-	-	-	-	-	

Notes:

(1) The \$81k in the Terminal column represents a tax refund expected in 2017. These funds are reserved to cover certain wind down costs, such as: preparation of final tax returns, Dec sales tax paid in Jan, issuance of employee W-2s, and closure of the 401k Plan and related items.

(2) Payroll is paid one week in arrears. Upon final payroll, the arrearage amount will be payable in addition to the regular payroll for that period.

Exhibit B

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this “*Agreement*”) is made effective as of the 23rd day of September, 2016, by and between CRIUS SOLAR FULFILLMENT, LLC, a Delaware limited liability company (the “*DIP Lender*”), and VERENGO, INC., a Delaware corporation (the “*DIP Borrower*”).

INTRODUCTORY STATEMENTS

WHEREAS, the DIP Lender has agreed to extend to the DIP Borrower a secured revolving credit facility in an aggregate principal amount not to exceed Two Million Dollars (\$2,000,000); and

WHEREAS, on September 23, 2016 (the “*Petition Date*”), the DIP Borrower filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “*Bankruptcy Code*”) in the United States Bankruptcy Court for the District of Delaware (the “*Bankruptcy Court*”).

NOW, THEREFORE, in consideration of the mutual covenants set forth herein and intending to be legally bound, each of the parties hereto agree as follows:

ARTICLE 1. DEFINITIONS

SECTION 1.1 Defined Terms. As used in this Agreement, the following terms have the following meanings:

“*Affiliate*” of any Person means (a) any Person which, directly or indirectly, is in control of, is controlled by, or is under common control with such Person, or (b) any Person who is a director or officer (i) of such Person, (ii) of any Subsidiary of such Person or (iii) of any Person described in clause (a) above. For purposes of this definition, control of a Person shall mean the power, direct or indirect, (x) to vote more than 50% of the securities having ordinary voting power for the election of directors (or equivalent governing body) of such Person, whether by ownership of securities, contract, proxy or otherwise, or (y) to direct or cause the direction of the management and policies of such Person, whether by ownership of securities, contract, proxy or otherwise.

“*Bankruptcy Code*” has the meaning specified in the Introductory Statements hereto.

“*Bankruptcy Court*” has the meaning specified in the Introductory Statements hereto.

“*Budget*” means the budget for the 15-week period commencing on the Petition Date, substantially in the form of Schedule 1 to the DIP Order, as the same may be further amended, supplemented, restated or otherwise modified from time to time, including any such amendment, supplement, restatement or other modification in accordance with the terms of this Agreement that extends the Budget to cover additional time periods beyond the initial 15-week period covered by the Budget.

“**Business Day**” means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed.

“**Chapter 11 Case**” has the meaning specified in Section 2.5(b).

“**Closing Fee**” has the meaning specified in Section 3.1.

“**Default**” means any event or condition that, with the giving of any notice, the passage of time, or both, would be an Event of Default.

“**DIP Borrower**” has the meaning specified in the Introductory Statements hereto.

“**DIP Collateral**” has the meaning specified in the DIP Order.

“**DIP Commitment**” means, as to the DIP Lender, its obligation to make Loans pursuant to Section 2.1 in an aggregate principal amount not to exceed Two Million Dollars (\$2,000,000).

“**DIP Lender**” has the meaning specified in the Introductory Statements hereto.

“**DIP Order**” has the meaning specified in Section 4.1(b).

“**Effective Date**” means the date on which the conditions specified in Section 4.1 are satisfied (or waived).

“**Indebtedness**” of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding trade accounts payable in the ordinary course of business and any earn-out obligation until such obligation becomes a liability on the balance sheet of such Person in accordance with GAAP), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (f) all guarantees by such Person of Indebtedness of others, (g) all obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty and (i) all obligations, contingent or otherwise, of such Person in respect of bankers’ acceptances. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person’s ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. The amount of Indebtedness of any Person for purposes of

clause (e) above shall (unless such Indebtedness has been assumed by such Person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the fair market value of the property encumbered thereby as determined by such Person in good faith.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time.

“**Governmental Authority**” means the government of the United States of America, any other nation or any political subdivision thereof, whether federal, state, provincial, territorial, local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supra national bodies such as the European Union or the European Central Bank).

“**Lien**” means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset.

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

“**Loan Document**” means this Agreement and each other agreement, document, instrument or supplement executed and delivered to the DIP Lender pursuant to this Agreement, and any amendment, waiver, supplement or other modification to any of the foregoing.

“**Material Adverse Effect**” means (a) a material adverse change in, or a material adverse effect upon, the operations, business, properties, liabilities or condition (financial or otherwise) of the DIP Borrower; (b) a material impairment of the ability of the DIP Borrower to perform its obligations under this Agreement; or (c) a material impairment of the rights and remedies of the DIP Lender or a material adverse effect upon the legality, validity, binding effect or enforceability against the DIP Borrower of this Agreement. In determining whether any individual event would result in a Material Adverse Effect, notwithstanding that such event in and of itself does not have such effect, a Material Adverse Effect shall be deemed to have occurred if the cumulative effect of such event and all other than existing events would result in a Material Adverse Effect. Notwithstanding the foregoing, the filing of the Chapter 11 Case (and events that customarily occur leading up to the commencement and pendency of a proceeding under chapter 11 of the Bankruptcy Code) will not be deemed to have had a Material Adverse Effect.

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

“**Obligations**” means all amounts, now or hereafter, owing by the DIP Borrower to the DIP Lender pursuant to this Agreement or any other Loan Document (including all principal, interest, fees, indemnities and other amounts).

“Organizational Documents” means, with respect to any Person, the charter, articles or certificate of organization or incorporation and bylaws or other organizational or governing documents of such Person.

“Person” means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

“Personnel Trigger Event” means more than four (4) of the persons set forth on Schedule 1 attached hereto are no longer employed by the DIP Borrower in the capacities set forth beside their respective names on such Schedule 1.

“Petition Date” has the meaning specified in the Introductory Statements hereto.

“Purchase Agreement” means that certain Asset Purchase Agreement, dated as of September 23, 2016, by and between the DIP Borrower and the DIP Lender, as the same may be amended, restated, supplemented or otherwise modified in accordance with the terms thereof.

“Requirements of Law” means, with respect to any Person, any statutes, laws, treaties, rules, regulations, orders, decrees, writs, injunctions or determinations of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

“Responsible Officer” means, with respect to any Person, the president, treasurer, chief executive officer, the chief operating officer, the chief financial officer, assistant treasurer, corporate controller or any vice president of such Person.

