

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36 AS AMENDED**

**AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS  
(CANADA) COMPANY,  
AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE  
"A" HERETO**

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE  
*COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**MOTION RECORD  
(RECOGNITION OF US SALE APPROVALS )  
(Motion returnable: October 10, 2013)**

October 3, 2013

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# INDEX

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**INDEX**

<b>Tab</b>	<b>Document</b>
1.	Notice of Motion returnable October 10, 2013
2.	Affidavit of Scott Macaulay sworn October 3, 2013
3.	Affidavit of Ava Kim sworn October 3, 2013
A	Sale and Bid Procedures Recognition Order dated June 26, 2013
B	US Jack Cooper Sale Approval Order dated September 17, 2013
C	Jack Cooper Asset Purchase Agreement
D	US First Lien Agent Sale Approval Order dated September 30, 2013
E	First Lien Agent Asset Purchase Agreement
F	Sale Notices
G	Amended Sale Notices
H	PPSA Summaries for Allied Canada and Axis Canada

4.	Draft Order recognizing US Jack Cooper Sale Approval Order
5.	Draft Order recognizing US First Lien Agent Sale Approval Order

# TAB 1

**ONTARIO  
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THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**NOTICE OF MOTION  
(Recognition of US Sale Approvals)  
(Returnable October 10, 2013)**

Allied Systems Holdings, Inc. ("**Allied US**", the "**Applicant**" or the "**Foreign Representative**"), in its capacity as foreign representative of Allied US, Allied Systems (Canada) Company ("**Allied Canada**"), Axis Canada Company ("**Axis Canada**", together with Allied Canada, the "**Canadian Debtors**") and those other entities listed on Schedule "A" hereto (the "**Chapter 11 Debtors**") will make a motion on October 10, 2013, at 10:00am at 330 University Avenue, Toronto, Ontario.

**PROPOSED METHOD OF HEARING:** The motion is to be heard orally.

**THE MOTION IS FOR:**

1. an Order recognizing the US Jack Cooper Sale Approval Order (defined below);
2. an Order approving the sale pursuant to the asset purchase agreement dated September 12, 2013 between the Allied Group, as sell and Jack Cooper Holdings Corp., ("**Jack Cooper**") as purchaser ("**Jack Cooper APA**") of the Purchased Assets (as defined in the

Jack Cooper APA) that are owned by the Canadian Debtors or situated in Canada (the **“Canadian JCT Purchased Assets”**) and vesting all of the Canadian Debtors’ right, title and interest in and to the Canadian JCT Purchased Assets absolutely in Jack Cooper, free and clear of all liens, claims and other interests;

3. an Order authorizing and approving the assignment to Jack Cooper of the Assigned Contracts (as defined in the Jack Cooper APA) to Jack Cooper to which the Canadian Debtors are parties or that relate to contractual obligations of the Chapter 11 Debtors in Canada;
4. an Order recognizing the asset purchase agreement to be executed by the Allied Group, as seller, and an entity (**“Newco”**) to be designated by Black Diamond Capital Management, L.L.C. (**“Black Diamond”**) and Spectrum Group Management LLC (collectively with Black Diamond, the **“First Lien Agents”**), as purchaser (the **“First Lien Agent APA”**);
5. an Order approving the sale pursuant to the First Lien Agent APA of the Purchased Assets (as defined in the First Lien Agent APA) that are owned by the Canadian Debtors or situated in Canada (the **“Canadian First Lien Agent Purchased Assets”**) and vesting all of the Canadian Debtors’ right, title and interest in and to the Canadian First Lien Agent Purchased Assets absolutely in Newco, free and clear of all liens, claims and other interests;
6. an Order authorizing and approving the assignment to NewCo of the Assigned Contracts (as defined in the First Lien Agent APA) to which the Canadian Debtors are parties or that relate to contractual obligations of the Chapter 11 Debtors in Canada;
7. such further relief as may be required in the circumstances and this Honourable Court deems just and equitable.

**THE GROUNDS FOR THE MOTION ARE:**

8. On June 10, 2012, the Chapter 11 Debtors filed involuntary and voluntary petitions with the United States Bankruptcy Court for the District of Delaware (the **“US Court”**)

pursuant to Chapter 11 of title 11 of the United States Bankruptcy Code (the “**Chapter 11 Cases**”).

9. The Chapter 11 Debtors commenced proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended pursuant to the Initial Recognition Order dated June 12, 2012 granted by this Court.
10. In the orders granted by this Court thereafter (the “**Orders**”), *inter alia*, (a) the Chapter 11 Cases were recognized as a “foreign main proceedings” for the purposes of section 47 and 48 of the CCAA; (b) Allied US was appointed as the foreign representative of the Chapter 11 Debtors; (c) certain orders made in the US Court dated June 12, 2012 were recognized; and (d) Duff & Phelps Canada Restructuring Inc. was appointed as the information officer (the “**Information Officer**”).
11. Since the commencement of the Chapter 11 Cases, the Chapter 11 Debtors have determined that selling substantially all of their assets and winding-down any remaining operations is the most effective way to maximize the value of the Chapter 11 Debtors’ estates for the benefit of all stakeholders. On June 26, 2013, this Court granted an order approving certain bid procedures and related relief.
12. On June 28, 2013, the Chapter 11 Debtors published a Notice of Bid Deadline, Auction and Sale Hearing in connection with the Sale of Substantially all of the Assets of the Allied Group in The New York Times and The Globe and Mail (National Edition). On August 8, 2013, Allied received two (2) qualified bids from each of (i) New Allied Acquisition Co. LLC (“**New Allied**”), a Delaware entity established by the First Lien Agents under the First Lien Facility; and (ii) Jack Cooper Holdings Corp. (“**Jack Cooper**”).
13. An auction was conducted on August 14-15, 2013 with the Chapter 11 Debtors concluding that the successful bidder was New Allied. Thereafter, a number of objections to the sale to New Allied were filed including from, amongst others, CAW-Canada, the official committee of unsecured creditors (the “**Committee**”) and Jack Cooper on the basis that the auction was unfair and did not follow the bid procedures.



14. A motion to re-open the auction was brought by the Committee which was later joined by the Chapter 11 Debtors. The US Court approved the motion and the auction was reopened on September 11, 2013 (the **“Reopened Auction”**).
15. At the Reopened Auction, it was determined that the successful bidders were: (i) Jack Cooper for substantially all of the assets of the Allied Group ; and (ii) NewCo for certain assets that did not form part of the assets to be purchased by Jack Cooper (the **“Excluded Assets”**).
16. Jack Cooper will pay to the sellers a purchase price of \$135,000,000 in the aggregate and the consideration to be paid for purchase of the Excluded Assets by Newco is to be in the form of the contribution, release or waiver of certain of the amounts otherwise due and owing to the lenders under the First Lien Facility. The terms and conditions of the Jack Cooper APA and the First Lien Agent APA are described in further detail in the Affidavit of Scott Macaulay sworn October 3, 2013.
17. The Jack Cooper APA was approved by the United States Bankruptcy Court for the District of Delaware (the **“US Court”**) on September 17, 2013 (the **“US Jack Cooper Sale Approval Order”**) and the First Lien Agent APA was approved by the US Court on September 30, 2013 (the **“US First Lien Agent Approval Order”**).
18. The sale to Jack Cooper under the Jack Cooper APA and the sale to the First Lien Agents under the First Lien Agent APA is fair and reasonable under the circumstances. Recognition by this Court of the US Jack Cooper Sale Approval Order and the US First Lien Agent Approval Order will allow the Chapter 11 Debtors to maximize the value of their business for the benefit of its stakeholders.

#### *General*

15. Such further and other grounds as counsel may advise and this Honourable Court may permit.
16. The following documentary evidence will be used at the hearing of the application:
  - (a) The affidavit of Scott Macaulay sworn October 3, 2013;

- (b) The affidavit of Ava Kim sworn October 3, 2013;
- (c) The seventh report of the Information Officer, to be filed; and
- (d) such further and other materials as counsel may advise and this Honourable Court may permit.

October 3, 2013

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**TO: THE ATTACHED SERVICE LIST**

## **SCHEDULE A – APPLICANTS**

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC

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**ONTARIO  
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<b>TAXATION AND FISCAL POLICY BRANCH (NEWFOUNDLAND AND LABRADOR)</b> East Block, Confederation Building, 3 <sup>rd</sup> Floor PO Box 8700 Newfoundland and Labrador St. John's NL A1B 4J6 <b><u>Delivery Address</u></b> 2 <sup>nd</sup> Floor East Block, Confederation Building St. John's NL A1B 4J6	Tel: 709.729.6165
<b>NOVA SCOTIA DEPARTMENT OF FINANCE</b> PO Box 187 1723 Hollis St., 6 <sup>th</sup> Floor Halifax, NS B3J 2N3	Tel: 902.424.4295
<b>FINANCE – REVENUE SERVICES</b> Government of Yukon PO Box 2703 Whitehorse, YK Y1A 2C6 <b><u>Delivery Address</u></b> 2071 2 <sup>nd</sup> Avenue, 3 <sup>rd</sup> Floor Whitehorse, YK Y1A 1B2	Tel: 867.667.5343
<b>TREASURY, DEPARTMENT OF FINANCE</b> Government of Northwest Territories PO Box 1320 Yellowknife NT X1A 2L9 <b><u>Delivery Address</u></b> 4922-48 <sup>th</sup> Street, 3 <sup>rd</sup> Floor YK Centre Yellowknife, NT X1A 2L9	Tel: 867.920.3470

<b>DEPARTMENT OF FINANCE</b> Government of Nunavut PO Box 1000 STN 330 Iqaluit, NU X0A 1H0 <u><b>Delivery Address</b></u> Building 924 Mivvik Road Iqaluit, NU X0A 1H0	Tel: 867.975.5803
<b>MINISTRY OF FINANCE FOR THE PROVINCE OF BRITISH COLUMBIA</b> Income Taxation Branch 1st Floor, 1802 Douglas St., Victoria BC V8T 4K6	
<b>GOVERNMENT ENVIRONMENTAL AGENCIES</b>	
<b>MINISTRY OF THE ENVIRONMENT (ONTARIO)</b> Public Information Centre 2 <sup>nd</sup> Floor – Macdonald Block Suite M2-22 900 Bay Street Toronto, ON M7A 1N3	Tel: 416.325.4000
<b>MANITOBA CONSERVATION AND WATER STEWARDSHIP</b> Box 22 200 Saulteaux Crescent Winnipeg, Manitoba R3J 3W3	Tel: 204.945.6698
<b>ALBERTA ENVIRONMENT AND SUSTAINABLE RESOURCE DEVELOPMENT</b> Main Floor, Great West Life Building 9920 108 Street Edmonton Alberta T5K 2M4	Tel: 877.944.0313
<b>QUEBEC MINISTRY OF SUSTAINABLE DEVELOPMENT, ENVIRONMENT, WILDLIFE, AND PARKS</b> Édifice Marie-Guyart, 29th Floor 675, boulevard René-Lévesque Est Québec (Québec) G1R 5V7	Tel: 418.521.3830
<b>NEW BRUNSWICK ENVIRONMENT AND LOCAL GOVERNMENT</b> Marysville Place P. O. Box 6000 Fredericton, NB E3B 5H1	Tel: 506.453.2690

<b>PRINCE EDWARD ISLAND DEPARTMENT OF ENVIRONMENT, LABOUR AND JUSTICE</b> Fourth Floor, Shaw Building, South 95 Rochford Street P.O. Box 2000 Charlottetown, PEI C1A 7N8	Tel: 902.368.4550
<b>NEWFOUNDLAND AND LABRADOR DEPARTMENT OF ENVIRONMENT AND CONSERVATION</b> P.O. Box 8700 St. John's, NL A1B 4J6	Tel: 709.729.4211
<b>NOVA SCOTIA ENVIRONMENT</b> PO Box 442 5151 Terminal Road Halifax, Nova Scotia B3J 2P8	Tel: 902.424.3600
<b>ENVIRONMENT YUKON GOVERNMENT OF YUKON</b> Box 2703 (V-3A) Whitehorse, Yukon Y1A 2C6	Tel: 867.667.5652
<b>NORTHWEST TERRITORIES DEPARTMENT OF ENVIRONMENT AND NATURAL RESOURCES</b> Environment and Natural Resources Government of the Northwest Territories Box 1320 Yellowknife, NT X1A 2L9	Tel: 867.873.7654
<b>NUNAVUT DEPARTMENT OF ENVIRONMENT</b> P.O. Box 1000, Stn. 1300 Iqaluit, NU X0A 0H0	Tel: 867.975.7700
<b>ENVIRONMENTAL ASSESSMENT BRANCH SASKATCHEWAN MINISTRY OF ENVIRONMENT</b> 3211 Albert Street, 4th Floor Regina, SK S4S 5W6	Tel: 306.787.6132
<b>BRITISH COLUMBIA MINISTRY OF ENVIRONMENT</b> Po Box 9339 Stn Prov Govt Victoria, BC V8W 9M1	Tel: 250.387.1161

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. c-36, AS AMENDED**

**AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS  
(CANADA) COMPANY,  
AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE  
"A" HERETO**

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE  
COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED**

**SUPPLEMENTAL SERVICE LIST  
(Pensions)**

<b>PENSIONS AND PENSION AUTHORITIES</b>	
<b>ECKLER LTD (CANADIAN AUTO CARRIERS &amp; LOGISITICS PENSION PLAN)</b> 110 Sheppard Ave East, Suite 900 Toronto, Ontario M2N 7A3	<b>Mark Davis</b> Tel: 416.696.4968 Email: mdavis@eckler.ca
<b>TEAMSTERS CANADIAN PENSION PLAN LOCAL 213</b> 490 Broadway Vancouver, British Columbia V5T 1X3	<b>Bilbeer Sandhu</b> Tel: 604.879.8627 Email: bsandhu@teamsters213benefits.com
<b>PRAIRIE TEAMSTERS PENSION PLAN</b> 7260 12th St SE, Suite 209 Calgary, Alberta T2H 2S5	<b>Morgan Jenkyns</b> Tel: 403.252.6924 Ext 226 Email: mjenkyns@ptadmin.ca



<b>SUPERINTENDENT OF FINANCIAL SERVICES COMMISSION OF ONTARIO</b> 5160 Yonge Street PO Box 85 Toronto, ON M2N 6L9	<b>Mark Bailey</b> Tel: 416.590.7555 Email: <a href="mailto:mark.bailey@fsco.gov.on.ca">mark.bailey@fsco.gov.on.ca</a>
<b>TEAMSTERS CANADIAN PENSION PLAN LOCAL 106</b> 9393 Edison St, Suite 200 Montreal, Quebec H1J 1T4	<b>Yves Gagnon</b> Tel: 1.514.493.7744 Ext. 228
<b>SUPERINTENDENT OF PENSIONS (ALBERTA)</b> Alberta Treasury Board and Finance Employment Pensions Financial Sector Regulation and Policy (FSRP) Room 402, Terrace Building 9515 - 107 Street Edmonton, Alberta, T5K 2C3	Tel: 780.427.9722
<b>RÉGIE DES RENTES DU QUÉBEC</b> Case postale 5200 Québec, Québec G1K 7S9 <b><u>Delivery Address</u></b> Place de la Cité 6 2600 Laurier Boulevard Office 548 Québec, Québec G1V 4T3	Tel: 1.877.660.8282
<b>OFFICE OF SUPERINTENDENT OF FINANCIAL INSTITUTIONS CANADA</b> 255 Albert Street Ottawa, Ontario K1A 0H2	<b>Candida Quast</b> Tel: 613.990.7788 Email: <a href="mailto:candida.quast@osfi-bsif.gc.ca">candida.quast@osfi-bsif.gc.ca</a>

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, RSC. 1985, C.C-36, AS AMENDED  
AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY, AXIS  
CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO  
APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.: 12- CV-9757-00CL

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**Proceeding commenced at Toronto, Ontario Canada**

**NOTICE OF MOTION  
(Recognition US Sale Approvals)  
(Returnable October 10, 2013)**

**GOWLING LAFLEUR HENDERSON LLP**

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One First Canadian Place  
Suite 1600  
TORONTO, Ontario  
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Lawyers for the Applicant

## **TAB 2**

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C-36, AS AMENDED**

**AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS  
(CANADA) COMPANY,  
AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON  
SCHEDULE "A" HERETO**

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED**

**AFFIDAVIT OF SCOTT MACAULAY  
(Recognition of US Sale Approvals)  
(sworn October 3, 2013)**

**I, Scott Macaulay, of the City of Snellville in the State of Georgia, MAKE OATH  
AND SAY:**

1. I am the senior vice president and chief financial officer of Allied Systems Holdings, Inc. ("Allied US") and the vice president and treasurer of Allied Systems (Canada) Company ("Allied Canada") and the treasurer of Axis Canada Company ("Axis Canada", together with Allied Canada, the "Canadian Debtors"). Overall, I have been an employee of Allied for the last fifteen (15) years. As such, I have personal knowledge of the matters to which I hereinafter depose in this Affidavit. Where I do not possess personal knowledge, I have stated the source of my information and, in all such cases, believe it to be true.