“Subsidiary” as to any Person, means a corporation, partnership, limited liability company or other entity of which shares of stock of each class or other interests having ordinary voting power (other than stock or other interests having such power only by reason of the happening of a contingency) to elect a majority of the board of directors or other managers of such corporation, partnership or other entity are at the time owned, or the management of which is otherwise controlled, by such Person or by one or more Subsidiaries of such Person or by such Person and one or more Subsidiaries of such Person. A Subsidiary shall be deemed wholly-owned by a Person who owns directly or indirectly all of the voting shares of stock or other interests of such Subsidiary having voting power under ordinary circumstances to vote for directors or other managers of such corporation, partnership or other entity, except for (a) directors’ qualifying shares, (b) shares owned by multiple shareholders to comply with local laws and (c) shares owned by employees.

SECTION 1.2 Terms Generally. As used herein or in any other Loan Document, accounting terms relating to the DIP Borrower not defined in Section 1.1, and accounting terms partly defined in Section 1.1 to the extent not defined, shall have the respective meanings given to them under GAAP. The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and section, schedule and exhibit references are to this Agreement unless otherwise specified. Unless otherwise expressly provided herein, references to agreements (including the Loan Documents) and other contractual instruments shall be deemed to include all subsequent amendments, restatements, extensions, supplements and other

modifications thereto, but only to the extent such amendments, restatements, extensions, supplements and other modifications are permitted by the DIP Order, this Agreement and the other Loan Documents. The meanings given to terms defined herein shall be equally applicable to the singular and plural forms of such terms.

ARTICLE 2. THE COMMITMENT AND LOANS

SECTION 2.1 The Credit Facility.

(a) Subject to the terms and conditions set forth herein, the DIP Lender agrees to make one or more secured loans (each individually, a “*Loan*” and, collectively, the “*Loans*”) to the DIP Borrower in a maximum aggregate principal amount at any time outstanding not to exceed the DIP Commitment. Amounts repaid in respect of the Loans may be reborrowed subject to Section 2.1(b) and Section 4.2.

(b) The DIP Borrower shall borrow Loans in amounts not exceeding the amount set forth in the Budget, subject to the permitted variances as set forth in the DIP Order.

SECTION 2.2 Requests for Borrowings. To request a borrowing, the DIP Borrower shall notify the DIP Lender of such request by telephone not later than 12:00 p.m., New York City time, three (3) Business Days before the date of the proposed borrowing. Each such telephonic request shall be irrevocable and shall be confirmed promptly by hand delivery or facsimile to the DIP Lender of a written request signed by the DIP Borrower. Each such telephonic and written request shall specify the following information:

- (a) the aggregate amount of such borrowing;
- (b) the funding date of such borrowing, which shall be a Business Day;
- (c) the location and number of the DIP Borrower’s account to which funds are to be disbursed; and
- (d) that, as of the date of such borrowing, the conditions set forth in Section 4.2 are satisfied.

SECTION 2.3 Interest. Each Loan shall bear interest on the unpaid principal amount thereof from the date made at a rate per annum equal to twelve percent (12%). The DIP Borrower shall pay any such accrued interest on the Maturity Date in accordance with Section 2.5(b). Interest hereunder shall be determined on the basis of a 365 (or 366 as the case may be) day year for the actual days elapsed.

SECTION 2.4 Default Interest. If any Event of Default shall have occurred and be continuing, the Loans and other Obligations shall bear interest (which shall be payable on demand by the DIP Lender in writing) at a rate per annum which is two percent (2%) in excess of the applicable interest rate set forth in Section 2.3 above, compounding quarterly from the date of the occurrence of such Event of Default until such Event of Default is cured (if such cure is permitted by the provisions hereof) as well after as before judgment.

SECTION 2.5 Repayment of the Loans.

(a) The DIP Borrower may prepay (subject to being reborrowed as may be permitted by Section 2.1 above) all or any portion of the outstanding principal amount of Loans or accrued interest at any time and from time to time, without premium or penalty, with prior written notice delivered no later than 12:00 p.m. New York City time three (3) Business Days prior to the date of such prepayment. All partial prepayments shall be applied first to accrued and unpaid interest, and second to the unpaid principal amount of the Loans.

(b) Notwithstanding the foregoing, the DIP Borrower shall pay the DIP Lender the entire outstanding amount of the Loans in full in cash, together with any accrued and unpaid interest incurred in accordance with this Agreement, on the date that is the earliest of (a) the date a plan is consummated in the chapter 11 case of the DIP Borrower (the "**Chapter 11 Case**"), (b) the date of consummation of a sale of all or substantially all of the assets of the DIP Borrower, or (c) December 31, 2016 (the "**Maturity Date**").

ARTICLE 3.
FEES

SECTION 3.1 Commitment Fee. The DIP Borrower shall pay (or cause to be paid) to the DIP Lender a fee (the "**Closing Fee**") equal to 2.00% of the aggregate amount of the DIP Commitments as of the Effective Date. The Closing Fee shall be fully vested and earned upon entry of the DIP Order, and shall be payable in full on the Maturity Date. Once paid, the Closing Fee payable under this Section 3.1 shall not be refundable under any circumstances and shall be paid free of any setoff.

ARTICLE 4.
CONDITIONS TO CREDIT EXTENSIONS

SECTION 4.1 Conditions to Initial Loans. The obligation of the DIP Lender to make the initial Loans hereunder is subject to satisfaction of the following conditions precedent:

(a) DIP Agreement. The DIP Lender shall have received an executed counterpart of this Agreement from the DIP Borrower.

(b) DIP Order. The DIP Lender shall have received a copy of the Bankruptcy Court interim order approving this Agreement (such order, including once approved by the Bankruptcy Court on a final basis, the "**DIP Order**"), which order (i) shall be in form and substance satisfactory to the DIP Lender, (ii) shall not have been stayed, vacated or reversed (in whole or in part) and (iii) shall not have been amended or modified other than with the consent of the DIP Lender.

(c) Secretary Certificate. The DIP Lender shall have received a copy of (i) each Organizational Document of the DIP Borrower certified, to the extent applicable, as of a recent date by the applicable Governmental Authority, (ii) signature and incumbency certificates of the officers of the DIP Borrower executing the Loan Documents, (iii) resolutions of the board of directors and/or similar governing body of the DIP Borrower approving and authorizing the execution, delivery and performance of Loan Documents, certified as of the Effective Date by its

secretary or an assistant secretary as being in full force and effect without modification or amendment, and (iv) a good standing certificate from the State of Delaware with respect to the DIP Borrower.