2. This Affidavit is sworn in support of a motion by Allied US in its capacity as foreign representative (the “**Applicant**”) of Allied US, Allied Canada, Axis Canada and those other companies listed in Appendix “A” hereto (collectively, “**Allied**”, the “**Allied Group**” or the “**Chapter 11 Debtors**”) for Orders:
- (a) recognizing and giving full force and effect to: (i) an order issued by the United States Bankruptcy Court for the District of Delaware (the “**US Court**”) dated September 17, 2013 (the “**US Jack Cooper Sale Approval Order**”) authorizing and approving: (i) the asset purchase agreement dated September 12, 2013 between the Allied Group, as seller and Jack Cooper Holdings Corp. (“**Jack Cooper**”), as purchaser (the “**Jack Cooper APA**”); (ii) the sale of Purchased Assets (as defined in the Jack Cooper APA) free and clear of all liens, claims, encumbrances and other interests; and, (iii) the assumption and assignment of certain executory contracts and unexpired leases;
  - (b) approving the sale pursuant to the Jack Cooper APA of the Purchased Assets (as defined in the Jack Cooper APA) that are owned by Canadian Debtors or situated in Canada (“**Canadian JCT Purchased Assets**”) and vesting all of the Chapter 11 Debtors’ right, title and interest in and to the Canadian JCT Purchased Assets absolutely in Jack Cooper;
  - (c) authorizing and approving the assignment to Jack Cooper of the Assigned Contracts (as defined in the Jack Cooper APA) to Jack Cooper to which the Canadian Debtors are parties or that relate to contractual obligations of the Chapter 11 Debtors in Canada (“**Canadian JCT Assigned Contracts**”);
  - (d) recognizing and giving full force and effect to: (i) an order issued by the US Court dated September 30, 2013 (the “**US First Lien Agent Sale Approval Order**”) authorizing and approving: (i) the asset purchase agreement dated ■, 2013 between the Allied Group, as seller and an entity (“**NewCo**”), designated by Black Diamond Capital Management, L.L.C. (“**Black Diamond**”)<sup>1</sup> and

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<sup>1</sup> As collateral agent and co-administrative agent under the Allied Group’s First Lien Facility (as defined below)

Spectrum Group Management LLC ("**Spectrum**")<sup>2</sup> (collectively, the "**First Lien Agents**"), as purchaser, for the sale of the Excluded Assets (defined below) (the "**First Lien Agent APA**"); (ii) the sale of assets free and clear of all liens, claims, encumbrances and other interests; and, (iii) the assumption and assignment of a certain unexpired lease;

- (e) approving the sale pursuant to the First Lien Agent APA of the Excluded Assets that are owned by Canadian Debtors or situated in Canada (the "**Canadian Excluded Assets**") and vesting all of the Chapter 11 Debtors' right, title and interest in and to the Canadian Excluded Assets absolutely in NewCo (and/or entities designated by Newco in accordance with the First Lien Agent APA); and
- (f) authorizing and approving the assignment to NewCo (and/or entities designated by Newco in accordance with the First Lien Agent APA) of the Assigned Contracts (as defined in the First Lien Agent APA) to which the Canadian Debtors are parties or that relate to contractual obligations of the Chapter 11 Debtors in Canada ("**Canadian NewCo Assigned Contracts**", together with Canadian JCT Assigned Contracts, the "**Canadian Assigned Contracts**").

3. All dollar references herein are in US dollars unless otherwise specified.

4. I am aware that the following documents, each of which I have reviewed, will be attached as exhibits to an affidavit of Ava Kim (the "**Kim Affidavit**"), to be sworn in connection with this motion:

- (a) Exhibit A - Sale and Bid Procedures Recognition Order;
- (b) Exhibit B – US Jack Cooper Sale Approval Order;
- (c) Exhibit C – Jack Cooper APA;
- (d) Exhibit D – US First Lien Agent Sale Approval Order;
- (e) Exhibit E – First Lien Agent APA (defined below);
- (f) Exhibit F – Sale Notices (defined below);

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<sup>2</sup> As co-administrative agent under the First Lien Facility

- (g) Exhibit G – Amended Sale Notices (defined below); and
- (h) Exhibit H - Personal Property Security Act Summaries for each of Allied Canada and Axis Canada.

## BACKGROUND

### General

5. Allied is in the business of: (a) short haul car transport of light vehicles from manufacturing plants, ports, auctions and railway distribution points to automobile dealerships in the United States and Canada; and (b) logistics and management of car haul transport. It is a business that requires the use of specialized equipment specifically designed for the hauling of cars and is heavily customer focused.
6. On June 10, 2012 (the “**Filing Date**”), Allied US and Allied Systems, Ltd. (L.P.) (“**ASL**”) each consented to the petition (the “**Involuntary Petitions**”) for relief filed against each of them pursuant to Chapter 11 of title 11 (“**Chapter 11**”) of the United States Code (the “**Bankruptcy Code**”) with the United States Bankruptcy Court for the District of Delaware (the “**US Court**”). On the same day the balance of the Chapter 11 Debtors each filed voluntary petitions for relief (together with the Involuntary Petitions, the “**Petitions**”) pursuant to Chapter 11 of the Bankruptcy Code with the US Court. The cases commenced or consented to by the Chapter 11 Debtors in the US Court shall be referred to herein as the “**Chapter 11 Cases**”.
7. The Chapter 11 Debtors commenced proceedings pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”) pursuant to the Initial Recognition Order of the Ontario Superior Court of Justice (the “**Canadian Court**”) dated June 12, 2012 (the “**Initial Recognition Order**”). On June 13, 2012, the Canadian Court granted a Supplemental Order (as amended, the “**Supplemental Order**”, collectively with the Initial Order, the “**Orders**”). Pursuant to the Orders, *inter alia*: (a) the Chapter 11 Cases were recognized as a “foreign main proceeding” for the purposes of section 47 and 48 of the CCAA; (b) Allied US was appointed as the foreign representative of the Chapter 11 Debtors; (c) certain orders made in the US Court dated

June 12, 2012 were recognized; and (d) Duff & Phelps Canada Restructuring Inc. was appointed as the information officer (the **"Information Officer"**).

### **Sale Efforts and Recognition of the US Sale and Bid Procedures Order**

8. After extensive prepetition and postpetition efforts to maximize value and careful consideration with their financial advisors, the Chapter 11 Debtors determined that the most effective way to maximize the value of the Chapter 11 Debtors' estates for the benefit of their constituents would be to sell substantially all of their assets and to then wind-down any remaining operations.
9. Black Diamond and Spectrum, as lenders under Allied's first lien secured facility (the **"First Lien Facility"**) were appointed by the requisite lenders under the First Lien Facility to designate New Allied Acquisition Co. LLC as the proposed stalking horse purchaser (the **"Stalking Horse Purchaser"**) in Allied's sale process. The Chapter 11 Debtors entered into a sale agreement dated May 17, 2013 with the Stalking Horse Purchaser (the **"Stalking Horse Agreement"**) for the sale of substantially all of their assets, however, the Stalking Horse Agreement was not approved by the US Court. The bid procedures (**"Bid Procedures"**) used by the Chapter 11 Debtors were subsequently submitted as part of a naked auction process and were approved by the US Court by an order dated June 20, 2013: (a) approving bid procedures; (b) approving cure procedures; (c) approving date for auction and approving related procedures; (d) scheduling sale hearing and related deadlines; (e) approving form and manner of notices; and (f) granting related relief (**"US Sale and Bid Procedures Order"**). On June 26, 2013, this Court granted an order (**"Sale and Bid Procedures Recognition Order"**) recognizing and giving full force and effect to the US Sale and Bid Procedures Order. The US Sale and Bid Procedures Order and the Sale and Bid Procedures Recognition Order shall collectively be referred to herein as the **"Bid Procedures Orders"**). A copy of the Sale and Bid Procedures Recognition Order is attached to the Kim Affidavit as Exhibit A.

### **SALE ACTIVITIES SINCE THE BID PROCEDURES ORDERS**



10. Before and after the granting of the Bid Procedures Orders, the Chapter 11 Debtors, with the assistance of their investment bankers, conducted a comprehensive marketing process to identify bidders and negotiated with all potential purchasers, in an effort to achieve maximum value for the benefit of all of their constituents.
11. In accordance with the Bid Procedures Orders, the Chapter 11 Debtors published a Notice of Bid Deadline, Auction and Sale Hearing in connection with the Sale of Substantially all of the Assets of the Chapter 11 Debtors in *The New York Times* on June 28, 2013 and the *Globe and Mail (National Edition)* on June 28, 2013 (collectively, the “**Sale Notices**”), copies of which are attached to the Kim Affidavit as Exhibit F. By August 8, 2013 (the bid deadline), the Chapter 11 Debtors received two (2) Qualified Bids<sup>3</sup> from each of: (i) New Allied Acquisition Co. LLC (“**New Allied**”), a Delaware entity established by the First Lien Agents under the First Lien Facility; and (ii) Jack Cooper. Since more than one (1) Qualified Bid was received, the Chapter 11 Debtors proceeded to conduct an auction to determine the highest and best bid for the Chapter 11 Debtors’ assets.

## AUCTION

12. The auction took place on August 14, 2013 and concluded on August 15, 2013 (the “**Auction**”) with the Chapter 11 Debtors determining that the successful bidder was New Allied. On August 27, 2013, the Chapter 11 Debtors filed with the US Court an Amended Notice of Sale Hearing and Related Deadlines in connection with the Sale of Substantially All of the Debtors’ Assets (the “**Amended Sale Notice**”), providing notice of, amongst other things: (i) the adjournment of the Sale Hearing from August 22, 2013 to September 10, 2013; and (ii) the deadline for objections to the sale of Allied’s assets to New Allied to be filed by September 3, 2013. A copy of the Amended Sale Notice is attached to the Kim Affidavit as Exhibit G.
13. After the conclusion of the Auction, a number of objections were filed with the US Court by, amongst others, CAW-Canada, the official committee of unsecured creditors (the “**Committee**”), Teamsters National Automobile Transporters Industry Negotiating

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<sup>3</sup> As defined in the US Sale and Bid Procedures Order

Committee and Jack Cooper. The objections filed by the Committee and Jack Cooper were substantially on the basis that the selection of New Allied as the successful bidder was done in violation of the Bid Procedures and that the Auction was inherently unfair. CAW-Canada's objection was based on the US Court's ability to approve (and this Court's ability to recognize) the sale and assignment of Allied's assets and contracts to New Allied absent assurance that the assignment and assumption of the collective agreement between Allied Canada and CAW-Canada complied with the applicable US and Canadian laws.

## REOPENING OF AUCTION

14. On September 6, 2013, the Creditors' Committee filed the *Motion of the Official Committee of Unsecured Creditors to Reopen the Auction Relating to the Sale of Substantially All of the Debtors' Assets Free and Clear of All Liens, Claims, Encumbrances and Interests* ("**Motion to Reopen**"). On the same day, Jack Cooper submitted a revised bid to the independent Special Committee of the Debtors' Board of Directors. On September 8, 2013, the Chapter 11 Debtors joined the Motion to Reopen.
15. The US Court approved the Motion to Reopen and as such, the auction was reopened on September 11, 2013 (the "**Reopened Auction**"). Through the course of negotiations in the Reopened Auction, it became apparent that the value realized for the estate of the Chapter 11 Debtors could be maximized by pursuing a revised bid by Jack Cooper for the Purchased Assets (the "**Jack Cooper Bid**") and a separate credit bid for the Excluded Assets by an entity designated by the First Lien Agents (the "**First Lien Agent Bid**").
16. Ultimately, the combination of the Jack Cooper Bid and the First Lien Agent Bid resulted in a better price than the purchase price under the proposed sale to New Allied and resolved many of the objections previously raised.
17. In accordance with the US Sale and Bid Procedures Order, the Chapter 11 Debtors announced within one (1) business day of the conclusion of the Reopened Auction that, subject to final documentation, the successful bidder for substantially all of the Chapter 11 Debtors' assets other than certain Excluded Assets is Jack Cooper. Further, the

successful bidder for the Excluded Assets is an entity to be formed by the First Lien Agents.

## **SALE OF ASSETS TO JACK COOPER**

### **Jack Cooper Asset Purchase Agreement<sup>4</sup>**

18. The Canadian business will be sold as part of the sale transaction under the Jack Cooper APA. The following is an overview of some of the key terms of the Jack Cooper APA:
- (a) The Purchase Price to acquire substantially all of Allied's assets is US\$135 million, which is comprised of \$125 million in cash and \$10 million in either: (i) face value of senior secured notes substantially identical in all material respects to (and pari passu with) those notes issued under that certain Indenture governing Jack Cooper's 9.25% Senior Secured Notes due 2020 (the "**Notes**"); or (ii) cash.
  - (b) The Purchased Assets include substantially all of the assets of the Chapter 11 Debtors, with the exception of the Excluded Assets which include, amongst other things:
    - (i) Six (6) owned real properties of the Chapter 11 Debtors including two (2) located in Canada;
    - (ii) One (1) leased real property located in New York, New York; and
    - (iii) Fifty (50) semi-trailers otherwise known as 'lowboys' to be designated by the Requisite Lenders (as defined in the US Sale and Bid Procedures Order) from the existing inventory of lowboys owned by Allied.
  - (c) The Purchase Price also includes the assumption of the Assumed Liabilities.<sup>5</sup>

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<sup>4</sup> Unless otherwise defined in this affidavit, all terms under this section shall have the meaning given to them in the Jack Cooper APA.

<sup>5</sup> As defined in the Jack Cooper APA

19. The Purchase Price is to be financed by committed credit facilities available to Jack Cooper in the amount of \$100 million along with additional available funding under its already existing asset-based revolving credit facility.

#### **About Jack Cooper**

20. Jack Cooper, a Delaware corporation headquartered in Kansas City, Missouri is the largest transporter of light-vehicles in North America based on revenue. Through its predecessor companies, it has been in business for over eight-five (85) years.
21. As of March 31, 2013, Jack Cooper's active fleet, consisting of 1,588 carhaul rigs, is the largest in the industry. Its network spans 34 strategically located terminals across North America, including six (6) locations in Canada, located in Ontario, Quebec, New Brunswick and Nova Scotia.
22. Jack Cooper has long-term relationships with most of its customers including its three (3) largest customers, General Motors Company, Ford Motor Company and Toyota Motor Sales, USA, Inc.

#### **Sale of Assets to Jack Cooper and Proceeds Of Sale<sup>6</sup>**

23. Upon payment of the Purchase Price, the Purchased Assets are to be transferred to Jack Cooper, free and clear of any and all Liens, Claims, Liabilities, Encumbrances and interests of any kind or nature. Jack Cooper shall not assume or become liable for any Liens or Liabilities other than the Assumed Liabilities.
24. In addition, the Assigned Contracts, which include certain contracts with Canadian counterparties, are to be assumed by the Chapter 11 Debtors and sold and assigned to Jack Cooper, all subject to the US Jack Cooper Sale Approval Order. These assignments also are subject to payment of required Cure Costs on closing.
25. Although the Purchased Assets are being sold free and clear of all Claims and Liens except Assumed Liabilities, this does not affect liabilities existing under the collective

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<sup>6</sup> Unless otherwise defined in this affidavit, all terms under this section shall have the meaning given to them in the US Jack Cooper Sale Approval Order.

agreement with the CAW-Canada, in respect of which, pursuant to s. 6.1 of the Jack Cooper APA, the applicable Employment Offering Purchaser Entity has agreed to assume any and all obligations and responsibilities of Allied Canada in accordance with s. 44 of the *Canada Labour Code*.

26. The US Jack Cooper Sale Approval Order sets forth the terms on which the Purchase Price proceeds are to be distributed and applied, which terms include provisions for the funding of a wind-down budget for Allied. Thereafter, the Sale Proceeds (as defined in the US Jack Cooper Sale Approval Order) are to be used (i) first, to pay in full in cash all obligations owing under the DIP Credit Agreement; and (ii) second, to provide for payment against Allied's obligations under the First Lien Facility.

#### **BD/SPECTRUM NEWCO ASSET PURCHASE AGREEMENT<sup>7</sup>**

27. The assets being sold under the First Lien Agent APA consist primarily of two (2) Canadian real properties located in Windsor, Ontario and London, Ontario and certain personal property and contracts related to those properties that are Canadian Excluded Assets. The following is an overview of some of the key terms of the First Lien Agent APA:
- (a) The consideration to be paid for the purchase of the Excluded Assets is to be in the form of the contribution, release or waiver of amounts otherwise due and owing to the lenders under the First Lien Facility.
  - (b) The Purchase Price paid for the Excluded Assets by way of contribution, release or waiver of amounts otherwise due under the First Lien Facility is an amount determined as follows:
    - (i) Initial Contribution in the amount of \$5,000,000.00; plus,
    - (ii) Post-Closing Claim Contributions equal to the amount by which the aggregate sale value of the Excluded Assets, or the appraised value if an

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<sup>7</sup> All capitalized terms used under this section and not otherwise defined have the meanings given to them in the BD/Spectrum NewCo APA.

Excluded Asset is not sold by Newco within six months of Closing, exceeds \$5,000,000.00.

- (c) The details of the Excluded Assets are more particularly described in the schedules 1 through 3 to the First Lien Agent APA.
  - (d) Newco shall assume certain contracts and liabilities related to the Excluded Assets, as specified in the First Lien Agent APA.
28. The First Lien Agent APA also contains protections for Allied as seller, which include disclosure provisions in relation to the on-sales of Excluded Assets by Newco. These protections are intended to ensure that the Chapter 11 Debtors are credited with fair value for the Excluded Assets.

#### **US SALE HEARING**

29. The Sale Hearing for approval of the sale transactions to each of Jack Cooper and New Allied took place on September 17, 2013. Although there were a number of objections raised at the Sale Hearing, including from CAW-Canada, all were resolved or dealt with by the US Court, including the CAW-Canada objection. The US Court accordingly issued the US Jack Cooper Sale Approval Order on September 17, 2013 and the US First Lien Agent Sale Approval Order on September 30, 2013.

#### **MATTERS RELATING TO SERVICE**

30. I am informed by Jennifer Stam of Gowling Lafleur Henderson LLP and do verily believe that this motion will be served on, among others (the “**Canadian Service List**”):
- (a) all personal property security registrants (“**PPSA Registrants**”) or counsel, a list of which is provided in the Kim Affidavit as Exhibit H;
  - (b) all real property security registrants or counsel;

- (c) Allied's Canadian pension plans<sup>8</sup>, the Financial Services Commissioner of Ontario and the Superintendents of Pensions in Alberta and Quebec and the Office of the Superintendent of Financial Institutions Canada;
- (d) various Federal and Provincial taxing and environmental authorities; and
- (e) additional parties as requested by counsel to the Stalking Horse Purchaser; and
- (f) counterparties to the Canadian Assigned Contracts.

31. With respect to the above groups of persons, I note the following:

- (a) *PPSA Registrants* – I am advised by Ms. Stam that PPSA searches were conducted against Allied Canada and Axis Canada in:
  - (i) Ontario, which is current to September 8, 2013;
  - (ii) Saskatchewan, Manitoba and Quebec, which are current to September 10, 2013; and
  - (iii) British Columbia, Alberta, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut, which are current to September 9, 2013.

Other than those registrations that relate to the Prepetition Credit Facilities, the only registrations that appear are as follows:

- (i) Registrations in favour of Spectrum Commercial Finance, LLC, as Collateral Agent under the DIP facility;
- (ii) Registrations in favour of Western Sterling Trucks Ltd;
- (iii) Registrations in favour of Atco Structures & Logistics Ltd; and
- (iv) Registrations in favour of Kal Tire A Corporate Partnership.