(d) Closing Certificate. The DIP Lender shall have received a certificate executed by a Responsible Officer of the DIP Borrower certifying that (i) except with respect to the filing of the Chapter 11 Case, there has been no event or circumstance since the Petition Date that has had or could be reasonably expected to have, either individually or in the aggregate, a Material Adverse Effect, and (b) either (i) no consents, licenses or approvals are required in connection with the execution, delivery and performance by the DIP Borrower and the validity against the DIP Borrower of this Agreement, or (ii) subject to the entry by the Bankruptcy Court of the DIP Order, all such consents, licenses and approvals have been obtained and are in full force and effect.

(e) Insurance. The DIP Lender shall have received certificates of insurance and endorsements evidencing the existence of insurance required to be maintained by the DIP Borrower pursuant to this Agreement, and, if applicable, the DIP Lender shall be named as an additional insured or loss payee, as the case may be, under insurance policies maintained with respect to the assets and properties of the DIP Borrower.

(f) Budget. The DIP Lender shall have received the Budget and such other financial statements or information as the DIP Lenders shall have reasonably requested prior to the Effective Date.

SECTION 4.2 Conditions to All Credit Extensions Loans. The obligation of the DIP Lender to make any Loan hereunder (including the initial Loans) is subject to satisfaction of the following conditions precedent:

(a) Notice of Borrowing. The DIP Lender shall have received a request for such Loan in accordance with Section 2.2.

(b) Representations and Warranties. The representations and warranties of the DIP Borrower contained in Article 5, or which are contained in any other Loan Document, shall be true and correct in all material respects on and as of the date of the making of any Loan, except (i) to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and (ii) in the case of any representation and warranty qualified by materiality, in which case they shall be true and correct in all respects.

(c) No Default. No Default or Event of Default shall exist, or would result from such proposed Loan or from the application of the proceeds thereof.

(d) DIP Order. The DIP Order shall not have been (i) stayed, vacated or reversed (in whole or in part), or (ii) amended or modified other than with the consent of the DIP Lender.

(e) Budget. The purpose of each borrowing shall be consistent with the Budget in accordance with Section 6.7.

(f) Fees. The DIP Lender shall have received all fees, expenses and other consideration agreed to in writing by it or otherwise presented for payment and that are required to be paid or delivered on or before the date of such borrowing.

Each borrowing request submitted by the DIP Borrower shall be deemed to be a representation and warranty that the conditions specified in Section 5.2(b), (c), (d) and (e) have been satisfied on and as of the date of the applicable borrowing.

SECTION 4.3 Post-Closing Conditions.

(a) Control Agreements. Within thirty (30) days after the Petition Date, the DIP Borrower shall have entered into a deposit account control agreement, in form and substance reasonably satisfactory to the DIP Lender, with each financial institution at which the DIP Borrower maintains deposit accounts on or after the Petition Date, pursuant to which such financial institution shall confirm and acknowledge the DIP Lender's security interest in such deposit accounts and shall agree to comply with instructions originated by the DIP Lender as to disposition of funds in such deposit accounts without further consent by the DIP Borrower.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES

The DIP Borrower hereby represents and warrants to the DIP Lender that:

SECTION 5.1 Existence, Qualification and Power. The DIP Borrower (a) is a corporation, duly incorporated, validly existing and in good standing under the laws of the State of Delaware, (b) subject to any entry of any required orders of the Bankruptcy Court including, without limitation, the entry of the DIP Order, has all requisite power and authority and all requisite governmental licenses, permits, authorizations, consents and approvals necessary to (i) own or lease its material assets and carry on its business in the ordinary course and (ii) execute, deliver and perform its obligations under this Agreement, and (c) is duly qualified and is licensed and, where applicable, in good standing under the laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (c), to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect.

SECTION 5.2 Authorization; No Contravention. Subject to the entry of the DIP Order, the execution, delivery and performance by the DIP Borrower of this Agreement and each of the Loan Documents has been duly authorized by all necessary corporate or other organizational action, and does not and will not: (a) contravene the terms of any of the DIP Borrower's Organizational Documents; (b) conflict with or result in any breach, termination, or contravention of, or constitute a default under, or require any payment to be made under (ii) any contract or any indebtedness to which the DIP Borrower is a party or affecting DIP Borrower or its properties or (ii) any order, injunction, writ or decree of any governmental authority or any arbitral award to which such person or its property is subject, (c) result in or require the creation of any Lien upon any asset of the DIP Borrower (other than Liens under the DIP Order), or (d) violate any Requirement of Law applicable to or binding upon the DIP Borrower or any of its properties or assets.

SECTION 5.3 Governmental Authorization; Other Consents. Subject to the entry of the DIP Order, no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other person is necessary or required in connection with the execution, delivery or performance by, or enforcement against, the DIP Borrower of this Agreement or any other Loan Document, except for such as have been obtained or made and are in full force and effect.

SECTION 5.4 Binding Effect. This Agreement has been duly executed and delivered by the DIP Borrower. Subject to the entry of the DIP Order, this Agreement and each other Loan Document constitutes a legal, valid and binding obligation of the DIP Borrower, enforceable against the DIP Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 5.5 Litigation. Except as specifically set forth on Schedule 4.5 attached hereto, there are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of the DIP Borrower, threatened in writing, at law, in equity, in arbitration or before any Governmental Authority, by or against DIP Borrower that (a) purport to affect or pertain to this Agreement, the Loan Documents or any of the transactions contemplated thereby, or (b) either individually or in the aggregate, if determined adversely, could reasonably be expected to result in material liability to the DIP Borrower.

SECTION 5.6 Insurance. The properties of the DIP Borrower is insured with financially sound and reputable insurance companies with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption and property damage insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the DIP Borrower operates.

SECTION 5.7 Compliance with Laws and Budget. Except to the extent non-performance thereof is permitted by the Bankruptcy Code, the DIP Borrower is in compliance with (a) the Requirements of Laws and (b) the Budget, subject to the permitted variances as set forth in the DIP Order

SECTION 5.8 No Default. No Default or Event of Default has occurred and is continuing.