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<sup>8</sup> The Canadian bargaining pension plans consist of: (i) Eckler Ltd. (Canadian Auto Carriers & Logistics Pension Plan); (ii) Teamsters Canadian Pension Plan Local 106; (iii) Teamsters Canadian Pension Plan Local 213; and (iv) Prairie Teamsters Pension Plan

(b) *UCC Registrants* – I am advised by US counsel to the Chapter 11 Debtors that UCC searches were conducted against Allied Canada and Axis Canada in:

- (i) the District of Columbia which is current to August 27, 2013; and
- (ii) Georgia (DeKalb County) which is current to August 31, 2013.

Other than those registrations which relate to the Prepetition Credit Facilities, there are no other registrations. I am not aware of any UCC filings that have been made since that time other than those that may have been made relating to the debtor-in-possession credit facilities.

(c) *FSCO and Pension Plans* – Allied Canada participates in the following registered pension plans (the “**Canadian Registered Pension Plans**”):

- (i) Canadian Auto Carriers & Logistics Pension Plan for union members in Ontario and Quebec;
- (ii) Teamsters Canadian Pension Plan (Local 213) for union members in Vancouver, British Columbia;
- (iii) Prairie Teamsters Pension Plan (Locals 362, 395, 979) for union members in Edmonton, Alberta, Calgary, Alberta, Saskatoon, Saskatchewan and Winnipeg, Manitoba; and
- (iv) Teamsters Canadian Pension Plan – Local 106 Miscellaneous Industries Division for bargaining unit office employees in Quebec.

None of the Canadian Registered Pension Plans are defined benefit plans for which Allied Canada or Axis Canada is liable for the deficiency. To my knowledge, all required contributions to the Canadian Registered Pension Plans have been made and are up to date. However, out of an abundance of caution, the Applicant intends to give notice to the Canadian Registered Pension Plans as well as the applicable pension plan authorities.



- (d) *Tax and Other Authorities* – To my knowledge, both Allied Canada and Axis Canada are current with respect to remittances of sales taxes (which have become due for remittance). It is the intention of Allied Canada and Axis Canada to continue to collect and remit sales and other related taxes during the course of Allied's restructuring proceedings. However, out of an abundance of caution, the Applicant intends to provide notice to Canada Revenue Agency as well as to the Provincial and Territorial tax authorities.
- (e) *Environmental Authorities* – The Applicant intends to provide notice to the Ministry of Environment in all of the Provinces and Territories of Canada where Allied's owned and leased properties are located.

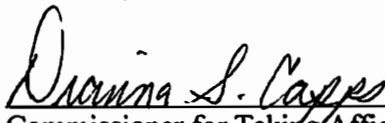
## CONCLUSION

- 32. The Purchase Price under the Jack Cooper APA constitutes full and fair consideration and reasonably equivalent value for the Purchased Assets (as defined in the Jack Cooper APA). The sale of the Excluded Assets for the consideration provided by the First Lien Agents (on behalf of the lenders under the First Lien Facility) under the First Lien Agent APA is fair and reasonable in the circumstances.
- 33. The bidding procedures, as approved by the US Court pursuant to the US Sale and Bid Procedures Order, were the result of arm's-length negotiations. The Chapter 11 Debtors and their professionals complied in all material respects with the bidding procedures and the US Sale and Bid Procedures Order. Other interested parties have had the opportunity to participate in the auction process pursuant to the US Sale and Bid Procedures Order to further maximize the value of the estates. Additionally, with the reopening of the auction, interested parties had a full opportunity to bid on the Purchased Assets and the Excluded Assets, further contributing to its value maximization.
- 34. The Chapter 11 Debtors have been in Chapter 11 proceedings for over a year. Although there have been various delays, it is necessary for this process to move forward so that the business may be transferred to a new operator. Recognition of the US Jack Cooper Sale Approval Order and the First Lien Agent Sale Approval Order granted by the US

Court will allow the Chapter 11 Debtors to maximize the value of their business for the benefit of its stakeholders.

35. I make this affidavit in support of a motion to recognize the US Jack Cooper Sale Approval Order and the US First Lien Agent Sale Approval Order, and for related relief, and for no other improper purpose.

SWORN before me at the City of *Atlanta*  
in the State of *Georgia*  
this *3* day of October, 2013



Commissioner for Taking Affidavits or Notary

**Dianna S Capps**  
**NOTARY PUBLIC**  
**DeKalb County, GEORGIA**  
**My Commission Expires**  
**3/7/2017**

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**SCOTT MACAULAY**

## **Appendix “A” – APPLICANTS**

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC

## TAB 3

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(COMMERCIAL LIST)**

**IN THE MATTER OF THE *COMPANIES' CREDITORS  
ARRANGEMENT ACT*, R.S.C. 1985, c. C 36, AS AMENDED**

**AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS  
(CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER  
COMPANIES LISTED ON SCHEDULE "A" HERETO**

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*,  
R.S.C. 1985, c. C 36, AS AMENDED**

**AFFIDAVIT OF AVA KIM  
(Recognition of US Sale Approvals)  
(Sworn on October 3, 2013)**

I, Ava Kim, of the City of Toronto, in the Province of Ontario, **MAKE OATH AND  
SAY:**

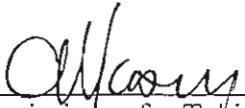
1. I am an Associate with Gowling Lafleur Henderson LLP, lawyers for Allied Systems Holdings, Inc. (the "**Applicant**") in its capacity as foreign representative of Allied Systems Holdings, Inc., Allied Systems (Canada) Company, Axis Canada Company and those other companies listed on Schedule "A" hereto (collectively, the "**Chapter 11 Debtors**"). I swear this affidavit in support of the Applicant's Motion for an order, *inter alia*, recognizing the US Jack Cooper Sale Approval Order and the US First Lien Agent Sale Approval Order (as defined in the Affidavit of Scott Macaulay sworn October 3, 2013, "**US Sale Approval Motion Recognition Affidavit**").

2. A copy of the following documents (as each is defined in the US Sale Approval Motion Recognition Affidavit) are attached hereto as follows:

- (a) Exhibit A - Sale and Bid Procedures Recognition Order;
- (b) Exhibit B – US Jack Cooper Sale Approval Order;
- (c) Exhibit C – Jack Cooper APA;
- (d) Exhibit D – US First Lien Agent Sale Approval Order;
- (e) Exhibit E – First Lien Agent APA (defined below);
- (f) Exhibit F – Sale Notices (defined below);
- (g) Exhibit G – Amended Sale Notices (defined below); and
- (h) Exhibit H - Personal Property Security Act Summaries for each of Allied Canada and Axis Canada.

3. I make this affidavit in support of the within Motion and for no other or improper purpose.

SWORN before me at the City of  
Toronto, in the Province of Ontario, this  
3<sup>rd</sup> day of October, 2013.

  
\_\_\_\_\_  
Commissioner for Taking Affidavits

  
\_\_\_\_\_  
AVA KIM

## **SCHEDULE A – APPLICANTS**

Allied Systems Holdings, Inc.

Allied Automotive Group, Inc.

Allied Freight Broker LLC

Allied Systems (Canada) Company

Allied Systems, Ltd. (L.P.)

Axis Areta, LLC

Axis Canada Company

Axis Group, Inc.

Commercial Carriers, Inc.

CT Services, Inc.

Cordin Transport LLC

F.J. Boutell Driveway LLC

GACS Incorporated

Logistic Systems, LLC

Logistic Technology, LLC

QAT, Inc.

RMX LLC

Transport Support LLC

Terminal Services LLC

# TAB A



This is Exhibit A referred to in the  
affidavit of Ava Kim  
sworn before me, this 3rd  
day of October 2013

Court File No. 12-CV-9757-00CL

ONTARIO

SUPERIOR COURT OF JUSTICE

(COMMERCIAL LIST)

THE HONOURABLE ) WEDNESDAY, THE 26TH DAY  
)  
JUSTICE MORAWETZ ) OF JUNE, 2013

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C.  
1985, c. c-36, AS AMENDED

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED  
SYSTEMS (CANADA) COMPANY, AXIS CANADA COMPANY AND THOSE OTHER  
COMPANIES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF  
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS  
AMENDED

### BID PROCEDURES RECOGNITION ORDER

THIS MOTION, made by Allied Systems Holdings, Inc. ("Allied US") in its capacity as the foreign representative (the "Foreign Representative") of Allied US, Allied Systems (Canada) Company, Axis Canada Company and those other companies listed on Schedule "A" hereto (the "Chapter 11 Debtors"), pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "CCAA"), for an Order substantially in the form enclosed at Tab 4 of the Motion Record, was heard this day at 330 University Avenue, Toronto, Ontario.

ON READING the Notice of Motion, the affidavit of Scott Macaulay sworn May 28, 2013 (the "Bid Procedures Affidavit"), the affidavit of Ava Kim sworn May 28, 2013 (the "Kim Affidavit"), the supplemental affidavit of Scott Macaulay sworn June 21, 2013 (the "Supplemental Macaulay Affidavit"), the affidavit of Tanya Rocca sworn June 21, 2013 (the

**“Rocca Affidavit”**), the seventh report of Duff & Phelps Canada Restructuring Inc. dated June 24, 2013 (the **“Seventh Report”**), and on hearing the submissions of counsel for the Foreign Representative, counsel for the Information Officer, counsel for Yucaipa American Alliance Fund I, L.P.; Yucaipa American Alliance Fund II, L.P.; Yucaipa American Alliance (Parallel) Fund I, L.P.; Yucaipa American Alliance (Parallel) Fund II, L.P., counsel for Black Diamond CLO 2005-1 Ltd., BDCM Opportunity Fund II, LP and Spectrum Investment Partners LP, counsel for the Canadian Auto Workers’ Union, counsel for the Unsecured Creditors’ Committee for the Chapter 11 Debtors, and those other parties present, no one else appearing although duly served as appears from the affidavit of service of Tanya Rocca sworn May 28, 2013, the affidavit of service of Tanya Rocca sworn June 24, 2013 and the affidavit of Ava Kim sworn June 25, 2013:

#### **SERVICE**

1. THIS COURT ORDERS that the time for service of the Notice of Motion, the Motion Record, the Kim Affidavit, the Supplemental Macaulay Affidavit, the Rocca Affidavit and the Seventh Report is hereby abridged and validated so that this Motion is properly returnable today, and hereby dispenses with further service thereof.
2. THIS COURT ORDERS that capitalized terms used herein and not other otherwise defined have the meaning given to them in the Bid Procedures Affidavit.

#### **RECOGNITION OF US BID PROCEDURES ORDER**

3. THIS COURT ORDERS that the Bid Procedures Order entered by the United States Bankruptcy Court for the District of Delaware on June 20, 2013 in the Foreign Proceeding, *inter alia* (a) approving bid procedures, (b) approving cure procedures, (c) establishing a date and procedures for an auction, (d) scheduling sale hearing and related deadlines, (e) approving form and manner of notices, and (f) granting related relief, a copy of which is attached hereto as Appendix “A” (the **“US Bid Procedures Order”**), is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA.

## GENERAL

4. THIS COURT ORDERS that, pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act* (Canada), the Chapter 11 Debtors are authorized and permitted to disclose to any Potential Bidder(s) (as defined in the US Bid Procedures Order and the Bid Procedures referenced therein) human resources and payroll information in the Chapter 11 Debtors' records pertaining to the Chapter 11 Debtors' past and current employees, solely for purposes of facilitating the Bid Procedures. Any Potential Bidder that receives any such information in connection with the Bid Procedures shall maintain and protect the privacy of such information and shall be entitled to use the personal information provided to it only for purposes of the Bid Procedures and only in a manner which is in all material respects identical to the use of such information by the Chapter 11 Debtors.

5. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United States, or in any other foreign jurisdiction, to give effect to this Order or to assist the Chapter 11 Debtors, the Foreign Representative, the Information Officer and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Chapter 11 Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Chapter 11 Debtors, the Foreign Representative or the Information Officer and their respective agents in carrying out the terms of this Order.

6. THIS COURT ORDERS that each of the Chapter 11 Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

ENTERED AT / INSCRIT A TORONTO  
ON / BOOK NO:  
LE / DANS LE REGISTRE NO.:

JUN 26 2013

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## **APPENDIX A – CHAPTER 11 DEBTORS**

**Allied Systems Holdings, Inc.**

**Allied Automotive Group, Inc.**

**Allied Freight Broker LLC**

**Allied Systems (Canada) Company**

**Allied Systems, Ltd. (L.P.)**

**Axis Areta, LLC**

**Axis Canada Company**

**Axis Group, Inc.**

**Commercial Carriers, Inc.**

**CT Services, Inc.**

**Cordin Transport LLC**

**F.J. Boutell Driveway LLC**

**GACS Incorporated**

**Logistic Systems, LLC**

**Logistic Technology, LLC**

**QAT, Inc.**

**RMX LLC**

**Transport Support LLC**

**Terminal Services LLC**

## **APPENDIX A– US BID PROCEDURES ORDER**

***Attached.***

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

In re:

**ALLIED SYSTEMS HOLDINGS, INC., et al.<sup>1</sup>,**

**Debtors.**

**Chapter 11**

**Case No. 12-11574 (CSS)**

**(Jointly Administered)**

**Re: Docket No. 1175**

**ORDER (A) APPROVING BID PROCEDURES, (B) APPROVING CURE  
PROCEDURES, (C) ESTABLISHING DATE FOR AUCTION AND  
APPROVING RELATED PROCEDURES, (D) SCHEDULING SALE  
HEARING AND RELATED DEADLINES, (E) APPROVING FORM AND  
MANNER OF NOTICES, AND (F) GRANTING RELATED RELIEF**

This matter coming before the Court on the motion (the "Motion") pursuant to Sections 105(a), 363, 365, and 503(b) of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), for entry of an order: (i) approving the bid procedures (the "Bid Procedures") substantially in the form attached hereto as Exhibit 1 with respect to the proposed sale (the "Sale") of substantially all of the assets (as discussed in greater detail below, the "Purchased Assets"), (ii) scheduling a hearing (the "Sale Hearing") on the Sale and setting objection and bidding deadlines with respect to the Sale, (iii) approving the form and manner of notice of an auction for the Purchased Assets (the "Auction"), (iv) establishing procedures to determine cure

<sup>1</sup> The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

amounts and deadlines for objections for certain contracts and leases to be assumed and assigned by the Debtors (the "Assumed and Assigned Agreements"), and (v) granting related relief; the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein (the "Bid Procedures Hearing"); and the Court having considered the *Notice of Filing Modified DIP Credit Agreement and Bid Procedures and Hearing Thereon* [Docket No. 1276] and the statements of counsel, evidence presented, record created and findings made on the record at the Bid Procedures Hearing;

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The Debtors have articulated good and sufficient reasons for, and the best interests of its estate will be served by, this Court granting the relief requested in the Motion, including approval of (i) the Bid Procedures, attached hereto as Exhibit 1; (ii) the form and manner of notice of the Sale Notice,<sup>2</sup> substantially in the form attached hereto as Exhibit 2; and (iii) the form and manner of the Cure Notice, substantially in the form attached hereto as Exhibit 3.

B. The proposed Sale Notice and the proposed Cure Notice are good, appropriate, adequate and sufficient, and are reasonably calculated to provide all interested parties with timely and proper notice of the Sale and the assumption and assignment of any executory contracts and unexpired leases contemplated in the Successful Bid.

C. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates will be served by, this Court scheduling an Auction and considering approval of the Sale and the transfer of the Purchased Assets to the Successful Bidder free and

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion.

clear of all liens, claims, interests and encumbrances pursuant to section 363 of the Bankruptcy Code.

**FURTHER, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein.
2. The Bid Procedures are hereby approved, are incorporated herein by reference, and shall govern all bids and bid proceedings relating to the Purchased Assets. The Debtors are authorized to take any and all actions necessary or appropriate to implement the Bid Procedures.
3. All Qualified Bids (as such term is defined in the Bid Procedures) must be received prior to **12:00 p.m. (Prevailing Eastern Time) on August 8, 2013** (the "**Bid Deadline**"), by each of the following: (i) the Debtors, Allied Systems Holdings, Inc., 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345 (Attn: John Blount, Esq.); (ii) co-counsel to the Debtors, Troutman Sanders LLP, Bank of America Plaza, 600 Peachtree Street, Suite 5200, Atlanta, Georgia 30308 (Attn: Jeffrey W. Kelley, Esq.) and Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and Christopher M. Samis, Esq.); (iii) the Debtors' investment banker, Rothschild Inc., 1251 Ave of the Americas, 51st Fl, New York, New York 10020 (Attn: Stephen Antinelli); (iv) the Office of the United States Trustee (the "**U.S. Trustee**"), 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: David L. Buchbinder, Esq.); and (v) co-counsel to the Official Committee of Unsecured Creditors (the "**Committee**"), Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Michael G. Burke, Esq.) and Sullivan Hazeltine Allinson LLC, 901 North Market Street, Suite 1300, Wilmington, Delaware 19801 (Attn: William D. Sullivan, Esq.). A Bid received after the Bid Deadline shall not constitute a Qualified Bid.



4. The Prepetition First Lien Agents, acting at the direction of the Requisite Lenders,<sup>3</sup> are automatically deemed to be a Qualified Bidder without prior compliance with the requirements that a Potential Bidder must satisfy to be a Qualified Bidder, provided however, that any offer submitted by the Prepetition First Lien Agents prior to or during the Auction may include a credit bid pursuant to section 363(k) of the Bankruptcy Code of all or any portion of the Obligations outstanding under the Prepetition First Lien Credit Agreement shall otherwise comply with the requirements that must be satisfied in order to be deemed a Qualified Bid. No other Lender under the Prepetition First Lien Credit Agreement shall be entitled to "credit bid" any Obligations held by such Lender in connection with any Written Offer, and no such bid shall constitute a Qualified Bid, provided however, that nothing contained in the Bid Procedures shall preclude an individual Lender (or group of Lenders) under the Prepetition First Lien Credit Agreement from submitting a Written Offer for the Assets that complies with the requirements of the Bid Procedures. Any Good Faith Deposit accompanying a Written Offer that the Debtors, after consultation with the Consultation Parties, determines not to be a Qualified Bid shall be returned promptly following such determination.

5. In their discretion, the Debtors, in consultation with the Consultation Parties, may choose to either consider or disregard Written Offers for an insubstantial portion of the Assets. Between the Bid Deadline and the Auction, the Debtors may negotiate with or seek clarification of any Written Offer or Qualified Bid from a Qualified Bidder (including for the purpose of having such Written Offer modified, amended or supplemented so as to become a Qualified Bid). Each Qualified Bidder shall provide to the Debtors any information reasonably required by the Debtors (which the Debtors may share with the Consultation Parties) in

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<sup>3</sup> The term "Requisite Lenders" (as defined in the Prepetition First Lien Loan Agreement) shall be determined by either (i) the Bankruptcy Court at or prior to the Sale Hearing or (ii) the agreement of the Petitioning Creditors (as defined below) and Yucaipa (as defined below).

connection with the evaluation of a Written Offer or Qualified Bid within two (2) business days after such request is made. Without the consent of the Debtors, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

6. As promptly as practicable after a Potential Bidder delivers the documents and items required to submit above, and after consultation with the Consultation Parties, but in any event no later than one (1) business day prior to the Auction, the Debtors shall determine in their business judgment, and shall notify each Potential Bidder whether (i) such Potential Bidder is a Qualified Bidder and (ii) such Potential Bidder's Written Offer is a Qualified Bid. Each Qualified Bidder and the Consultation Parties will be given access to all Qualified Bids at such time. In evaluating any Qualified Bid or subsequent bid, the Debtors shall treat comparable credit bids and cash bids as equivalent and no credit bid shall be considered inferior to a comparable cash bid because it is a credit bid.

7. Each Qualified Bidder shall be deemed to acknowledge and represent that (i) it has had an opportunity to conduct any and all desired due diligence regarding the Assets prior to making its Qualified Bid, (ii) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its Qualified Bid, and (iii) it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Purchased Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder, as set forth in the applicable agreement.

8. In the event that two (2) or more Qualified Bids are received, the Debtors shall conduct an Auction of the Purchased Assets. The Auction shall be held on **August 14, 2013 at 10:00 a.m. (Prevailing Eastern Time)** at the offices of Richards, Layton and Finger, P.A. located at 920 N. King Street, Wilmington, DE 19801 and continue thereafter until completed. No later than August 12, 2013, the Debtors will provide notice of whether the Auction will go forward to the Consultation Parties, the U.S. Trustee, any creditor of the Debtors that has provided written notice to the Debtors' counsel at least five (5) business days in advance of the Auction of his, her, or its intent to attend the Auction, any Qualified Bidder who has timely submitted a Qualified Bid, and Duff & Phelps Canada Restructuring Inc., the information officer appointed in the Canadian recognition proceeding ("**Duff and Phelps**"). If there is only one (1) Qualified Bid submitted by the Bid Deadline, and after consultation with the Prepetition First Lien Agents to determine that the Prepetition First Lien Agents do not intend to submit a Qualified Bid at or prior to the Auction (a "**Sole Qualified Bid**"), the Debtors shall not hold the Auction and instead shall request at the Sale Hearing that the Court approve the Sole Qualified Bid.

9. The Auction will be conducted openly, but only the Debtors, any representative of the Consultation Parties, the U.S. Trustee, any creditor of the Debtors that has provided written notice to the Debtors' counsel at least five (5) business days in advance of the Auction of his, her, or its intent to attend the Auction, any Qualified Bidder who has timely submitted a Qualified Bid, and Duff & Phelps, together with professional advisors to each of the foregoing, may attend the Auction. The Auction will be transcribed. Each Qualified Bidder participating at the Auction will be required to confirm that it has not engaged in any collusion

with any other Qualified Bidder regarding the Bid Procedures, the Auction or any proposed transaction relating to the Assets or a portion thereof.

10. All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidders' asset purchase agreement, as applicable.

11. The Sale Notice and the Cure Notice, substantially in the forms attached hereto as Exhibit 2 and Exhibit 3, respectively, are good and sufficient for all purposes.

12. Not later than three (3) business days after the entry of the Bid Procedures Order, the Debtors will serve copies of the Sale Notice, the Bid Procedures, and the Bid Procedures Order by mail, postage prepaid to: (i) all entities known to have expressed a *bona fide* interest in acquiring the Purchased Assets (by overnight mail); (ii) counsel to BDCM Opportunity Fund II, LP, Black Diamond CLO 2005-1 LTD and Spectrum Investment Partners LP (collectively, the "Petitioning Creditors"); (iii) Yucaipa American Alliance Fund I, L.P. and Yucaipa American Alliance (Parallel) Fund I, L.P. (collectively, "Yucaipa"); (iv) the U.S. Trustee; (v) the agent under the debtor in possession financing facility in effect at the time of the Auction; (vi) known entities holding or asserting a security interest in or lien against any of the Purchased Assets; (vii) taxing authorities whose rights may be affected by a sale of the Purchased Assets; (viii) counsel to the Committee; (ix) all Attorneys General for the states in which the Debtors conduct business; (x) all parties that have requested notice pursuant to Bankruptcy Rule 2002 as of the date of the entry of this Order; and (xi) all parties listed on the Main Service List, the Supplemental Service List (Pensions) and the Supplemental Service List (Government Tax / Environmental Agencies) in the Canadian recognition proceeding.

13. Not later than ten (10) days after entry of the Bid Procedures Order, the Debtors will publish the Sale Notice in the national edition of *The Wall Street Journal* or *The New York Times* and the national edition (Canada) of the *Globe and Mail*.

14. The Debtors shall prepare and serve on the non-Debtor parties to all potential Assumed and Assigned Agreements to be assigned to the Successful Bidder the Cure Notice listing (i) the potential Assumed and Assigned Agreement(s), and (ii) the Cure Amount(s), if any, no later than July 15, 2013, to be assigned to the Successful Bidder. Any counter-party to a potential Assumed and Assigned Agreement that wishes to be notified of the identity of the Successful Bidder after such party is identified in accordance with the Bid Procedures and receive evidence of such Successful Bidder's ability to perform in the future the Assumed and Assigned Agreements, must submit a written request for such notification by fax or e-mail to co-counsel for the Debtors at the number or e-mail address set forth in the Cure Notice. Such request must contain the fax number and/or e-mail address to which the Assumed and Assigned Agreement counter-party would like the Debtors to transmit the information.

15. The Sale Hearing will be held on August 22, 2013 at 2:00 p.m. (Prevailing Eastern Time) at the United States Bankruptcy Court for the District of Delaware, located in 824 Market Street, 5<sup>th</sup> Floor, Courtroom 6, Wilmington, DE 19801 before The Honorable Christopher S. Sontchi. After consultation with the Consultation Parties, the Debtors may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of the adjournment in open court or on the Court's calendar on the date scheduled for the Sale Hearing or any adjourned date.

16. At the Sale Hearing, the Debtors shall present the results of the Auction to the Court and seek approval for the Successful Bid and the Backup Bid(s). As soon as

practicable following the granting of any sale approval Order by this Court, the Debtors shall seek recognition of such sale approval Order by the Canadian Court. In the course of seeking such recognition, the Debtors shall seek a vesting Order in respect of any applicable Canadian Assets confirming that such Canadian Assets vest in the Successful Bidder free and clear of all Interests upon the consummation of the approved transaction. Any creditor that receives notice of the Sale Hearing and fails to timely file an objection to the sale shall be deemed to have consented under section 363(f)(2) of the Bankruptcy Court to a sale free and clear of such creditor's line or interest, if any.

17. The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the Closing Deadline. Subject to the terms of the Successful Purchase Agreement and any limitation contained in any debtor in possession financing facility then in effect, the Debtors may, in consultation with the Consultation Parties, extend the Closing Deadline from time to time in their reasonable business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Date, its Successful Bidder Deposit shall be applied to the purchase price in such transaction.

18. If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Successful Purchase Agreement, or otherwise fails to perform, the Debtors may, in their business judgment, and in consultation with the Consultation Parties, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a "Defaulting Buyer," at which time the Successful Bid shall be deemed rejected.

19. The Debtors shall be entitled to (i) retain and apply the Successful Bidder Deposit as set forth in the Successful Bid, as part of the Debtors' damages resulting from the

breach or failure to perform by the Defaulting Buyer, and, (ii) subject to any limitation on damages set forth in the purchase agreement between the Defaulting Buyer and the Debtors, seek specific performance and all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform.

20. Following the Sale Hearing approving the transaction with respect to the Assets to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for any reason, the Debtors will be authorized, but not required to consummate a sale transaction with (an) appropriate Backup Bidder(s) (the "**Backup Purchase**") without further order of this Court or the Canadian Court, provided that the Bankruptcy Court approves such Backup Purchase at the Sale Hearing.

21. If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder shall be applied to the purchase price in such transaction. On an as-needed basis, the Debtors, in the exercise of their business judgment and after consultation with the Consultation Parties, shall determine an alternative Closing Deadline for the Backup Purchase provided that such Closing Deadline shall not be later than the Backup Bid Closing Deadline. In the event that the Debtors seek to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches its Modified Agreement or otherwise fails to perform, the Debtors may, in their business judgment and after consultation with the Consultation Parties, and without further order of the Bankruptcy Court or the Canadian Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as set forth in paragraph 19 above (including, but not limited to, retaining and applying the Backup Bidder's Good Faith

Deposit as set forth in the Backup Bid, as part of the Debtors' damages resulting from the breach or failure to perform by the Backup Bidder).

22. Objections to (i) approval of the Sale, including the Sale of the Purchased Assets free and clear of Liens, Claims and Interests and (ii) the assumption and assignment of any executory contract or unexpired lease indentified on the Cure Notice, including, but not limited to, objections relating to any anti-alienation provision or other restriction on assumption or assignment, or to the Cure Costs set forth on the Cure Schedule (but excluding Adequate Assurance Objections (as defined below)) (a "Contract Objection"), must be in writing, state the basis of such objection with specificity and be filed with this Court and served so as to be received on or before August 15, 2013 at 4:00 p.m. (Prevailing Eastern Time) by each of the following: (i) the Debtors, Allied Systems Holdings, Inc., 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345 (Attn: John Blount, Esq.); (ii) co-counsel to the Debtors, Troutman Sanders LLP, Bank of America Plaza, 600 Peachtree Street, Suite 5200, Atlanta, Georgia 30308 (Attn: Jeffrey W. Kelley, Esq.) and Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and Christopher M. Samis, Esq.); (iii) Rothschild Inc., 1251 Ave of the Americas, 51st Fl, New York, New York 10020 (Attn: Stephen Antinelli); (iv) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: David L. Buchbinder, Esq.); (v) co-counsel to the Committee, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Michael G. Burke, Esq.) and Sullivan Hazeltine Allinson LLC, 901 North Market Street, Suite 1300, Wilmington, Delaware 19801 (Attn: William D. Sullivan, Esq.); (vi) co-counsel to the Petitioning Creditors, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022 (Attn: Adam Harris, Esq. and David M. Hillman, Esq.) and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800,



Wilmington, DE 19899 (Attn: Adam Landis, Esq.); and (vii) co-counsel to Yucaipa, Latham & Watkins LLP, 355 South Grant Avenue, Los Angeles, CA 90071-1560 (Attn: Robert A. Klyman, Esq.) and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq. and Joseph M. Barry, Esq.).

23. Within one (1) business day after the conclusion of the Auction for the Purchased Assets, the Debtors will (a) file and serve upon the non-debtor parties to the Assumed and Assigned Agreements that have been identified in the Bid of the Successful Bidder a notice identifying the Successful Bidder and (b) distribute to non-debtor parties to the Assumed and Assigned Agreements that have been identified in the Bid of the Successful Bidder evidence of the Successful Bidder's ability to provide adequate assurance of the Successful Bidder's ability to perform in the future the Assumed and Assigned Agreements. The non-debtor parties to the Assumed and Assigned Agreements will have until **August 21, 2013 at 4:00 p.m. (Prevailing Eastern Time)** (the "**Adequate Assurance Objection Deadline**") to object to the assumption, assignment, and/or transfer of such Assumed and Assigned Agreement solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by Section 365 of the Bankruptcy Code (an "**Adequate Assurance Objection**") by filing and serving an Adequate Assurance Objection on the parties identified above.

24. Unless an objection to the assumption and assignment of an Assumed and Assigned Agreement is filed and served before the applicable objection deadline, all counterparties to the Assumed and Assigned Agreements shall be (i) forever enjoined and barred from objecting to the proposed Cure Amounts and from asserting any additional cure or other amounts with respect to the Assumed and Assigned Agreements, and the Debtors, their estates, or the Successful Bidder shall be entitled to rely solely upon the proposed Cure Amounts set

forth in the Cure Notices; (ii) deemed to have consented to the Cure Amount; and (iii) forever barred and estopped from asserting or claiming against the Debtors, or the Successful Bidder that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed and Assigned Agreements, or that there is any objection or defense to the assumption and assignment of such Assumed and Assigned Agreements.

25. Nothing contained in this order or the Sale Order shall affect or otherwise impair any setoff or recoupment rights or other defenses of General Motors Holdings LLC, General Motors LLC, or General Motors Canada Limited (collectively, "GM"), or the priority of any setoff or recoupment claims, or any rights attendant thereto, including without limitation, the right of GM to credit bid up to the amount of its claims for any account receivable allegedly owed by GM to the Debtors, should such rights exist.

26. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Dated: June 20, 2013  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

## **EXHIBIT 1**

### **Bid Procedures**

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

In re:

**ALLIED SYSTEMS HOLDINGS, INC., et al.<sup>1</sup>,**  
  
**Debtors.**

Chapter 11

Case No. 12-11874 (CSS)

(Jointly Administered)

**BID PROCEDURES**

1. These bid procedures (the “**Bid Procedures**”)<sup>2</sup> set forth the guidelines and process by which Allied Systems Holdings, Inc. (“**Allied**”) and its affiliated debtors and debtors in possession (collectively, the “**Debtors**”) shall market substantially all of their assets (the “**Assets**”) for sale to interested parties and conduct a sale of such Assets through a court-approved auction (the “**Auction**”).

2. On June \_\_, 2013, the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”) entered its *Order (A) Approving Bid Procedures, (B) Approving Cure Procedures, (C) Establishing Date for Auction and Approving Related Procedures, (D) Scheduling Sale Hearing and Related Deadlines, (E) Approving Form and Manner of Notices, and (F) Granting Related Relief* [Docket No. \_\_] (the “**Bid Procedures Order**”), thereby approving these Bid Procedures and scheduling a hearing on the Debtors’ Sale Motion (as defined below) for **August 22, 2013 at 2:00 p.m. (Prevailing Eastern Time)** (the “**Sale Hearing**”). On \_\_\_\_\_, 2013, the Ontario Superior Court of Justice

<sup>1</sup> The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors’ corporate headquarters and the Debtors’ address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30343.

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meaning set forth in the Sale Motion.

(Commercial List) (the "Canadian Court") granted an Order recognizing the Bid Procedures Order in the proceedings of the Debtors pursuant to Part IV of the *Companies' Creditors Arrangement Act* (Canada). The Debtors have filed a motion to sell substantially all of their Assets to the entity or combination of entities that submits the highest or otherwise best offer at the Auction (the "Sale Motion"). The Debtors will seek to have any Order of the Bankruptcy Court approving the sale of the Assets recognized in Canada by a further order of the Canadian Court.

3. The Debtors provide these Bid Procedures for use by Potential Bidders (as defined below) and Qualified Bidders (as defined below) in submitting written bids proposing a transaction to purchase or otherwise acquire all or any portion of the Assets, and, as necessary, qualifying for and participating in the Auction. The Debtors seek to enter into one or more transactions with one or more Qualified Bidders, so long as the individual bid for all of the Assets by a Qualified Bidder or the bids for less than all of the Assets by two or more Qualified Bidders, in combination, represent the highest or otherwise best offer for all or substantially all of the Assets.

**A. Important Dates**

4. The Debtors shall, in their discretion and in consultation with the Consultation Parties (as defined below):

- Assist Qualified Bidders in conducting their reasonable due diligence investigations;
- Negotiate, solicit and entertain offers for the sale of the Assets pursuant to the terms of these Bid Procedures;
- Accept Written Offers (as defined below) from Qualified Bidders until 12:00 p.m. (noon) (Prevailing Eastern Time) on August 8, 2013;
- Select the Successful Bidder and Backup Bidder(s) (each as defined below) at the conclusion of the Auction to be held on August 14, 2013 at 10:00 a.m. (Prevailing Eastern Time);

- Seek authority to sell Assets to such Successful Bidder(s) at the Sale Hearing, to be held before the Bankruptcy Court on August 22, 2013 at 2:00 p.m. (Prevailing Eastern Time); and
- Seek an Order of the Canadian Court as soon as practicable following the Sale Hearing: (i) recognizing any sale approval Order granted by the Bankruptcy Court and (ii) vesting any applicable Assets that are situated in Canada ("Canadian Assets") in the applicable Successful Bidder(s).

**B. Form of Asset Purchase Agreement**

5. No later than July 1, 2013, the Debtors will file with the Bankruptcy Court a form of asset purchase agreement to be used by Qualified Bidders in connection with the preparation of a Written Offer (as defined below).

**C. Assets to be Sold**

6. The Debtors seek to sell the Assets as a going concern, provided that a sale so constituted would yield the highest or otherwise best offer for the Assets.

**D. Confidentiality Agreements and Access to Data Room**

7. Any person or entity wishing to bid on any of the Assets (each, a "Potential Bidder") must (a) deliver to the Debtors, to the extent not already executed and delivered, a confidentiality agreement in form acceptable to the Debtors (such a form is available upon request of the Debtors) and (b) disclose the identity of the Potential Bidder, including the identity of: (i) the equity holders and sponsors of the Potential Bidder; provided, however, that if the Potential Bidder is a publicly traded company then such Potential Bidder will only be required to disclose those equity holders who hold in excess of 5% of the equity of such Potential Bidder; and (ii) any guarantors of the obligations of the Potential Bidder in connection with a potential purchase of the Assets. The Administrative Agent and Collateral Agent (the "Prepetition First Lien Agents") under the Amended and Restated First Lien Secured Super-Priority Debtor In Possession and Exit Credit Agreement, dated as of May 15, 2007 (as amended from time, the

**"Prepetition First Lien Loan Agreement")**, acting at the direction of Requisite Lenders (as defined below) and their respective designees, assignees, and successors, are automatically deemed to be Potential Bidders that have satisfied the requirements set forth in the preceding sentence. For purposes of these Bid Procedures, the term **"Requisite Lenders"** (as defined in the Prepetition First Lien Loan Agreement) shall be determined by either (i) the Bankruptcy Court at or prior to the Sale Hearing or (ii) the agreement of the Petitioning Creditors (as defined below) and Yucaipa (as defined below).