SECTION 5.9 Financial Statements, Etc. The DIP Borrower has furnished to the DIP Lender (a) the consolidated balance sheet and related statements of income, stockholders' equity and cash flows of the DIP Borrower and its consolidated Subsidiary as of and for the fiscal years ended December 31, 2012, December 31, 2013 and December 31, 2014, audited by and accompanied by the opinion of Squar, Milner, Peterson, Miranda & Williamson LLP and (b) the unaudited consolidated balance sheet and related statements of income, stockholders' equity and cash flows of the DIP Borrower as of and for the fiscal month ended May 31, 2015. Such financial statements present fairly in all material respects the consolidated financial condition and results of operations of the DIP Borrower as at such dates and for such periods. All such financial statements, including any related schedules and notes thereto have been prepared in

accordance with GAAP applied consistently throughout the periods involved subject, in the case of unaudited financial statements, to audit adjustments and the absence of footnotes

SECTION 5.10 Information Correct. None of the reports, financial statements, certificates or other written information furnished by or on behalf of the DIP Borrower to the DIP Lender in connection with the negotiation of any Loan Document or delivered thereunder (as modified or supplemented by other information so furnished), when taken as a whole, contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to projected financial information, including, without limitation, such projected information set forth in the Budget, the DIP Borrower represents only that such information was prepared in good faith based upon assumptions believed by them to be reasonable at the time delivered and, if such projected financial information was delivered prior to the Effective Date, as of the Effective Date, it being understood that any such projected financial information may vary from actual results and such variations could be material. The DIP Borrower has not failed to disclose to the DIP Lender any material assumptions made with respect to, or in connection with, the Budget and all reports or other information contained in the Budget are true, correct, complete and accurate in all material respects

SECTION 5.11 Federal Regulations; Investment Company Act.

(a) No part of the proceeds of the Loan will be used for any purpose which violates the provisions of Regulation T, U or X of the Board of Governors of the Federal Reserve System, together with any successor. The DIP Borrower is not engaged and will not engage, principally or as one of its important activities, in the business of extending credit for the purpose of “purchasing” or “carrying” any “margin stock” within the respective meanings of each of the quoted terms under said Regulation U.

(b) The DIP Borrower is not required to register as an “investment company” (as defined or used in the Investment Company Act of 1940, as amended).

ARTICLE 6.
AFFIRMATIVE COVENANTS

SECTION 6.1 Financial Statements. The DIP Borrower shall furnish to the DIP Lender:

(a) on or before 5:00 p.m., New York City time, of Wednesday of each calendar week, commencing September 26, 2016, (i) a comparison of actual results for the weekly period ending the preceding Friday before such date of all items contained in the Budget to the amounts originally contained in the Budget, and (ii) a cumulative comparison of the actual results for the period from the Petition Date through the end of the week for the weekly period ending the preceding Friday before such date of results of all items contained in the Budget to the amounts originally contained in the Budget; and

(b) as soon as available, but in any event not later than fifteen (15) days after the end of each calendar month to end after the Effective Date (commencing with the calendar

month ending September 30, 2016) (i) the unaudited consolidated balance sheet of the DIP Borrower as at the end of each such month, and (ii) the related unaudited consolidated statements of income and cash flows of the DIP Borrower for such month and the portion of the fiscal year of the DIP Borrower through such month-end date, accompanied by a certificate of a Responsible Officer, which certificate shall state that such consolidated financial statements fairly present, in all material respects, the consolidated financial condition and results of operations of the DIP Borrower.

SECTION 6.2 Notices and Other Information.

(a) the DIP Borrower shall promptly deliver to the DIP Lender, no less than three (3) Business Days prior to the filing thereof, drafts of all pleadings, motions, applications, judicial information, financial information and any other documents to be filed by or on behalf of the DIP Borrower in the Chapter 11 Case;

(b) the DIP Borrower shall promptly deliver to the DIP Lender and any parties required to receive notice in the DIP Order notice of (i) the occurrence of any Default or Event of Default, (ii) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, (iii) any breach or non-performance of, or any default under, a material contract of the DIP Borrower other than breaches or defaults arising as a result of the filing of the Chapter 11 Case, the exercise of remedies as a result of which are stayed under the Bankruptcy Code, (iv) of any dispute, litigation, investigation, proceeding or suspension between the DIP Borrower and any Governmental Authority or the commencement of, or any material development in, any material litigation or proceeding affecting the DIP Borrower, each of which is reasonably expected to result in a Material Adverse Effect, (v) the filing of any Lien for unpaid taxes against the DIP Borrower, or (vi) any casualty or other insured damage to any material portion of the DIP Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the DIP Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the DIP Collateral is damaged or destroyed; and

(c) The DIP Borrower shall deliver to the DIP Lender and the parties required to receive notice in the DIP Order promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the DIP Borrower, or compliance with the terms of any Loan Document, as the DIP Lender may reasonably request.

SECTION 6.3 Payment of Obligations. Subject to the provisions of the Bankruptcy Code and in accordance with the Budget, the DIP Borrower shall pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, (b) all lawful claims (including, without limitation, claims of landlords, warehousemen, customs brokers, freight forwarders, consolidators and carriers) which, if unpaid, would by law become a lien upon its property; and (c) all Indebtedness, as and when due and payable, but subject to any subordination provisions contained in any instrument or agreement evidencing such indebtedness, except, in each case, where (i) the validity or amount thereof is being contested in good faith by appropriate proceedings, (ii) such DIP Borrower has set aside on its books adequate reserves with respect thereto, (iii) such contest effectively suspends collection of the

contested obligation and enforcement of any lien securing such obligation, (iv) no Lien has been filed with respect thereto and (v) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect. For the avoidance of doubt, nothing herein requires payment of any obligation subject to the automatic stay of the Bankruptcy Code.

SECTION 6.4 Preservation of Existence. The DIP Borrower shall (a) preserve, renew and maintain in full force and effect its legal existence and good standing under the laws of the jurisdiction of its organization or formation, (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its intellectual property, except to the extent such intellectual property is no longer used or useful in the conduct of the business of the DIP Borrower.

SECTION 6.5 Maintenance of Properties; Maintenance of Insurance. The DIP Borrower shall (a) maintain, preserve and protect all of its material properties and equipment necessary in the operation of its business in good working order and condition, ordinary wear and tear excepted; and (b) make all necessary repairs thereto and renewals and replacements thereof, except in all cases where the failure to do so could not reasonably be expected to have a Material Adverse Effect. The DIP Borrower shall maintain with financially sound and reputable insurance companies insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable law, of such types and in such amounts as are customarily carried under similar circumstances by such other persons.

SECTION 6.6 Compliance with Laws. Except to the extent noncompliance is permitted under the Bankruptcy Code or could not reasonably be expected to have a Material Adverse Effect, the DIP Borrower shall comply with the Requirements of Law.