8. The Debtors will afford any Potential Bidder who satisfies the requirement set forth in paragraph 7 such reasonable due diligence access or additional information as may be reasonably requested by the Potential Bidder that the Debtors, in their reasonable business judgment, determine to be reasonable and appropriate; provided that if any Potential Bidder is (or is affiliated with) a competitor of the Debtors, the Debtors, after consultation with the Consultation Parties, will not be required to disclose to such Potential Bidder any trade secrets or proprietary information unless the confidentiality agreement executed by such Potential Bidder contains appropriate provisions to ensure that such trade secrets or proprietary information will not be used for an improper purpose or to gain an unfair competitive advantage. The Debtors and their advisors will coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders. The Debtors shall not be obligated to furnish any due diligence information after the deadline for the submission of bids. The Debtors, their advisors and the Consultation Parties are not responsible for, and will bear no liability with respect to, any information obtained by Potential Bidders in connection with due diligence. Notwithstanding anything contained herein to the contrary, the Debtors in their business judgment will decide what, if any, diligence information to make available to a particular

Potential Bidder. **"Consultation Parties"** means each of the following: (a) the professionals and advisors to the official committee of unsecured creditors appointed in these cases (the **"Committee"**); (b) BDCM Opportunity Fund II, LP, Black Diamond CLO 2005-1 LTD and Spectrum Investment Partners LP (collectively, the **"Petitioning Creditors"**); (c) Yucaipa American Alliance Fund I, L.P. and Yucaipa American Alliance (Parallel) Fund I, L.P. (**"Yucaipa"**), and (d) the agent under the debtor in possession financing facility in effect at the time of the Auction, provided however, that in the case of the entities listed in clauses (b) through (d), such entities shall constitute Consultation Parties only to the extent neither they nor any of their affiliates, directly or indirectly, is participating in any Qualified Bid.

9. Potential Bidders seeking information about the qualification process, should contact the Debtors' financial advisor at:

Rothschild Inc.  
1251 Avenue of the Americas, 51<sup>st</sup> Floor  
New York, NY 10020  
Attn: Marcelo Messer  
Fax: (646) 390-7965  
E-mail: marcelo.messer@rothschild.com

10. A **"Qualified Bidder"** is a Potential Bidder (or a combination of Potential Bidders whose bids for the Assets of the Debtors do not overlap and who agree to have their bids combined for purposes of the determination of whether such Potential Bidders together constitute a Qualified Bidder) (i) that delivers a confidentiality agreement as set forth in paragraph 7 above (unless previously provided), (ii) that delivers by no later than August 8, 2013 financial information and credit-quality support or enhancement that demonstrate, in the Debtors' reasonable discretion, in consultation with the Consultation Parties, the financial capability of the Potential Bidder to consummate the proposed transaction for the desired Assets, (iii) that the Debtors determine, in their reasonable discretion, in consultation with the Consultation Parties, is



reasonably likely to submit a bona fide offer for the Assets and will be able to consummate such transaction if selected as the Successful Bidder within the time frame set forth in these Bid Procedures, and (iv) who submits a Qualified Bid as set forth in Section E below by the Bid Deadline; provided however that the Prepetition First Lien Agents shall be excused from the requirement in clauses (ii) and (iv) immediately above.

11. Potential Bidders requesting information in connection with their due diligence should contact the Debtors' representative at the address provided above.

**E. Requirements for a Qualified Bid**

12. To participate in the Auction, if any, a Qualified Bidder must deliver to the Debtors a written offer (each, a "Written Offer"), which, in order to be deemed a "Qualified Bid," must meet each of the requirements listed below:

- (i) The consideration must include cash in an amount sufficient to satisfy in full the Debtors' obligations under their debtor-in-possession financing facility and fully fund the Debtors' post-closing wind-down budget,<sup>3</sup> and provide for the assumption of the Assumed Liabilities (as defined in the Agreement);<sup>4</sup>
- (ii) Include a good faith deposit (the "Good Faith Deposit") in the form of a certified check, wire transfer or such other form of a cash equivalent (including a release of allowed secured claims under the Prepetition First Lien Credit Agreement) as is reasonably acceptable to the Debtors (in consultation with the Consultation Parties) in an amount equal to 10% of the aggregate value of the Qualified Bidder's bid (excluding the value of the Assumed Liabilities);
- (iii) Be accompanied by a clean, duly executed and binding purchase agreement in a form acceptable to the Debtors in their reasonable discretion (after consultation with the Consultation Parties) together with a blacklined copy marked to show all changes from the Agreement. A Written Offer must also be accompanied by all exhibits and schedules contemplated by the purchase agreement, and, to the extent required by the terms and conditions of such bid, any ancillary agreements as

<sup>3</sup> The wind-down budget is subject to the consent of the Prepetition First Lien Agents and will be posted to the data room no later than July 15, 2013.

<sup>4</sup> The requirements of this paragraph 12(i) shall not apply to any Potential Bidder that submits a Written Offer to acquire less than all or substantially all of the Assets, provided however, that such Potential Bidder shall not be designated as a Qualified Bidder, and such Written Offer shall not be designated as a Qualified Bid, unless the Debtors shall have received one or more other Written Offers to acquire non-overlapping Assets that, in the aggregate, meet the requirements of this paragraph 12(i).

described in the purchase agreement with all exhibits and schedules thereto (or term sheets that describe the material terms and provisions of such agreements) (collectively, with the purchase agreement, a "Modified Agreement");

- (iv) The Modified Agreement must contain a covenant that the Qualified Bidder shall make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, or other applicable competition laws or regulations, if any, and pay all costs and expenses of such filings (including the Debtors' costs and expenses);
- (v) Be accompanied by a list of any executory contracts or unexpired leases that are to be assumed and/or assigned under such Written Offer and/or specify whether the final assumption and assignment of such contracts and leases is subject to any "designation rights" period;
- (vi) State that the bidder will: (a) consummate and fund the proposed transaction by no later than the outside Closing Date set forth in the Agreement (the "Closing Deadline"); and (b) in the event that the bidder is selected as a Backup Bidder, keep its offer to purchase the Assets open until 5:00 p.m. Eastern Time) on the fifth (5<sup>th</sup>) business day following the date set for the closing of the sale to the Successful Bidder (the "Backup Bid Closing Deadline");
- (vii) To the extent not previously provided, state that the Qualified Bidder is financially capable of consummating the transactions contemplated by the Modified Agreement and any related transaction documents (the "Sale"), and include written evidence of a firm, irrevocable commitment for financing, or other evidence of ability to consummate the Sale, that will allow the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the Sale;
- (viii) Include current audited financial statements and latest unaudited financial statements of the Qualified Bidder or, if the Qualified Bidder is an entity formed for the purpose of acquiring the Assets, current audited financial statements and latest unaudited financial statements of the equity holders or sponsors of the Qualified Bidder who will guarantee the obligations of the Qualified Bidder, or such other form of financial disclosure and/or credit-quality support or enhancement, if any, that will allow the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the Sale;
- (ix) Include an acknowledgement and representation that the Qualified Bidder: (a) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (b) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or the Auction other than as provided in the Modified

Agreement and (c) is not entitled to any expense reimbursement, break-up fee or similar type of payment in connection with its bid;

- (x) Include evidence of the Qualified Bidder's ability to comply with section 365 of the Bankruptcy Code (to the extent applicable), including providing adequate assurance of such Qualified Bidder's ability to perform in the future the contracts and leases proposed in its bid to be assumed by the Debtors and assigned to the Qualified Bidder, in a form that will permit the immediate dissemination of such evidence to the counterparties to such contracts and leases;
- (xi) To the Debtors' satisfaction, fully disclose (a) the identity of each entity that will be bidding for the Assets or otherwise participating in connection with such bid, (b) the terms of any such participation, and (c) if an entity has been formed for the purpose of acquiring some, or all, of the Assets, the parties that will bear liability for any breach by such entity, and the financial capacity of such parties to satisfy such liability;
- (xii) State that the Written Offer is irrevocable until the later of (a) the closing of the transaction, if such Qualified Bidder is designated as a Successful Bidder and (b) the Backup Bidder Closing Deadline;
- (xiii) Must contain provisions allowing the Debtors' reasonable access to the Debtors' books and records for the administration of their bankruptcy cases if any agreement provides for the purchase of such books and records;
- (xiv) Not contain any due diligence or financing contingencies;
- (xv) In the Debtors' discretion, provide evidence of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Modified Agreement to the Debtors' satisfaction;
- (xvi) All documentation submitted in support of the Written Offer must be submitted both in hard copy and electronically; and
- (xvii) To the extent a Qualified Bidder includes non-cash consideration as part of its Written Offer, such as the waiver of any right to receive a distribution on account of an allowed claim (or if a Qualified Bidder wishes to preserve the option to include non-cash consideration in any subsequently submitted Qualified Bid), then, subject to paragraph 12(xviii) below, no later than seven (7) business days before the Bid Deadline (as defined below): (a) identify the form or forms of non-cash consideration that the Qualified Bidder included in any Written Offer, or that may be included in any subsequent Qualified Bid (it being understood that any forms of non-cash consideration not identified may not later be included in any subsequent Qualified Bid), (b) provide the Debtors and the Consultation Parties with the Qualified Bidder's methodology for valuing the non-cash consideration and all supporting documentation to allow the Debtors and the Consultation Parties to independently confirm the value of the form or forms of non-cash

consideration so identified and such additional information requested by the Debtors or any Consultation Party within two (2) Business Days after such request, and (c) provide detailed term sheets with respect to the material terms of any such non-cash consideration.

- (xviii) No Written Offer that includes non-cash consideration, such as a Written Offer that includes the waiver of any right to receive a distribution on account of an allowed claim, shall constitute a Qualified Bid (other than a credit bid pursuant to paragraph 13 below) unless the following prior written consent is obtained from the applicable parties: (a) if a Written Offer with non-cash consideration is made by any party in which a First Lien Lender (or any affiliate or related party) is a participant (directly or indirectly) in any capacity (a "Lender Related Bid"), then such Written Offer shall not constitute a Qualified Bid unless the Debtors obtain the written consent of the holders of a majority of the Prepetition First Lien Debt held by the other First Lien Lenders that are not participating (directly or indirectly) in the Lender Related Bid and (b) if the Written Offer with non-cash consideration is made by any party other than a First Lien Lender (or any affiliate or related party), then such Written Offer shall not constitute a Qualified Bid unless the Debtors obtain the written consent of the Requisite Lenders.<sup>5</sup> The consent rights described in this subparagraph shall not, in any way, be affected by the submission of any Qualified Bid by any First Lien Lender (or any affiliate or related party).

13. The Prepetition First Lien Agents, acting at the direction of the Requisite Lenders,<sup>6</sup> are automatically deemed to be a Qualified Bidder. The Prepetition First Lien Agents shall have the right to participate in the Auction (as defined below) without prior compliance with the requirements of paragraph 12, provided however, that any offer submitted by the Prepetition First Lien Agents (at the direction of Requisite Lenders) prior to or during the Auction may include a credit bid of all or any portion of the Obligations outstanding under the Prepetition First Lien Credit Agreement and shall comply with the requirements of paragraph 12(i) –(xvi). No other Lender under the Prepetition First Lien Credit Agreement shall be entitled to "credit bid" any Obligations held by such Lender in connection with any Written Offer, and no such bid shall constitute a Qualified Bid, provided however, that nothing contained in this paragraph 13 shall preclude an individual Lender (or group of Lenders) under the Prepetition

<sup>5</sup> For clarity, the term "Requisite Lenders" has the meaning set forth in paragraph 7, above.  
<sup>6</sup> See footnote 5.

First Lien Credit Agreement from submitting a Written Offer for the Assets that complies with the requirements of these Bid Procedures (including paragraph 12 hereof). Any Good Faith Deposit accompanying a Written Offer that the Debtors determine not to be a Qualified Bid shall be returned promptly following such determination.

14. In their discretion, the Debtors, in consultation with the Consultation Parties, may choose to either consider or disregard Written Offers for an insubstantial portion of the Assets. Between the Bid Deadline and the Auction, the Debtors may negotiate with or seek clarification of any Written Offer or Qualified Bid from a Qualified Bidder (including for the purpose of having such Written Offer modified, amended or supplemented so as to become a Qualified Bid). Each Qualified Bidder shall provide to the Debtors any information reasonably required by the Debtors (which the Debtor may share with the Consultation Parties) in connection with the evaluation of a Written Offer or Qualified Bid within two (2) business days after such request is made. Without the consent of the Debtors, a Qualified Bidder may not amend, modify or withdraw its Qualified Bid, except for proposed amendments to increase the amount or otherwise improve the terms of the Qualified Bid, during the period that such Qualified Bid is required to remain irrevocable and binding.

**F. Bid Deadline**

15. All Qualified Bids must be received prior to 12:00 p.m. (noon) (Prevailing Eastern Time) on August 8, 2013 (the "Bid Deadline"), by each of the following:

Debtors: Allied Systems Holdings, Inc.  
2302 Parklake Drive  
Building 15, Suite 600  
Atlanta, GA 30345  
Attn: Scott Macaulay  
Fax: 404-687-568  
E-mail: Scott.Macaulay@AlliedAutomotive.com

Debtors' Counsel: Troutman Sanders LLP  
600 Peachtree St. NE, Suite 5200  
Atlanta, GA 30308  
Attn: Jeffrey W. Kelley  
Fax: (404) 885-3900  
E-mail: jeffrey.kelley@troutmansanders.com

-and-

Richards, Layton & Finger, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Attn: Mark D. Collins  
Fax: (302) 651-7701  
E-mail: collins@rlf.com and samis@rlf.com

Debtors'  
Financial Advisor: Rothschild, Inc.  
1251 Avenue of the Americas, 51st Floor  
New York, New York 10020  
Attn: Todd R. Snyder  
Stephen J. Antinelli  
Fax: 646.390.8741  
E-mail: stephen.antinelli@rothschild.com

**G. Determination of Qualified Bidder and Qualified Bids**

16. As promptly as practicable after a Potential Bidder delivers the documents and items required by Section E above, and after consultation with the Consultation Parties, but in any event no later than one (1) business day prior to the Auction, the Debtors shall determine in their business judgment, and shall notify each Potential Bidder whether (i) such Potential Bidder is a Qualified Bidder and (ii) such Potential Bidder's Written Offer is a Qualified Bid. Each Qualified Bidder and the Consultation Parties will be given access to all Qualified Bids at such time. In evaluating any Qualified Bid or subsequent bid, the Debtors shall treat comparable credit bids and cash bids as equivalent and no credit bid shall be considered inferior to a comparable cash bid because it is a credit bid.

**H. "As Is, Where Is"**

17. Except as otherwise provided in the applicable agreement, the sale of any or all of the Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtors, their agents or their estates except to the extent set forth in the applicable agreement of the Successful Bidder(s) as approved by the Bankruptcy Court. Except as otherwise provided in the applicable agreement, and subject to the Bankruptcy Court's approval, all of the Debtors' right, title and interest in and to the Assets subject thereto shall be sold free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon and there against (collectively, the "Interests") subject to and in accordance with sections 363 and 365 of the Bankruptcy Code (and, with respect to any Canadian Assets, the terms of the vesting Order of the Canadian Court), with such Interests to attach to the net proceeds of the sale of the Assets. Each Qualified Bidder shall be deemed to acknowledge and represent that (a) it has had an opportunity to conduct any and all desired due diligence regarding the Assets prior to making its Qualified Bid, (b) it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its Qualified Bid, and (c) it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bid Procedures or, as to the Successful Bidder, as set forth in the applicable agreement.

**H. Auction**

18. In the event that two or more Qualified Bids are received, the Debtors shall conduct an Auction of the Assets. The Auction shall be held on **August 14, 2013 at 10:00 a.m. (Prevailing Eastern Time)** at the offices of Richards, Layton and Finger, P.A. located at 920 N.

King Street, Wilmington, DE 19801, and continue thereafter until completed. The Debtor may not cancel the Auction except in the circumstances described in Section J below.

19. Except as otherwise permitted in the Debtors' discretion, in consultation with the Consultation Parties, only the (i) Debtors, (ii) the Consultation Parties, (iii) the Office of the United States Trustee for the District of Delaware, (iv) Qualified Bidders, (v) any creditor of the Debtors that has provided written notice to the Debtors' counsel at least five (5) business days in advance of the Auction of his, her, or its intent to attend the Auction, (vi) Duff & Phelps Canada Restructuring Inc., the information officer appointed in the Canadian recognition proceeding ("Duff & Phelps"), and (vii) the respective professionals of the foregoing, shall be entitled to attend the Auction. Only a Qualified Bidder that submitted a Qualified Bid is eligible to participate in the Auction.

20. The Auction shall be governed by the following procedures:

- (i) Qualified Bidders shall appear at the Auction in person, or through a duly authorized representative.
- (ii) The Debtors, in their reasonable discretion, and in consultation with the Consultation Parties, may conduct the Auction in the manner that they determine in their reasonable business judgment will result in the Successful Bid(s) that will maximize the overall value of the Debtors' estates. The Debtors in their reasonable discretion, and in consultation with the Consultation Parties, shall take into account the assumption of liabilities in evaluating any Qualified Bid or subsequent Bid. The Debtors, in consultation with the Consultation Parties, may adopt and modify rules for the Auction at the Auction that, in the Debtors' reasonable business judgment and in consultation with the Consultation Parties, will better promote the goals of the Auction and that are not inconsistent with any of the provisions of the Bid Procedures Order, the Bankruptcy Code, or any order of the Bankruptcy Court; provided however, the Debtors shall not modify the rules for the Auction set forth in paragraphs 12(i), 12(xvii), 12(xviii), 13, 30 or 31 of these Bid Procedures. All such rules will provide that: (i) the Auction procedures must be fairly and evenly administered, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way with respect to the process as compared to any other participating Qualified Bidder; and (ii) the Consultation Parties and all participating Qualified Bidders shall be entitled to be present for all bidding with the understanding that the true identity of each bidder (i.e., the principals submitting each bid) shall be fully disclosed to



all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of these Bid Procedures, shall be deemed to constitute a Qualified Bid.

- (iii) The Debtors will arrange for the actual bidding at the Auction to be transcribed.
- (iv) Each Qualified Bidder participating in the Auction will be expected to confirm at the Auction that it has not engaged in any collusion with any other Qualified Bidder regarding these Bid Procedures, the Auction or any proposed transaction relating to the Assets or a portion thereof.
- (v) At least one day in advance of the Auction, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid (the "Opening Bid"), as determined by the Debtors in consultation with the Consultation Parties.
- (vi) The Auction will begin initially with the Opening Bid and shall proceed thereafter in minimum increments of at least \$500,000, with the specific increments for each round of bidding to be announced on the record at the Auction.
- (vii) All Qualified Bidders shall have the right, at any time, to request that the Debtors announce, subject to any potential new bids, the then current highest or otherwise best bid.
- (viii) In the Debtors' discretion and upon consultation with the Consultation Parties, all Qualified Bidders shall have the right to submit additional bids and make additional modifications to their Modified Agreement at the Auction: provided, however, that any such modifications to a Modified Agreement, on an aggregate basis and viewed in whole, shall not be less favorable to the Debtors as determined by the Debtors, and in consultation with the Consultation Parties.
- (ix) Upon conclusion of the bidding, the Auction shall be closed, and the Debtors shall, as soon as practicable thereafter, and after consultation with the Consultation Parties, identify and determine in its reasonable business judgment the highest or otherwise best Qualified Bid for the Assets (each, a "Successful Bid" and the entity or entities submitting such Successful Bid, each, a "Successful Bidder"), taking into account all material factors including, without limitation, the aggregate amount of cash consideration, the Assumed Liabilities, and the executory contracts to be assumed and assigned (including collective bargaining agreements). The Debtors shall advise the Qualified Bidders of such determination, and require the Successful Bidder to deliver its executed Modified Agreement (together, the "Successful Purchase Agreement") and to deposit an amount equal to at least 10% of the aggregate cash components of its Successful Bid in the form of a certified check, wire transfer or such other form of a cash equivalent as is reasonably acceptable to the Debtors (in consultation with the Consultation Parties) or such other form as approved by the Court (the

**"Successful Bidder Deposit"**) (provided that such Successful Bidder's Good Faith Deposit shall be applied and credited towards such Successful Bidder Deposit) within two (2) business days after conclusion of the Auction (unless the closing of the transaction reflected in the Successful Bid occurs prior to such time), but in no event later than the commencement of the Sale Hearing; provided further that the Prepetition First Lien Agents shall not be required to provide the Successful Bidder Deposit if the Prepetition First Lien Agents are the Successful Bidder.

- (x) In addition, the Debtors will determine, after consultation with the Consultation Parties, which Qualified Bid, if any, is the next highest or otherwise best Qualified Bid and designate such Qualified Bid as a **"Backup Bid"** in the event the Successful Bidder fails to consummate the contemplated transaction. A Qualified Bidder that submitted a Qualified Bid that is designated a Backup Bid is a **"Backup Bidder."**
- (xi) At the conclusion of the Auction, the Debtors may request, and upon such request the Successful Bidder and the Backup Bidder shall, recite on the record of the Auction any and all key terms of the Successful Bid and the Backup Bid, respectively, to ensure the accuracy of the final bids and to aid in the final documentation of the Sale.
- (xii) Following the conclusion of the Auction for the sale of substantially all of the Assets or the closing of the Sale, as the case may be, the Debtors, after consultation with the Consultation Parties, may resume bidding pursuant to such procedures determined by the Debtors in their discretion, and in consultation with the Consultation Parties, for the sale of discrete Assets not sold to the Successful Bidder.
- (xiii) All Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Auction, and the construction and enforcement of the Qualified Bidders' Modified Agreement, as applicable. All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Canadian Court with respect to the vesting of any Canadian Assets in the applicable Successful Bidder(s).

**J. Sole Qualified Bid**

21. If there is only one Qualified Bid submitted by the Bid Deadline, and after consultation with the Prepetition First Lien Agents to determine that the Prepetition First Lien Agents do not intend to submit a Qualified Bid at or prior to the Auction (a **"Sole Qualified Bid"**), the Debtors shall not hold the Auction and instead shall request at the Sale Hearing that

the Bankruptcy Court approve the Sole Qualified Bid. No later than August 12, 2013, the Debtors will provide notice of whether the Auction will go forward to the Consultation Parties, the U.S. Trustee, any creditor of the Debtors that has provided written notice to the Debtors' counsel at least five (5) business days in advance of the Auction of his, her, or its intent to attend the Auction, any Qualified Bidder who has timely submitted a Qualified Bid, and Duff & Phelps.

**K. Sale Hearing**

22. The Sale Hearing will be held on August 22, 2013 at 2:00 p.m. (Prevailing Eastern Time) at the United States Bankruptcy Court for the District of Delaware, located in 824 Market Street, Courtroom 6, Wilmington, DE 19801. After consultation with the Consultation Parties, the Debtors may adjourn or continue the Sale Hearing from time to time without further notice to parties in interest other than by announcement of the adjournment in open court or on the Bankruptcy Court's calendar on the date scheduled for the Sale Hearing or any adjourned date. At the Sale Hearing, the Debtors shall present the results of the Auction to the Bankruptcy Court and seek approval for the Successful Bid and the Backup Bid(s). As soon as practicable following the granting of any sale approval Order by the Bankruptcy Court, the Debtors will seek recognition of such sale approval Order by the Canadian Court. In the course of seeking such recognition, the Debtors will seek a vesting Order in respect of any applicable Canadian Assets confirming that such Canadian Assets vest in the Successful Bidder free and clear of all Interests upon the consummation of the approved transaction. Any creditor that receives notice of the Sale Hearing and fails to timely file an objection to the sale shall be deemed to have consented under section 363(f)(2) of the Bankruptcy Code to a sale free and clear of such creditor's lien or interests, if any.

23. Following the Sale Hearing approving the transaction with respect to the Assets to the Successful Bidder, if such Successful Bidder fails to consummate an approved transaction for

any reason, the appropriate Backup Bidder(s) shall be designated the Successful Bidder and the Debtors shall be authorized to effect such transaction without further order of the Bankruptcy Court or the Canadian Court. The Successful Bidder and Backup Bidder (if any) should be represented by counsel at the Sale Hearing.

**L. Consummation of the Purchase**

**(i) Closing Deadline**

24. The Successful Bidder shall consummate the sale transaction contemplated by the Successful Bid (the "Purchase") on or before the Closing Deadline. Subject to the terms of the Successful Purchase Agreement and any limitation contained in any debtor in possession financing facility then in effect, the Debtors may, in consultation with the Consultation Parties, extend the Closing Deadline from time to time in their reasonable business judgment. If a Successful Bidder successfully consummates an approved transaction by the Closing Deadline, its Successful Bidder Deposit shall be applied to the purchase price in such transaction.

25. If the Successful Bidder either fails to consummate the Purchase on or before the Closing Deadline, breaches the Successful Purchase Agreement, or otherwise fails to perform, the Debtors may, in their business judgment, and in consultation with the Consultation Parties, and without further order of the Bankruptcy Court, deem the Successful Bidder to be a "Defaulting Buyer," at which time the Successful Bid shall be deemed rejected.

26. The Debtors shall be entitled to (i) retain and apply the Successful Bidder Deposit as set forth in the Successful Bid, as part of the Debtors' damages resulting from the breach or failure to perform by the Defaulting Buyer, and, (ii) subject to any limitation on damages set forth in the purchase agreement between the Defaulting Buyer and the Debtors, seek specific performance and all available damages from such Defaulting Buyer occurring as a result of such Defaulting Buyer's failure to perform.

(ii) Backup Purchase

27. Upon a determination by the Debtors, after consultation with the Consultation Parties, that the Successful Bidder is a Defaulting Buyer, the Debtors will be authorized, but not required, to consummate a sale transaction with the Backup Bidder on the terms and conditions of the Backup Bid (the "Backup Purchase") without further order of the Bankruptcy Court or the Canadian Court, provided that the Bankruptcy Court approves such Backup Purchase at the Sale Hearing.

28. If a Backup Bidder consummates a Backup Purchase, the Good Faith Deposit of such Backup Bidder will be applied to the purchase price in such transaction. On an as-needed basis, the Debtors, in the exercise of their business judgment and after consultation with the Consultation Parties, shall determine an alternative Closing Deadline for the Backup Purchase provided that such Closing Deadline shall not be later than the Backup Bid Closing Deadline. In the event that the Debtors seek to consummate a Backup Purchase with a Backup Bidder and such Backup Bidder fails to consummate the Backup Purchase on or before the alternative Closing Deadline, breaches its Modified Agreement or otherwise fails to perform, the Debtors may, in their business judgment and after consultation with the Consultation Parties, and without further order of the Bankruptcy Court or the Canadian Court, deem such Backup Bidder to be a Defaulting Buyer and pursue the same remedies as set forth in paragraph 26 above (including, but not limited to, retaining and applying the Backup Bidder's Good Faith Deposit as set forth in the Backup Bid, as part of the Debtors' damages resulting from the breach or failure to perform by the Backup Bidder).

M. Return of Good Faith Deposits

29. Good Faith Deposits of all Qualified Bidders shall be held in an escrow account. Except for the Successful Bidder and the Backup Bidder(s), the Debtors shall return the Good

Faith Deposits of all Qualified Bidders that submit Written Offers no later than three (3) business days after the conclusion of the Auction. The Good Faith Deposit of any Backup Bidder shall be returned to the Backup Bidder on the earlier to occur of (a) the Backup Bidder Closing Deadline or (b) two (2) business days after the consummation of the Sale to the Successful Bidder.

**N. Reservations of Rights**

30. The Debtors, in consultation with the Consultation Parties, reserve the right in their reasonable business judgment to seek the approval of the Bankruptcy Court of a Qualified Bidder as the "stalking horse" bidder for purposes of the Auction, provided that the Written Offer submitted by such Qualified Bidder otherwise complies with these Bid Procedures (including, without limitation, paragraph 12 hereof). All parties in interest, including the Consultation Parties, shall receive notice of any motion seeking such approval, and shall have the right to object to any relief requested in such motion.

31. The Debtors, in consultation with the Consultation Parties,<sup>7</sup> reserve the right to terminate the Auction without declaring a Successful Bidder or Backup Bidder if the Debtors have received advice of outside counsel advising them that proceeding with a sale of the Assets on the terms of the highest and best offer submitted at the Auction would constitute a breach of fiduciary duty. Prior to terminating the Auction, the Debtors shall comply with the following procedures: (a) the Debtors shall notify each Consultation Party and each Qualified Bidder of the Debtors' preliminary determination not to declare a Successful Bidder or Backup Bidder and the reasons supporting such preliminary determination; and (b) the Debtors shall adjourn the Auction and promptly file a motion with the Bankruptcy Court seeking the entry of an order authorizing the Debtors to terminate the Auction (which motion may be heard by the Bankruptcy Court on

<sup>7</sup> For purposes of this paragraph 31 no person who would otherwise be a "Consultation Party" shall be disqualified from such status by reason of its or any affiliates participation, directly or indirectly, in any Qualified Bid.

shortened notice). If the Bankruptcy Court grants the requested relief the Auction shall be terminated. If the Bankruptcy Court denies the requested relief, the Debtors will promptly declare as the Successful Bidder and Backup Bidder, respectively, the highest and best Qualified Bid and next highest and best Qualified Bid received immediately prior to the adjournment of the Auction.

**EXHIBIT 2**

**Sale Notice**



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

**In re:**

**ALLIED SYSTEMS HOLDINGS, INC., et al.<sup>1</sup>,**

**Debtors.**

**Chapter 11**

**Case No. 12-11574 (CSS)**

**(Jointly Administered)**

**Re: Docket No. \_\_\_\_**

**NOTICE OF BID DEADLINE, AUCTION, AND SALE  
HEARING IN CONNECTION WITH THE SALE OF  
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS**

**NOTICE IS HEREBY GIVEN** as follows:

1. On May 17, 2013, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed a motion seeking approval of, among other things, (a) bid procedures (the "Bid Procedures") in connection with the sale (the "Sale") of substantially all of the Debtors' assets (the "Purchased Assets"), (b) procedures to determine cure amounts and deadlines for objections to certain contracts and leases to be assumed and assigned by the Debtors, (c) the date, time, and place for a sale hearing (the "Sale Hearing") and for objections to the Sale, and (d) related relief with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). By order dated [\_\_\_\_], 2013 [Docket No. \_\_\_\_], the Bankruptcy Court approved the Bid Procedures (the "Bid Procedures Order").<sup>2</sup>

2. All interested parties are invited to submit a Qualified Bid and to make offers to purchase the Purchased Assets in accordance with the terms of the Bid Procedures and the Bid Procedures Order. The Bid Deadline is August 8, 2013, at 12:00 p.m. (noon) (Prevailing Eastern Time). Requests for any other information concerning the Bid Procedures or the Sale should be directed by written request to the undersigned Debtors' counsel.

3. Pursuant to the Bid Procedures Order, in the event the Debtors receive one or more Qualified Bids on or before the Bid Deadline, the Debtors shall conduct the Auction for the purpose of determining the highest and best bid for the Purchased Assets. Only (a) the Debtors, (b) the Consultation Parties, (c) any Qualified Bidders and their counsel, (d) any creditor of the Debtors that has provided written notice to the Debtors' counsel at least five (5) business days in

<sup>1</sup> The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

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

advance of the Auction of his, her, or its intent to attend the Auction, (e) representatives of the Office of the U.S. Trustee, (f) Duff & Phelps Canada Restructuring Inc., the information officer appointed in the Canadian recognition proceed, and (g) the respective professionals of the foregoing, shall be permitted to attend the Auction and only Qualified Bidders may be entitled to make any subsequent Qualified Bids at the Auction. The Auction will be held at August 14, 2013, at 10:00 a.m. (Prevailing Eastern Time), or at such other place and time as the Debtors shall notify all parties that submitted Qualified Bids, or that are otherwise entitled to attend the Auction.

4. At the Sale Hearing on August 22, 2013, at 2:00 p.m. (Prevailing Eastern Time) or such other time as the Bankruptcy Court shall determine, the Debtors intend to seek the Bankruptcy Court's approval of the sale of the Purchased Assets and the assumption and assignment of certain unexpired leases and executory contracts (collectively, the "Assumed and Assigned Agreements") to the Successful Bidder at the Auction. In determining the Successful Bidder, in addition to the amount of cash or cash equivalent consideration offered, the Debtors will consider, among other factors, the assumption of liabilities contemplated by each Qualified Bid. The Sale Hearing will be held before the Honorable Christopher S. Sontchi, at the United States Bankruptcy Court for the District of Delaware, 824 Market Street, 5th Floor, Wilmington, Delaware, 19801.

5. At the Sale Hearing, the Bankruptcy Court may enter such orders as it deems appropriate under applicable law and as required by the circumstances and equities of these Chapter 11 cases. Objections, if any, to the Sale of the Purchased Assets or the assumption and assignment of the Assumed and Assigned Agreements to the Successful Bidder (excepting Adequate Assurance Objections (as such term is defined below)), shall be in writing, shall conform to the Federal Rules of Bankruptcy Procedure and the Local Rules of the Bankruptcy Court for the District of Delaware, shall set forth the name of the objecting party, the nature and amount of any claims or interests held or asserted against the Debtors' estate or properties, the basis for the objection and the specific grounds therefore, and shall be filed with the Bankruptcy Court by 4:00 p.m. (Prevailing Eastern Time) on August 15, 2013, and be served upon: (i) co-counsel to the Debtors, Troutman Sanders LLP, Bank of America Plaza, 600 Peachtree Street, Suite 5200, Atlanta, Georgia 30308 (Attn: Jeffrey W. Kelley, Esq.) and Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and Christopher M. Samis, Esq.); (ii) Rothschild Inc., 1251 Ave of the Americas, 51st Fl, New York, New York 10020 (Attn: Stephen Antinelli); (iii) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: David L. Buchbinder, Esq.); (iv) co-counsel to the Committee, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Michael G. Burke, Esq.) and Sullivan Hazeltine Allinson LLC, 901 North Market Street, Suite 1300, Wilmington, Delaware 19801 (Attn: William D. Sullivan, Esq.); (v) co-counsel to BDCM Opportunity Fund II, LP, Black Diamond CLO 2005-1 LTD and Spectrum Investment Partners LP, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022 (Attn: Adam Harris, Esq. and David M. Hillman, Esq.) and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19899 (Attn: Adam Landis, Esq.); and (vi) co-counsel to Yucaipa, Latham & Watkins LLP, 355 South Grant Avenue, Los Angeles, CA 90071-1560 (Attn: Robert A. Klyman, Esq.) and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq. and Joseph M. Barry, Esq.).

6. Objections, if any to the assumption, assignment, and/or transfer of any Assumed and Assigned Agreement solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by Section 365 of the Bankruptcy Code (an "Adequate Assurance Objection") must be filed with the Bankruptcy Court and served on the parties identified in the previous paragraph so as to be received so as to be received no later than 4:00 p.m. (Prevailing Eastern Time) on August 21, 2013.

Dated: \_\_\_\_\_, 2013  
Wilmington, Delaware

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*Counsel for Debtors*

**EXHIBIT 3**

**Cure Notice**

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

In re:

**ALLIED SYSTEMS HOLDINGS, INC., et al.<sup>1</sup>,**

**Debtors.**

Chapter 11

Case No. 12-11574 (CSS)

(Jointly Administered)

Re: Docket No. \_\_\_\_

**NOTICE OF DEBTORS' INTENT TO ASSUME AND ASSIGN CERTAIN  
LEASES AND EXECUTORY CONTRACTS AND FIXING OF CURE AMOUNTS**

PLEASE TAKE NOTICE that on May 17, 2013, the above-captioned debtors and debtors-in-possession (collectively, the "Debtors") filed a motion seeking approval of, among other things, (a) bid procedures (the "Bid Procedures") in connection with the sale of substantially all of the Debtors' assets (the "Purchased Assets"), (b) procedures to determine cure amounts and deadlines for objections to certain contracts and leases to be assumed and assigned by the Debtors, and (c) related relief (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). By order dated June \_\_, 2013, the Bankruptcy Court approved the Bid Procedures (the "Bid Procedures Order"). A copy of the Bid Procedures Order is attached hereto as Exhibit A.<sup>2</sup>

PLEASE TAKE FURTHER NOTICE that if the Debtors receive more than one Qualified Bid, the Debtors shall conduct an auction (the "Auction") to determine the highest and best bid

<sup>1</sup> The Debtors in these cases, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

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

with respect to the Purchased Assets. The Auction shall commence at 10:00 a.m. (Prevailing Eastern Time) on August 14, 2013.