SECTION 6.7 Use of Proceeds. The DIP Borrower shall use the proceeds of the Loans, to the extent permitted under applicable law, the Budget (subject to the permitted variances set forth in the DIP Order) and this Agreement, (a) to finance general working capital purposes of the DIP Borrower in the ordinary course of business or as otherwise approved by the DIP Lender, and (b) to pay fees, expenses, and costs incurred in connection with the Chapter 11 Case, as well as the payment of any adequate protection approved in the DIP Order.

SECTION 6.8 Information Regarding the DIP Collateral. The DIP Borrower shall furnish to the DIP Lender and the parties required to receive notice in the DIP Order, at least fifteen (15) days prior written notice of any change in: (a) the DIP Borrower's name or in any trade name used to identify it in the conduct of its business or in the ownership of its properties; (b) the location of the DIP Borrower's chief executive office, its principal place of business, any office in which it maintains books or records relating to the DIP Collateral owned by it, (c) the DIP Borrower's organizational structure or jurisdiction of incorporation or formation, or (d) the DIP Borrower's Federal Taxpayer Identification Number or organizational identification number assigned to it by its state of organization. The DIP Borrower agrees not to affect or permit any change referred to in the preceding sentence unless all filings have been made under the Uniform

Commercial Code or otherwise that are required in order for the DIP Lender to continue at all times following such change to have a valid, legal and perfected first priority security interest in all the DIP Collateral.

SECTION 6.9 Inspection of Property; Books and Records; Discussions; Management Presentations. The DIP Borrower shall keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities which permit financial statements to be prepared in conformity with GAAP and all Requirements of Law; and permit representatives of the DIP Lender upon reasonable notice to visit and inspect any of its properties and examine and make abstracts from any of its books and records at any reasonable time and as often as may reasonably be requested, and to discuss the business, operations, assets and financial and other condition of the DIP Borrower with officers and employees thereof. Upon request by the DIP Lender, and in no event less frequently than on a bi-weekly basis, the senior management of the DIP Borrower shall provide management presentations to the DIP Lender.

SECTION 6.10 Material Contracts. Except to the extent nonperformance thereof is permitted by the Bankruptcy Code, and other than as a result of the filing of the Chapter 11 Case and the effect thereof, the DIP Borrower shall (a) maintain each material contract in full force and effect and (b) enforce each material contract in accordance with its terms.

SECTION 6.11 Performance Within Budget. The DIP Borrower shall perform in accordance with the Budget, including having made all scheduled payments to DIP Lender, subject to the permitted variances set forth in the DIP Order, and timely provide notices to the parties required to receive notice in the DIP Order, as applicable, as and when required.

SECTION 6.12 DIP Order. The DIP Borrower shall comply with the DIP Order, as then in effect, in all respects, and shall not seek any reversal, vacatur, stay, amendment or modification thereto without consent of the DIP Lender.

SECTION 6.13 Further Actions. The DIP Borrower shall take such further actions and shall execute such further documents or instruments as may be reasonably necessary to fulfill or give force and effect to this Agreement, including without limitation that the DIP Borrower agrees to issue a promissory note to evidence the Loans upon request.

ARTICLE 7. NEGATIVE COVENANTS

SECTION 7.1 Indebtedness.

(a) The DIP Borrower shall not, on or after the date hereof, (a) create, incur, assume, guarantee, suffer to exist or otherwise become or remain liable with respect to, any Indebtedness, except

- (i) Indebtedness incurred pursuant to the Loan Documents;
- (ii) Indebtedness outstanding on the Effective Date and listed on Schedule 6.1 attached hereto;

(iii) Indebtedness incurred in respect of letters of credit, bank guarantees, bankers' acceptances, warehouse receipts or similar instruments issued or created in the ordinary course of business, including in respect of workers compensation claims, health, disability or other employee benefits or property, casualty or liability insurance or self-insurance or other Indebtedness with respect to reimbursement type obligations regarding workers compensation claims in accordance with the Budget; and

(iv) trade credit incurred in the ordinary course of business in accordance with the Budget.

(b) The DIP Borrower shall not issue and sell any capital stock, without, in each case, the prior written consent of the DIP Lender.

SECTION 7.2 Liens. The DIP Borrower shall not create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired other than the following Liens (to the extent, with respect to the DIP Borrower or any of its assets or properties (x) if created, incurred or assumed by such Person on or after the Petition Date, such Liens have been approved and authorized by the Bankruptcy Court with the prior written consent of the DIP Lender and (y) if created, incurred or assumed by such Person before the Petition Date, such Liens have the priority set forth in the DIP Order):

(a) Liens granted pursuant to the Loan Documents;

(b) Liens outstanding on the Effective Date and listed on Schedule 6.2 attached hereto;

(c) Liens arising after the Petition Date for taxes, assessments or other governmental charges not yet delinquent or which are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the DIP Borrower in accordance with GAAP;

(d) Liens which are statutory liens for amounts incurred before or after the Petition Date in connection with workmen's compensation obligations, unemployment insurance and other social security laws; and

(e) carriers', warehousemen's, mechanics' repairmen's and other like Liens imposed by law, arising in the ordinary course of business.

SECTION 7.3 Investments. The DIP Borrower shall not make any loans, advances or other transfers of assets or investments to any Person without the consent of the DIP Lender.

SECTION 7.4 Fundamental Changes. The DIP Borrower shall not merge, dissolve, liquidate, consolidate with or into another person without the prior written consent of the DIP Lender

SECTION 7.5 Dispositions. The DIP Borrower shall not other than in the ordinary course of business, sell, assign, transfer, license, lease or otherwise dispose (whether in one transaction or in a series of transactions, and including any sale and leaseback transaction and

any sale, transfer, license or other disposition) of any property (including, without limitation, any capital stock) or grant any option or other right to do any of the foregoing without, in any such case, the prior written consent of the DIP Lender.

SECTION 7.6 Dividends. The DIP Borrower shall not declare any dividends on any shares of any class of capital stock, or make any payment on account of, or set apart assets for a sinking or other analogous fund for, the purchase, redemption, retirement or other acquisition of any shares of any class of capital stock, or any warrants or options to purchase such capital stock, whether now or hereafter outstanding, or make any other distribution in respect thereof, either directly or indirectly, whether in cash or property or in obligations of the DIP Borrower.