PLEASE TAKE FURTHER NOTICE that if you wish to be notified of the identity of any Qualified Bidder or Successful Bidder (as defined in the Bid Procedures) after such parties are identified in accordance with the Bid Procedures and receive evidence of such Successful Bidder's ability to perform in the future the Assumed and Assigned Agreements, you must submit a written request for such notification to co-counsel for the Debtors by fax to [ ] or by e-mail to [ ]. Such request must contain the fax number and/or e-mail address to which you would like the Debtors to transmit the information..

PLEASE TAKE FURTHER NOTICE that at a hearing on August 22, 2013, at 2:00 p.m. (Prevailing Eastern Time) or such other time as the Bankruptcy Court shall determine (the "Sale Hearing"), the Debtors intend to seek approval of the sale of the Purchased Assets free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon to the maximum extent permitted by Section 363 of the Bankruptcy Code (the "Sale") to such party as is determined pursuant to the Bid Procedures to have submitted the highest and best bid for the Purchased Assets (the "Successful Bidder").

PLEASE TAKE FURTHER NOTICE that, pursuant to the Cure Procedures, at the Sale Hearing, the Debtors intend to seek approval to assume and assign certain unexpired leases and executory contracts (collectively, the "Assumed and Assigned Agreements") to the Successful Bidder pursuant to Section 365 of the Bankruptcy Code. You have been identified as a party to an Assumed and Assigned Agreement that the Debtors may seek to assume and assign. The Assumed and Assigned Agreement with respect to which you have been identified as a non-Debtor party is set forth on Exhibit B attached hereto. The Successful Bidder shall have until the

Closing to remove any executory contract or unexpired lease listed on Exhibit B by notifying the Debtors in writing of its intent to not take assignment thereof.

PLEASE TAKE FURTHER NOTICE that the Debtors believe that any and all defaults (other than the filing of these Chapter 11 Cases), actual pecuniary losses, and any amounts due under the Assumed and Assigned Agreement can be cured and satisfied in full by the payment of the cure amount, also set forth on Exhibit B attached hereto (the "Cure Amount").

PLEASE TAKE FURTHER NOTICE that any party objecting to (a) any Cure Amount and/or (b) the proposed assumption and assignment of any Assumed and Assigned Agreement in connection with the Sale (excepting Adequate Assurance Objections (as defined below)) must file with the Bankruptcy Court and serve an objection (a "Contract Objection"), in writing, setting forth with specificity any and all obligations that the objecting party asserts must be cured or satisfied in respect to the Assumed and Assigned Agreement, and/or any and all objections to the potential assumption and assignment of such agreement, together with all documentation supporting such cure claim or objection, upon: (i) co-counsel to the Debtors, Troutman Sanders LLP, Bank of America Plaza, 600 Peachtree Street, Suite 5200, Atlanta, Georgia 30308 (Attn: Jeffrey W. Kelley, Esq.) and Richards, Layton & Finger, P.A., One Rodney Square, 920 N. King Street, Wilmington, Delaware 19801 (Attn: Mark D. Collins, Esq. and Christopher M. Samis, Esq.); (ii) Rothschild Inc., 1251 Ave of the Americas, 51st Fl, New York, New York 10020 (Attn: Stephen Antinelli); (iii) the U.S. Trustee, 844 King Street, Suite 2207, Wilmington, Delaware, 19801 (Attn: David L. Buchbinder, Esq.); (iv) co-counsel to the Committee, Sidley Austin LLP, 787 Seventh Avenue, New York, New York 10019 (Attn: Michael G. Burke, Esq.) and Sullivan Hazeltime Allinson LLC, 901 North Market Street, Suite 1300, Wilmington, Delaware 19801 (Attn: William D. Sullivan, Esq.); (v) co- counsel to BDCM Opportunity Fund

II, LP, Black Diamond CLO 2005-1 LTD and Spectrum Investment Partners LP, Schulte Roth & Zabel LLP, 919 Third Avenue, New York, NY 10022 (Attn: Adam Harris, Esq.) and Landis Rath & Cobb LLP, 919 Market Street, Suite 1800, Wilmington, DE 19899 (Attn: Adam Landis, Esq.); and (vi) co-counsel to Yucaipa, Latham & Watkins LLP, 355 South Grant Avenue, Los Angeles, CA 90071-1560 (Attn: Robert A. Klyman, Esq.) and Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801 (Attn: Michael R. Nestor, Esq. and Joseph M. Barry, Esq.), so as to be received no later than 4:00 p.m. (Prevailing Eastern Time) on August 15, 2013. Unless the Contract Objection is timely filed and served, the assumption, sale, and assignment of the applicable Assumed and Assigned Agreement will proceed without further notice.

PLEASE TAKE FURTHER NOTICE that if no Cure Amount is due, or if you agree with the Cure Amount listed on Exhibit B, and you do not otherwise object to the Debtors' assumption, sale, and assignment of such agreement, no further action needs to be taken on your part.

PLEASE TAKE FURTHER NOTICE that within one (1) business day after the conclusion of the Auction for the Purchased Assets, the Debtors will serve a notice identifying the Successful Bidder to the non-debtor parties to the Assumed and Assigned Agreements that have been identified in the Bid of the Successful Bidder and distribute to the non-debtor parties to such Assumed and Assigned Agreements evidence of the Successful Bidders' ability to perform in the future such Assumed and Assigned Agreements. Any party objecting to the assumption, assignment, and/or transfer of such Assumed and Assigned Agreement solely on the issue of whether the Successful Bidder can provide adequate assurance of future performance as required by Section 365 of the Bankruptcy Code (an "Adequate Assurance Objection") must



file with the Bankruptcy Court and serve such Adequate Assurance Objection, in writing, on the parties identified in the previous paragraph so as to be received so as to be received no later than 4:00 p.m. (Prevailing Eastern Time) on August 21, 2013. Unless the Adequate Assurance Objection is timely filed and served, the assumption, sale, and assignment of the applicable Assumed and Assigned Agreement will proceed without further notice.

PLEASE TAKE FURTHER NOTICE that any person or entity receiving this Notice that fails to file an objection on a timely basis (a) shall be forever enjoined and barred from seeking any additional amount on account of the Debtors' cure obligations under Section 365 of the Bankruptcy Code or otherwise from the Debtors, their estates, or the Successful Bidder on account of the assumption and assignment of such executory contract or unexpired lease and deemed to have consented to the Cure Amount, and (b) upon approval by the Bankruptcy Court of the assignment to the Successful Bidder, as applicable, of the Assumed and Assigned Agreement, shall be deemed to have waived any right to object, consent, condition, or otherwise restrict any such assumption and assignment.

PLEASE TAKE FURTHER NOTICE that a hearing on Contract Objections and Adequate Assurance Objections may be held (a) at the Sale Hearing, or (b) at such other date prior to or after the Sale Hearing as the Bankruptcy Court may designate upon request by the Debtors.

PLEASE TAKE FURTHER NOTICE that the Debtors' decision to assume and assign the Assumed and Assigned Agreements is subject to the Court's approval of and consummation of the Sale. Absent consummation of the Sale, each Assumed and Assigned Agreement shall not be deemed either assumed or assigned and shall in all respects be subject to further administration under the Bankruptcy Code. The designation of any agreement as an Assumed and Assigned

Agreement shall not constitute or be deemed to be a determination or admission by the Debtors or the Successful Bidder, as applicable, that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code (all rights with respect thereto being expressly reserved).

PLEASE TAKE FURTHER NOTICE that the Debtors reserve the right to remove any Assumed and Assigned Agreement from any proposed asset sale and to withdraw the request to assume and assign any such Assumed and Assigned Agreement.

Dated: \_\_\_\_\_ 2013  
Wilmington, Delaware

---

Mark D. Collins (No. 2981)  
Christopher M. Samis (No. 4909)  
RICHARDS, LAYTON & FINGER, P.A.  
One Rodney Square  
920 North King Street  
Wilmington, Delaware 19801  
Telephone No.: (302) 651-7700  
Facsimile No.: (302) 651-7701  
E-Mail: Collins@rlf.com  
E-Mail: samis@rlf.com

-and-

Jeffrey W. Kelley (GA Bar No. 412296)  
Ezra H. Cohen (GA Bar No. 173800)  
Carolyn P. Richter (GA Bar No. 944751)  
Matthew R. Brooks (GA Bar No. 378018)  
Benjamin R. Carlsen (GA Bar No. 940614)  
TROUTMAN SANDERS LLP  
Bank of America Plaza  
600 Peachtree Street, Suite 5200  
Atlanta, Georgia 30308-2216  
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E-Mail: matthew.brooks@troutmansanders.com  
E-Mail: Benjamin.carlsen@troutmansanders.com

*Counsel for Debtors*

**Exhibit A**

**Bid Procedures Order**

(omitted)

**Exhibit B**

**Assumed and Assigned Agreements**

	<b>Contract/Lease</b>	<b>Cure Amount as of the Petition Date</b>	<b>Cure Amounts After the Petition Date</b>
1.			
2.			
3.			
4.			
5.			
6.			
7.			
8.			
9.			
10.			

**IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
R.S.C. 1985, C. C-36, AS AMENDED**

**Court File No: 12-CV-9757-00CL**

**AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY,  
AXIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO**

**APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE COMPANIES'  
CREDITORS ARRANGEMENT ACT, R.S.C. 1985, C. C-36, AS AMENDED**

**ONTARIO  
SUPERIOR COURT OF JUSTICE**

Proceeding commenced at Toronto, Ontario, Canada

**BID PROCEDURES RECOGNITION ORDER**

Barristers and Solicitors  
One First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

Jennifer Stam (LSUC#46735J)  
Telephone: (416) 862-5697  
Facsimile: (416) 862-7661

Lawyers for the Applicant

June 5-13

Court File No.: 12-CV-9757-00CL

THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT,  
S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF ALLIED SYSTEMS HOLDINGS, INC., ALLIED SYSTEMS (CANADA) COMPANY,  
KIS CANADA COMPANY AND THOSE OTHER COMPANIES LISTED ON SCHEDULE "A" HERETO

APPLICATION OF ALLIED SYSTEMS HOLDINGS, INC. UNDER SECTION 46 OF THE COMPANIES' CREDITORS  
ARRANGEMENT ACT, R.S.C. 1985, c. C-36, AS AMENDED

ONTARIO  
SUPERIOR COURT OF JUSTICE

Proceeding commenced at Toronto, Ontario, Canada

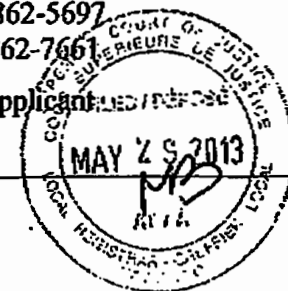
MOTION RECORD  
(Bid Procedures Motion Recognition)  
(Returnable: June 5, 2013)

4 Kim + J. Stam for Applicant  
B Wadsworth for CAW  
E Cobb for Informal Officer  
A. Rose for Official Com. of Unsecured Cred.  
J. Latham + L. W. He for Bldg. Demolition  
J. MacDonald for Yucapco American Alliance.  
The <sup>US</sup> Bid Procedures Order was  
entered by the United States

June 26, 2013.

GOWLINGS LAFLEUR HENDERSON LLP  
Barristers and Solicitors  
One First Canadian Place  
100 King Street West, Suite 1600  
TORONTO, Ontario  
M5X 1G5

Jennifer Stam (LSUC#467353)  
Telephone: (416) 862-5697  
Facsimile: (416) 862-7661  
Lawyers for the Applicant



Bankruptcy Court for the District of Delaware  
on June 20, 2013. Counsel for the Applicant  
advises that it is a Final Order.

Having reviewed the Record and the submissions  
of all counsel, I am satisfied that the  
U.S. Bank Procedures Order should be recognized  
and given full force and effect in Consideration  
pursuant to § 542 of the CCA.

In making this Order, it is noted that the  
CAW did not object to the motion, but reserved  
its right to object to and take all necessary  
steps to protect its interests in ~~the~~ the  
event a sale agreement does not provide  
for the assumption of the CAW collective  
agreement and related pension plan, or  
amendments thereto, on terms agreeable  
to the Union.

This granted and Order signed.

*Attorney*

## TAB B



This is Exhibit B referred to in the Case 12-11564-CSS Doc 1837 Filed 09/17/13 Page 1 of 39  
affidavit of Ava Kim  
sworn before me, this 3rd  
day of October 20 13

**ORIGINAL**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

Ava Kim  
A COMMISSIONER FOR TAKING AFFIDAVITS

ALLIED SYSTEMS HOLDINGS, INC., *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 12-11564 (CSS)

Jointly Administered

Hearing Date: September 17, 2013  
at 11 a.m.

Re: Docket Nos. 1175, 1320

**ORDER (A) APPROVING ASSET PURCHASE AGREEMENT AND AUTHORIZING  
THE SALE OF ASSETS OF THE DEBTORS OUTSIDE THE ORDINARY COURSE OF  
BUSINESS, (B) AUTHORIZING THE SALE OF ASSETS FREE AND CLEAR OF ALL  
LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS, (C) AUTHORIZING THE  
ASSUMPTION AND SALE AND ASSIGNMENT OF CERTAIN EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (D) GRANTING RELATED RELIEF**

Upon the Motion (docket no. 1175) (the "Sale Motion") of the above captioned debtors and debtors-in-possession (collectively, the "Debtors" or "Sellers") for, among other things, the entry of an order pursuant to §§ 105, 363, and 365 of title 11 of the United States Code (the "Bankruptcy Code"), and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") (a) authorizing the Debtors to: (i) enter into an asset purchase agreement with the party submitting the highest or best bid for the Debtors' assets in

<sup>1</sup> The Debtors in this Chapter 11 Case, along with the federal tax identification number (or Canadian business number where applicable) for each of the Debtors, are: Allied Systems Holdings, Inc. (58-0360550); Allied Automotive Group, Inc. (58-2201081); Allied Freight Broker LLC (59-2876864); Allied Systems (Canada) Company (90-0169283); Allied Systems, Ltd. (L.P.) (58-1710028); Axis Areta, LLC (45-5215545); Axis Canada Company (87568828); Axis Group, Inc. (58-2204628); Commercial Carriers, Inc. (38-0436930); CT Services, Inc. (38-2918187); Cordin Transport LLC (38-1985795); F.J. Boutell Driveway LLC (38-0365100); GACS Incorporated (58-1944786); Logistic Systems, LLC (45-4241751); Logistic Technology, LLC (45-4242057); QAT, Inc. (59-2876863); RMX LLC (31-0961359); Transport Support LLC (38-2349563); and Terminal Services LLC (91-0847582). The location of the Debtors' corporate headquarters and the Debtors' address for service of process is 2302 Parklake Drive, Bldg. 15, Ste. 600, Atlanta, Georgia 30345.

connection with the Debtors' sale and bidding process; (ii) sell the Purchased Assets,<sup>2</sup> which include substantially all of the Debtors' assets, free and clear of all Liens (as used in this Order, the term "Liens" shall have the meaning ascribed to it below) with such sale to be in accordance with the terms and conditions of the Agreement; (iii) assume and sell and assign certain executory contracts and unexpired leases; and (b) granting related relief; and this Court having entered an order on June 21, 2013 (docket no. 1320) (the "Bid Procedures Order") authorizing the Debtors to conduct, and approving the terms and conditions of, an auction (the "Auction") as set forth in the Bid Procedures Order to consider offers for the Purchased Assets, establishing a date for the Auction, and approving, among other things: (i) certain bid procedures (the "Bidding Procedures" approved pursuant to the Bid Procedures Order) to be used in connection with the Auction; (ii) the form and manner of notice of the Auction and Bidding Procedures; and (iii) procedures relating to certain unexpired leases and executory contracts, including notice of proposed cure amounts; and the Court having established the date of the hearing on the Sale Motion (the "Sale Hearing"); and the Auction having been held on August 14 and 15, 2013; and at the conclusion of the Auction, the Debtors having determined that New Allied Acquisition Co. LLC ("New Allied"), a Delaware entity established by the Prepetition First Lien Agents (as defined in the Bid Procedures) submitted the highest and/or best bid for the Purchased Assets; and the Sale Hearing having been postponed on August 20, 2013 to September 10, 2013; and on September 3 and 4, 2013, certain objections or joinders thereto were filed by, among others: (i) Jack Cooper Holdings Corp. (together with its successors and assigns, the "Purchaser")<sup>3</sup>, (ii)

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Asset Purchase Agreement, dated September 12, 2013, between the Purchaser and the Debtors (the "Agreement").

<sup>3</sup> Any reference herein to the Purchaser shall also be deemed a reference to the appropriate Designated Purchaser, if any.