ARTICLE 8. EVENTS OF DEFAULT

SECTION 8.1 Events of Default. The occurrence and continuance of any of the following events shall constitute an “*Event of Default*,” unless waived in writing by the DIP Lender:

- (a) The DIP Borrower shall fail to pay any principal of any Loan when the same shall become due and payable by the terms of this Agreement; or
- (b) The DIP Borrower shall fail to pay any interest, fee or amount (other than principal) within two (2) Business Days after any such interest, fee or amount becomes due and payable; or
- (c) The DIP Borrower fails to perform or observe any term, covenant or agreement contained in Section 6.1, Section 6.2(b)(i) or Article 7 of this Agreement; or
- (d) The DIP Borrower fails to perform or observe any other term, covenant or agreement contained in this Agreement and such default shall continue unremedied for a period of five (5) days; or
- (e) On a cumulative basis, commencing on the Petition Date, (i) cumulative Receipts are below the cumulative amount of Receipts identified in the Budget or (ii) cumulative Disbursements are above the cumulative amount of Disbursements identified in the Budget, in each case, subject to the permitted variances as set forth in the DIP Order; or
- (f) Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of the DIP Borrower herein or in any document delivered in connection herewith shall be incorrect or misleading in any material respect when made or deemed made (or, with respect to any representation, warranty, certification, or statement of fact qualified by materiality, incorrect or misleading in any respect); or
- (g) Any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of the DIP Borrower; or

(h) Except as otherwise expressly permitted hereunder, the DIP Borrower shall take any action to suspend the operation of its business in the ordinary course or liquidate all or a material portion of its assets; or

(i) There occurs any uninsured loss to any material portion of the DIP Collateral; or

(j) The occurrence of a Material Adverse Effect; or

(k) The DIP Borrower files a motion with the Bankruptcy Court seeking the authority to liquidate all or substantially all of the DIP Borrower's assets or capital stock without the prior written consent of the DIP Lender; or

(l) The entry of an order reversing, amending, supplementing, staying, vacating or otherwise modifying this Agreement or the DIP Order, without the written consent of the DIP Lender, or the filing by the DIP Borrower of a motion for reconsideration with respect to the DIP Order or the DIP Order is otherwise not in full force and effect, in each case, without the consent of the DIP Lender; or

(m) The entry of an order dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; or

(n) The entry of an order appointing a chapter 11 trustee or examiner with expanded powers in the Chapter 11 Case; or

(o) The lapse, reduction or termination of the DIP Borrower's exclusivity period to file and solicit a plan of reorganization pursuant to section 1121 of the Bankruptcy Code or the conversion of the Case to a case under chapter 7 of the Bankruptcy Code; or

(p) The DIP Borrower's breach any material provisions of the DIP Order; or

(q) The entry of an order in the Chapter 11 Case charging any of the DIP Collateral (as defined in the DIP Order) under Section 506(c) of the Bankruptcy Code or otherwise; or

(r) The entry of an order granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow foreclosure (or granting of a deed in lieu of foreclosure) on any DIP Collateral; or

(s) The Debtor seeks to commence an action against the DIP Lender, the First Lien Lender with respect to any of the Prepetition First Lien Obligations or First Lien Documents, or the Debtor otherwise fails to comply in any material respect with any of the material terms or conditions contained in this Agreement or the DIP Order; or

(t) The payment of any prepetition claims (other than as permitted by the DIP Order or pursuant to an order entered in the Chapter 11 Case that is supported, or not objected to, by the DIP Lender); or

(u) Any party other than the DIP Lender or its designee is selected as the winning bidder for the Debtor's assets and the DIP Loan is not paid off in full in cash within five (5) Business Days of entry of an order in the Chapter 11 Case approving such party as the winning bidder; or

(v) The DIP Order has not been approved by the Bankruptcy Court on a final basis within thirty (30) days of the Petition Date; or

(w) The occurrence of a Personnel Trigger Event; or

(x) The DIP Borrower breaches any of its covenants, agreements, representations or warranties in the Purchase Agreement, and such breach is not waived or cured within the applicable cure period set forth in the Purchase Agreement.

If an Event of Default has occurred, and at any time thereafter during the continuance of such event, the DIP Lenders shall, by notice to the DIP Borrower, take either or both of the following actions, at the same or different times: (i) terminate the DIP Commitment, and thereupon the Commitment shall terminate immediately, and (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the DIP Borrower accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the DIP Borrower.

SECTION 8.2 Remedies Cumulative; No Waiver. Each and every right, power and remedy hereby specifically given to the DIP Lender shall be in addition to every other right, power and remedy specifically given under this Agreement, the Order or the other Loan Documents or now or hereafter existing at law or in equity, or by statute and each and every right, power and remedy whether specifically herein given or otherwise existing may be exercised from time to time or simultaneously and as often and in such order as may be deemed expedient by the DIP Lender. All such rights, powers and remedies shall be cumulative and the exercise or the beginning of exercise of one shall not be deemed a waiver of the right to exercise of any other or others. No delay or omission of the DIP Lender in the exercise of any such right, power or remedy and no renewal or extension of any of the Obligations shall impair any such right, power or remedy or shall be construed to be a waiver of any Default or Event of Default or an acquiescence therein

SECTION 8.3 Discontinuance of Proceedings. In case the DIP Lender shall have instituted any proceeding to enforce any right, power or remedy under this Agreement by foreclosure, sale, entry or otherwise, and such proceeding shall have been discontinued or abandoned for any reason, then and in every such case the DIP Borrower, the DIP Lender and each holder of any of the Obligations shall be restored to their former positions and rights hereunder with respect to the DIP Collateral subject to the Liens granted under this Agreement and the DIP Order, and all rights, remedies and powers of the DIP Lender shall continue as if no such proceeding had been instituted.

**ARTICLE 9.
MISCELLANEOUS**

SECTION 9.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the DIP Borrower, the DIP Lender and their respective successors and permitted assigns. Notwithstanding the foregoing, the DIP Borrower may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the DIP Lender, such consent not to be unreasonably withheld or delayed. Except as provided below, the DIP Lender may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the DIP Borrower, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, the DIP Lender may, without the consent of the DIP Borrower, assign or transfer to any other Person or Persons any or all of its rights or obligations under this Agreement. The DIP Lender may without the consent of the DIP Borrower sell participations in its Loan and rights under this Agreement.

SECTION 9.2 Amendments and Waivers. Except as otherwise expressly set forth in this Agreement, no Loan Document nor any terms thereof may be amended, supplemented, waived or modified except in accordance with the provisions of this Section 9.2. The DIP Lender and the DIP Borrower may, from time to time, enter into written amendments, supplements or modifications hereto for the purpose of adding any provisions to any Loan Document or changing in any manner the rights of the DIP Lender or of the DIP Borrower thereunder or waiving, on such terms and conditions as the DIP Lender may specify in such instrument, any of the requirements of any such Loan Document or any Default or Event of Default and its consequences. Any such waiver and any such amendment, supplement or modification described in this Section 9.2 shall be binding upon the DIP Borrower, the DIP Lender and all of their successors and assigns. In the case of any waiver, the DIP Borrower and the DIP Lender shall be restored to their former position and rights hereunder, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

SECTION 9.3 Liens and Security. The Liens and claim priorities of the DIP Borrower's obligations hereunder shall be those contained in the DIP Order.

SECTION 9.4 Payment of Expenses; Indemnification. The DIP Borrower agrees (a) to pay or reimburse the DIP Lender for all its reasonable out-of-pocket costs and expenses incurred in connection with the development, negotiation, preparation and execution of the Loan Documents and any other documents prepared in connection herewith, and the consummation of the transactions contemplated hereby and thereby, including, without limitation, the reasonable fees and disbursements of one lead counsel and one local counsel to the DIP Lender, (b) to pay or reimburse the DIP Lender for all its costs and expenses incurred in connection with, and to pay, indemnify, and hold the DIP Lender harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever arising out of or in connection with, the administration, enforcement or preservation of any rights under any Loan Document and any such other documents, including, without limitation, reasonable fees and disbursements of counsel to the DIP Lender incurred in connection with the foregoing and in connection with

advising the DIP Lender with respect to its rights and responsibilities under this Agreement and the documentation relating thereto, (c) to pay, indemnify, and to hold the DIP Lender harmless from any and all recording and filing fees and any and all liabilities with respect to, or resulting from any delay in paying, stamp, excise and other similar taxes, if any, which may be payable or determined to be payable in connection with the execution and delivery of, or consummation of any of the transactions contemplated by, or any amendment, supplement or modification of, or any waiver or consent under or in respect of, any Loan Document and any such other documents, and (d) to pay, indemnify, and hold the DIP Lender and its respective Affiliates, officers, directors, trustees, agents, attorneys and advisors harmless from and against any and all other liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including, without limitation, reasonable fees and disbursements of counsel) which may be incurred by or asserted against the DIP Lender or such Affiliates, officers, directors, trustees, agents, attorneys or advisors arising out of or in connection with any investigation, litigation or proceeding related to this Agreement, the other Loan Documents, the proceeds of the Loan and the transactions contemplated by or in respect of such use of proceeds, or any of the other transactions contemplated hereby, whether or not any of the DIP Lender or such Affiliates, officers, directors or trustees is a party thereto (all the foregoing, collectively, the “*indemnified liabilities*”); provided that the DIP Borrower shall not have any obligation hereunder with respect to indemnified liabilities of the DIP Lender or any of its Affiliates, officers, directors, trustees, agents, attorneys or advisors to the extent such indemnified liabilities are found by a final and non-appealable decision of a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct by the person seeking indemnification.

SECTION 9.5 Right of Offset. All payments under this Agreement may be made by offset, counterclaim or deduction of any kind, provided there is prior consent by the DIP Lender for such offset, counterclaim or deduction.

SECTION 9.6 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by and interpreted in accordance with the laws in force in the State of New York of the United States of America and the applicable provisions of the Bankruptcy Code.

(b) Each party hereto hereby irrevocably and unconditionally submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party, or for recognition and enforcement of any judgment in respect thereof, to the non-exclusive general jurisdiction of the Bankruptcy Court and, if the Bankruptcy Court does not have (or abstains from) jurisdiction, to the non-exclusive general jurisdiction of any State or Federal court of competent jurisdiction sitting in the State of Delaware, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the DIP Lender may otherwise have to bring any action or proceeding relating to this Agreement against the DIP Borrower or its properties in the courts of any jurisdiction.

(c) Each party hereto hereby irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to any Loan Document in any court referred to in paragraph (b) of this Section 9.6. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

SECTION 9.7 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.8 Notices. Except in the case of notices and other communications expressly permitted to be given by telephone, all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by fax or other electronic transmission, as follows:

The DIP Borrower:

Verengo, Inc.
20285 S. Western Avenue, Suite 200
Torrance, CA 90501
Attn: Dan Squiller

With a copy to:

Bayard, P.A.
222 Delaware Avenue
Wilmington, DE 19899
Attn: Scott D. Cousins
Evan T. Miller

The DIP Lender:

Crius Solar Fulfillment, LLC
Crius Solar Fulfillment, LLC
c/o Crius Energy, LLC
1055 Washington Blvd., Floor 7

Stamford, CT 06901
Attention: Chief Legal Officer
Email: bclay@criusenergy.com

With a copy to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attn: Paul Shalhoub
A. Mark Getachew
Jeffrey M. Goldfarb

provided that any notice, request or demand to or upon the DIP Lender shall not be effective until received and; provided, further, that the failure to provide the copies of notices to the DIP Borrower provided for in this Section 9.8 shall not result in any liability to the DIP Lender.

SECTION 9.9 Severability. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

SECTION 9.10 Counterparts; Integration; Effectiveness. This Agreement may be executed manually or by facsimile by the parties hereto, in any number of counterparts, each of which shall be considered one and the same agreement and shall become effective when a counterpart hereof shall have been signed by each of the parties and delivered to the other parties hereto. This Agreement and the other Loan Documents constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Delivery of an executed counterpart of a signature page of this Agreement by facsimile or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.11 Headings. Article and Section headings used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be effective as of the day and year first above written.

DIP LENDER:

CRIUS SOLAR FULFILLMENT, LLC

By: _____

Name:

Title:

DIP BORROWER:

VERENGO, INC.

By: _____
Name:
Title:

Schedule 1

Name:	Job Title:
Matthew Lees	Director, IT & Facilities
Chinmay Abhyankar	Manager, Operational Excellence
Rhonda Gornitsky	SVP General Counsel
James White	Director, Operations
Alex Jurado	Service Operations Manager
Ricardo Aguayo	Superintendent
Hamlet Ebrahimi	Certified Electrician
Ben Belanger	Service Electrician
Jorge Portillo	Certified Electrician
Jose Chacon	Senior Superintendent
Jose Rojas	Senior Superintendent

Exhibit C

Verengo, Inc.
Cash Projection 2016
As of 9/22/2016

	Projection 9/23/2016	Projection 9/30/2016	Projection 10/7/2016	Projection 10/14/2016	Projection 10/21/2016	Projection 10/28/2016	Projection 11/4/2016	Projection 11/11/2016	Projection 11/18/2016	Projection 11/25/2016	Projection 12/2/2016	Projection 12/9/2016	Projection 12/16/2016	Projection 12/23/2016	Projection 12/30/2016	9/23 - 12/31 Total	Terminal
Beginning Cash	552,000	(111,000)	(371,000)	(1,005,000)	(972,000)	(1,382,000)	(1,455,000)	(1,645,000)	(1,193,000)	(1,275,000)	(899,000)	(1,000,000)	(793,000)	(889,000)	(701,000)	552,000	
Receipts																	
Accounts Receivable	6,000	6,000	27,000	42,000	57,000	103,000	163,000	200,000	185,000	170,000	8,000	8,000	8,000	8,000	8,000	999,000	
Backlog/New Sales	14,000	14,000	32,000	47,000	62,000	108,000	390,000	427,000	412,000	397,000	459,000	459,000	459,000	459,000	459,000	4,198,000	
Letter of Credit Release	17,000	-	-	200,000	-	-	-	-	93,000	75,000	-	-	-	-	-	385,000	
Refunds/Asset Sales/Sub-rent	(1) 1,000	41,000	23,000	281,000	1,000	1,000	23,000	-	-	324,000	22,000	-	-	-	290,000	1,007,000	81,093
DIP Financing	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	
Total Receipts	38,000	61,000	82,000	570,000	120,000	212,000	576,000	627,000	690,000	966,000	489,000	467,000	467,000	467,000	757,000	6,589,000	81,093
Operating Disbursements																	
Payroll & Benefits	(2) (12,000)	-	(328,000)	(33,000)	(317,000)	-	(349,000)	-	(362,000)	-	(366,000)	-	(377,000)	(5,000)	(351,000)	(2,500,000)	
Critical Consultants	(18,000)	(21,000)	(24,000)	(21,000)	(24,000)	(22,000)	(23,000)	(20,000)	(20,000)	(21,000)	(20,000)	(20,000)	(20,000)	(20,000)	(21,000)	(315,000)	
Subcontractor, Materials and Oth Job Costs	(446,000)	(245,000)	(250,000)	(117,000)	(127,000)	(128,000)	(110,000)	(128,000)	(142,000)	(198,000)	(113,000)	(125,000)	(121,000)	(163,000)	(197,000)	(2,610,000)	
Commissions & Referrals	(3,000)	(19,000)	(30,000)	(7,000)	(17,000)	(13,000)	(21,000)	(6,000)	(21,000)	(12,000)	(20,000)	(5,000)	(20,000)	(11,000)	(20,000)	(225,000)	
General & Administrative	(77,000)	(22,000)	(10,000)	(33,000)	(6,000)	(24,000)	(6,000)	(16,000)	(18,000)	(26,000)	(4,000)	(10,000)	(22,000)	(7,000)	(24,000)	(305,000)	
Insurance	(32,000)	-	(3,000)	(283,000)	(23,000)	-	(3,000)	-	(3,000)	(160,000)	(3,000)	(3,000)	(3,000)	-	(164,000)	(677,000)	
Rent & Utilities	(74,000)	(2,000)	(54,000)	(6,000)	(8,000)	(2,000)	(54,000)	-	(6,000)	(10,000)	(54,000)	-	-	(8,000)	(8,000)	(286,000)	
CA Sales & Use Tax	-	-	-	-	-	(41,000)	(40,000)	-	-	(50,000)	-	-	-	(65,000)	-	(196,000)	
Wind down costs	(1) -	-	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(81,093)
Total Disbursements	(662,000)	(309,000)	(699,000)	(500,000)	(522,000)	(230,000)	(606,000)	(170,000)	(572,000)	(477,000)	(580,000)	(160,000)	(563,000)	(279,000)	(785,000)	(7,114,000)	(81,093)
BANKRUPTCY COST AND PROFESSIONAL FEES																	
Financial Advisory	-	-	-	-	-	-	-	-	-	(100,000)	-	-	-	-	-	(100,000)	
DE Bankruptcy Attorney	-	-	-	-	-	-	(150,000)	-	-	-	-	(100,000)	-	-	(190,000)	(440,000)	
Claims Agent	(5,000)	(5,000)	-	(5,000)	-	(5,000)	-	(5,000)	-	(5,000)	-	-	-	-	-	(30,000)	
Creditors Committee	-	-	-	-	-	(50,000)	-	-	-	-	-	-	-	-	-	(50,000)	
US Trustee Fees	-	-	-	(7,000)	-	-	-	-	-	-	-	-	-	-	(13,000)	(20,000)	
Travel	(6,000)	-	-	-	(8,000)	-	-	-	-	(8,000)	-	-	-	-	(10,000)	(32,000)	
Utility Motions	(21,000)	-	-	-	-	-	-	-	-	-	-	-	-	-	-	(21,000)	
Other Professional Support	(7,000)	(7,000)	(17,000)	-	-	-	(10,000)	-	-	-	(10,000)	-	-	-	(15,000)	(66,000)	
Investment Bank	-	-	-	(25,000)	-	-	-	-	(200,000)	-	-	-	-	-	-	(225,000)	
Total Bankruptcy Costs	(39,000)	(12,000)	(17,000)	(37,000)	(8,000)	(55,000)	(160,000)	(5,000)	(200,000)	(113,000)	(10,000)	(100,000)	-	-	(228,000)	(984,000)	-
Net Cash Flow	(663,000)	(260,000)	(634,000)	33,000	(410,000)	(73,000)	(190,000)	452,000	(82,000)	376,000	(101,000)	207,000	(96,000)	188,000	(256,000)	(1,509,000)	-
Ending Cash	(111,000)	(371,000)	(1,005,000)	(972,000)	(1,382,000)	(1,455,000)	(1,645,000)	(1,193,000)	(1,275,000)	(899,000)	(1,000,000)	(793,000)	(889,000)	(701,000)	(957,000)	(957,000)	
Cash Needed for the Week (assumes previous we	111,000	260,000	634,000	-	377,000	73,000	190,000	-	-	-	-	-	-	-	-	-	

Notes:

(1) The \$81k in the Terminal column represents a tax refund expected in 2017. These funds are reserved to cover certain wind down costs, such as: preparation of final tax returns, Dec sales tax paid in Jan, issuance of employee W-2s, and closure of the 401k Plan and related items.

(2) Payroll is paid one week in arrears. Upon final payroll, the arrearage amount will be payable in addition to the regular payroll for that period.