National Automobile, Aerospace, Transportation and General Workers CAW-Canada of Canada, (iii) the Teamsters National Automobile Transporters Industry Negotiating Committee, (iv) Central States, Southeast and Southwest Areas Pension Fund and Central States, Southeast and Southwest Areas Health and Welfare Fund, (v) the official committee of unsecured creditors appointed in the Chapter 11 Case (the "Committee"), and (vi) Yucaipa American Alliance Fund I, L.P., Yucaipa American Alliance (Parallel) Fund I, L.P., Yucaipa American Alliance Fund II, L.P., and Yucaipa American Alliance (Parallel) Fund II, L.P. (collectively, the "Objecting Parties") to the sale of the Debtors' assets to New Allied (including any such informal objections raised, collectively, the "Sale Objections") (docket nos. 1723, 1724, 1730, 1731, 1734, 1735, 1736, and 1754); and the Purchaser having submitted a revised bid on September 6, 2013 to the independent Special Committee of the Debtors' Board of Directors; and the Committee having filed its Motion to Reopen the Auction to the Sale of Substantially all of the Debtors' Assets Free and Clear of all Liens, Claims, Encumbrances and Interests (the "Motion to Reopen") (docket no. 1769) on September 6, 2013; and the Sellers having filed their response and joinder to the Motion to Reopen on September 8, 2013 (docket no. 1772); and this Court having held a conference with counsel for certain of the Objecting Parties, Debtors, and the Prepetition First Lien Agents on September 9, 2013, at the conclusion of which the Court ordered that the Auction be re-opened on September 11, 2013 at 2 p.m.; and the re-opened Auction having taken place on September 11 and 12, 2013, at the conclusion of which, the Debtors declared (i) the Purchaser's final bid the "highest or best" bid for the Purchased Assets, and (ii) New Allied's bid the "highest or best" bid for certain assets excluded from the Purchaser's final bid; and the Sale Hearing having taken place on September 17, 2013; and the Court having jurisdiction to consider the Sale Motion and the relief requested therein in accordance with 28 U.S.C. §§ 157(b)(2) and

1334; and in consideration of the Sale Motion, the relief requested therein, and the responses thereto being a core proceeding in accordance with 28 U.S.C. § 157(b); and the appearance of all interested parties and all responses and objections to the Sale Motion having been duly noted in the record of the Sale Hearing; and upon the record of the Sale Hearing and all other pleadings and proceedings in this Chapter 11 Case, including (without limitation) the Sale Motion, the certificate of service regarding the Sale Motion (docket no. 1399), and the Sale Objections; and it appearing that the relief requested in the Sale Motion is in the best interests of the Debtors, their estates, their creditors, their other stakeholders and all other parties in interest; and after due deliberation and sufficient cause appearing therefore;

**IT IS HEREBY FOUND, DETERMINED AND CONCLUDED THAT:<sup>4</sup>**

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014.

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

C. The Court has jurisdiction over this matter and over the property of the Debtors' estates, including the Purchased Assets to be sold, transferred, or conveyed pursuant to the Agreement, and the disposition of the Sale Proceeds (as defined herein) pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a "core proceeding" pursuant to 28 U.S.C. § 157(b)(2). Venue of this Chapter 11 Case and the Sale Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>4</sup> All findings of fact and conclusions of law announced by the Court at the Sale Hearing in relation to the Sale Motion are incorporated herein to the extent not inconsistent herewith.

D. This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). To any extent necessary under Bankruptcy Rule 9014 and Rule 54(b) of the Federal Rules of Civil Procedure, as made applicable by Bankruptcy Rule 7054, the Court expressly finds that there is no just reason for delay in the implementation of this Order, and expressly directs entry of judgment as set forth herein.

E. The statutory bases for the relief requested in the Sale Motion and for the approvals and authorizations herein are (i) Bankruptcy Code §§ 102, 105, 362, 363 and 365, and (ii) Bankruptcy Rules 2002, 4001, 6004, 6006, and 9014.

F. On May 17, 2012 (the "Petition Date"), the Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtors have continued in possession and management of their businesses and properties as debtors-in-possession pursuant to Bankruptcy Code §§ 1107(a) and 1108.

G. As evidenced by the certificates of service filed with the Court, proper, timely, adequate, and sufficient notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, and the transactions contemplated by the Agreement (the "Transactions") has been provided in accordance with Bankruptcy Code §§ 102(1) and 363(b), Bankruptcy Rules 2002, 6004, 6006, 9006, 9007, 9008, and 9014, the local rules of the Court, the procedural due process requirements of the United States Constitution, and in compliance with the Bid Procedures Order. The Debtors also gave due and proper notice of the assumption, sale, and assignment of each contract or lease listed on the Notice of Debtors' Intent to Assume and Assign Certain Leases and Executory Contracts and Fixing of Cure Amounts filed on July 15, 2013 (as amended, the "Contract Notice") (docket no. 1431) to each

non-debtor party under each such contract or lease.<sup>5</sup> Such notice was good and sufficient and appropriate under the particular circumstances. No other or further notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, the Transactions, the assumption and assignment of the Assigned Contracts, or of the entry of this Order is necessary or shall be required.

H. Notice and a reasonable opportunity to object and/or be heard regarding the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, the Transactions, the assumption and assignment of the Assigned Contracts, and the entry of this Order have been provided to all interested Persons, including, without limitation, (a) the Office of the United States Trustee for the District of Delaware; (b) counsel to the Committee; (c) all taxing authorities having jurisdiction over any of the Purchased Assets, including the Internal Revenue Service; (d) the United States Environmental Protection Agency and all state and local environmental agencies in the jurisdictions where the Debtors own or lease real property; (e) all parties that have requested special notice pursuant to Bankruptcy Rule 2002 as of the date prior to the date of the filing of the Sale Motion; (f) all persons or entities known to the Debtors that have or have asserted a lien on, or security interest in, all or any portion of the Purchased Assets; (g) all Attorneys General for the states in which the Debtors conduct business; (h) all potential bidders previously identified or otherwise known to the Debtors; and (i) all parties listed on the Main Service List, the Supplemental Service List (Pensions) and the Supplemental Service List (Government Tax / Environmental Agencies) in the Canadian recognition proceeding.

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<sup>5</sup> The Contracts listed in the Contract Notice that are included in the Purchased Assets are referred to in this Order as the "Assigned Contracts".

I. The Purchased Assets are property of the Debtors' estates and title thereto is vested in the Debtors' estates.

J. The Debtors have demonstrated a sufficient basis and the existence of reasonable and appropriate circumstances requiring them to enter into the Agreement, sell the Purchased Assets, and assume and assign the Assigned Contracts under Bankruptcy Code §§ 363 and 365, and such actions are appropriate exercises of the Debtors' business judgment and in the best interests of the Debtors, their estates, their creditors and their other stakeholders.

K. The Bidding Procedures were non-collusive, substantively and procedurally fair to all parties, and were the result of arm's-length negotiations between the Debtors, the Petitioning Creditors (as such term is defined in the Bid Procedures Order) and the Committee.

L. The Debtors and their professionals complied in all material respects with the Bid Procedures Order and the Bidding Procedures.

M. At the re-opened Auction held on September 11 and 12, 2013, two (2) Qualified Bidders (as such term is defined in the Bid Procedures Order) participated. At the conclusion of the re-opened Auction, the Debtors determined that Purchaser was the Successful Bidder (as such term is defined in the Bid Procedures Order) for the Purchased Assets.

N. The offer of the Purchaser, upon the terms and conditions set forth in the Agreement, including the form and total consideration to be realized by the Debtors pursuant to the Agreement, (i) is the highest or best offer received by the Debtors for the Purchased Assets, (ii) is fair and reasonable, (iii) is in the best interests of the Debtors' stakeholders and estates, (iv) constitutes full and fair consideration and reasonably equivalent value for the Purchased Assets, and (v) will provide a greater recovery for the Debtors' creditors, stakeholders and other interested parties than would be provided by any other practically available alternative.

O. The Purchaser is not an “insider” or “affiliate” of the Debtors as those terms are defined in the Bankruptcy Code and the decisions thereunder. The Purchaser is a purchaser in “good faith,” as that term is used in the Bankruptcy Code and the decisions thereunder, and is entitled to the protections of Bankruptcy Code § 363(m) with respect to all of the Purchased Assets. The Agreement was negotiated and entered into in good faith, based upon arm’s-length bargaining, and without collusion or fraud of any kind. Neither the Debtors nor the Purchaser have engaged in any conduct that would prevent the application of Bankruptcy Code § 363(m) or cause the application of, or implicate, Bankruptcy Code § 363(n) to the Agreement or to the consummation of the Transactions and transfer of the Purchased Assets and Assigned Contracts to the Purchaser. The Purchaser is purchasing the Purchased Assets (including the Assigned Contracts) in good faith, is a good faith purchaser within the meaning of Bankruptcy Code § 363(m), is an assignee in good faith of the Assigned Contracts, and is, therefore, together with the Debtors, entitled to the protection of Bankruptcy Code § 363(m). Additionally, the Purchaser has otherwise proceeded in good faith in all respects in connection with this proceeding in that: (i) the Purchaser recognized that the Debtors were free to deal with any other party interested in acquiring the Purchased Assets, (ii) the Purchaser complied with the Bidding Procedures, (iii) all consideration to be paid by the Purchaser and other agreements or arrangements entered into by the Purchaser in connection with the sale have been disclosed, (iv) the Purchaser has not violated Bankruptcy Code § 363(n) by any action or inaction, and (v) the negotiation and execution of the Agreement and any other agreements or instruments related thereto was in good faith.

P. The Debtors have full corporate, limited liability company and other power and authority to execute the Agreement (and all other documents contemplated thereby) and to consummate the Transactions, and the sale of the Purchased Assets has been duly and validly



authorized by all necessary corporate, limited liability company and other actions on the part of the Debtors. No consents or approvals, other than as may be expressly provided for in the Agreement, are required by the Debtors to consummate such Transactions.

Q. The Debtors have provided sound business reasons for seeking to enter into the Agreement and to sell and/or assume and sell and assign the Purchased Assets, as more fully set forth in the Sale Motion and as demonstrated at the Sale Hearing, and it is a reasonable exercise of the Debtors' business judgment to sell the Purchased Assets and to consummate the Transactions contemplated by the Agreement. Notwithstanding any requirement for approval or consent by any Person, the transfer of the Purchased Assets to the Purchaser and the assumption and assignment of the Assigned Contracts is a legal, valid, and effective transfer of the Purchased Assets (including the Assigned Contracts).

R. The terms and conditions of the Agreement, including the consideration to be realized by the Debtors pursuant to the Agreement, are fair and reasonable, and the Transactions contemplated by the Agreement are in the best interests of the Debtors' estates.

S. The Agreement and Transactions do not constitute a sub rosa chapter 11 plan for which approval has been sought without the protections that a disclosure statement would afford. The Agreement and the Transactions neither impermissibly restructure the rights of the Debtors' creditors nor impermissibly dictate a liquidating plan for the Debtors.

T. Upon payment of the Purchase Price, the Purchased Assets shall be sold free and clear of any and all liens, Claims (as such term is defined in the Bankruptcy Code), Liabilities, Encumbrances and interests of any kind or nature whatsoever including, without limitation, all liens, mechanics' liens, materialmen's liens, consensual liens, non-consensual liens, statutory liens, hypothecations, Encumbrances, security interests, mortgages, security deeds, deeds of

trust, debts, levies, indentures, pledges, restrictions (whether on voting, sale, transfer, disposition or otherwise), charges, instruments, preferences, priorities, security agreements, conditional sales agreements, title retention contracts, options, judgments, offsets, rights of recovery, rights of pre-emption, rights of first refusal, other third party rights, Claims for reimbursement, Claims for contribution, Claims for indemnity, Claims for exoneration, products liability Claims, alter-ego Claims, successor-in-interest Claims, successor liability Claims, successor employer Claims, substantial continuation Claims, COBRA Claims, withdrawal liability Claims (including under any Employee Benefit Plan), environmental Claims, Tax Claims (including Claims for any and all foreign, federal, state and local Taxes), decrees of any court or foreign or domestic governmental entity, orders and Claims of any Governmental Body, of any kind or nature (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security device, and (iii) any Claim based on any theory that the Purchaser is a successor, successor-in-interest, successor employer or a substantial continuation of the Debtors or the Debtors' business), reclamation Claims, obligations, Liabilities, demands, and guaranties, whether any of the foregoing are known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, secured or unsecured, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, Law, equity or otherwise, including Claims otherwise arising under doctrines of successor liability, successor-in-interest liability, successor employer liability or substantial continuation liability including, without limitation, that Purchaser is in any

way a successor, successor-in-interest, successor employer or substantial continuation of the Debtors or their businesses (collectively, the "Liens"), other than the Permitted Encumbrances and Assumed Liabilities. Purchaser would not have entered into the Agreement, and would not have agreed to purchase and acquire the Purchased Assets, if the sale of the Purchased Assets was not free and clear of all Liens (other than Permitted Encumbrances and Assumed Liabilities).

U. Liens (other than the Permitted Encumbrances) shall attach to the net proceeds of the sale of the Purchased Assets actually received by the Debtors in the same priority and subject to the same defenses and avoidability, if any, as before the Closing.

V. Upon payment of the Purchase Price, the transfer of the Purchased Assets to the Purchaser will be a legal, valid, and effective transfer of the Purchased Assets and shall vest Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of any and all Liens (other than the Permitted Encumbrances). Except as specifically provided in the Agreement, the Purchaser shall not assume or become liable for any Liens or Liabilities other than the Permitted Encumbrances and Assumed Liabilities.

W. The transfer of the Purchased Assets to the Purchaser free and clear of all Liens (other than the Permitted Encumbrances) will not result in any undue burden or prejudice to any holders of any Liens, because all such Liens of any kind or nature whatsoever shall attach to the net proceeds of the sale of the Purchased Assets actually received by the Debtors in the order of their priority, with the same validity, force, and effect which they now have as against the Purchased Assets and subject to any claims and defenses the Debtors or other parties may possess with respect thereto. Upon payment of the Purchase Price, all persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets shall be

forever barred, estopped and permanently enjoined from pursuing or asserting such Liens (other than the Assumed Liabilities and Permitted Encumbrances) against the Purchaser, any of its assets, property, successors or assigns, or the Purchased Assets.

X. The Debtors may sell the Purchased Assets free and clear of all Liens of any kind or nature whatsoever (other than the Permitted Encumbrances) because, in each case, one or more of the standards set forth in Bankruptcy Code § 363(f) has been satisfied. Those (i) holders of Liens in or with respect to the Purchased Assets and (ii) non-debtor parties to the Assigned Contracts, who did not object, or who withdrew their objections, to the sale of the Purchased Assets and the Sale Motion are deemed to have consented pursuant to Bankruptcy Code § 363(f)(2). All objections to the Sale Motion have been overruled, adjourned or resolved in accordance with the terms of this Order and as set forth on the record of the Sale Hearing. Those holders of Liens in or with respect to the Purchased Assets who did object fall within one or more of the other subsections of Bankruptcy Code § 363(f) and are adequately protected by having their Liens, if any, attach to the net proceeds of the sale of the Purchased Assets actually received by the Debtors and ultimately attributable to the property against or in which they claim or may claim any Liens.

Y. Not selling the Purchased Assets free and clear of all Liens (other than the Permitted Encumbrances and Assumed Liabilities) would adversely impact the Debtors' estates, and the sale of Purchased Assets other than one free and clear of all Liens (other than the Permitted Encumbrances and Assumed Liabilities) would be of substantially less value to the Debtors' estates.

Z. The Debtors and the Purchaser have, to the extent necessary, satisfied the requirements of Bankruptcy Code § 365, including Bankruptcy Code §§ 365(b)(1)(A), (B) and

365(f), in connection with the sale and the assumption and assignment of the Assigned Contracts. The Purchaser has demonstrated adequate assurance of future performance with respect to the Assigned Contracts pursuant to Bankruptcy Code § 365(b)(1)(C). The assumption and assignment of the Assigned Contracts pursuant to the terms of this Order are integral to the Agreement and are in the best interests of the Debtors, their estates, their stakeholders and other parties in interest, and represent the exercise of sound and prudent business judgment by the Debtors. To the extent any objections based upon adequate assurance are adjourned, the Debtors and the Purchaser will demonstrate that they satisfy the requirements of § 365 of the Bankruptcy Code as may be necessary.

AA. The Assigned Contracts are assignable notwithstanding any provisions contained therein to the contrary. Except as provided in Section 1.4(n) of the Agreement, the Purchaser shall have sole responsibility for paying all Cure Costs required to assume and assign the Assigned Contracts to the Purchaser.

BB. The Purchaser has and will be acting in good faith, pursuant to Bankruptcy Code § 363(m), at all times including in closing the Transactions and at any time on or after the entry of this Order and cause has been shown as to why this Order should not be subject to the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

CC. The Transactions do not amount to or constitute a consolidation, merger, or *de facto* merger of the Purchaser and the Debtors or the Debtors' estates, there is not substantial continuity between the Purchaser and the Debtors or the Debtors' estates, there is no continuity of enterprise between the Purchaser and the Debtors or the Debtors' estates, the Purchaser is not a continuation or substantial continuation of the Debtors or their estates, and the Purchaser is not a successor, successor employer or successor-in-interest to the Debtors or their estates.

DD. The total consideration provided by the Purchaser for the Purchased Assets was the highest or best offer received by the Debtors for the Purchased Assets, and the Purchase Price constitutes (a) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (b) fair consideration under the Uniform Fraudulent Conveyance Act, and (c) reasonably equivalent value, fair consideration, and fair value under any other applicable Laws of the United States, any state, territory or possession, or the District of Columbia, for the Purchased Assets.

EE. Time is of the essence in consummating the sale. In order to maximize the value of the Purchased Assets, it is essential that the sale of the Purchased Assets occur within the time constraints set forth in the Agreement. Accordingly, there is cause to lift the stays contemplated by Bankruptcy Rules 6004(h) and 6006(d).

FF. At and effective as of the Closing, the Purchaser shall assume sole responsibility for paying and satisfying the Assumed Liabilities as provided in the Agreement. For the avoidance of doubt, nothing in this Order (including, without limitation, any provisions in this Order regarding the sale, transfer or conveyance of the Purchased Assets free and clear of Liens upon payment of the Purchase Price) nor in the Agreement shall be construed to mean that the Purchaser is not assuming from the Debtors and thereafter becoming solely responsible for the payment, performance and discharge of the Assumed Liabilities as provided in the Agreement. After the Closing, the Debtors shall have no liability whatsoever with respect to the Assumed Liabilities. The Purchaser shall have no obligations or responsibility whatsoever with respect to any Liabilities of the Debtors other than the Assumed Liabilities.

**NOW, THEREFORE, BASED UPON ALL OF THE FOREGOING, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. The relief requested in the Sale Motion is granted in its entirety, and the

Agreement and the provisions thereof are approved in their entirety, subject to the terms and conditions contained herein.

2. All objections, responses, reservations of rights, and requests for continuance concerning the Sale Motion are resolved or adjourned in accordance with the terms of this Order and as set forth in the record of the Sale Hearing. To the extent any such objection, response, reservation of rights, or request for continuance was not otherwise withdrawn, waived, adjourned or settled, it is overruled and denied on the merits.

3. Notice of the Sale Motion, the Auction, the Sale Hearing, the Agreement, the sale of the Purchased Assets free and clear of all Liens, the Transactions, and the assumption and assignment of the Assigned Contracts was fair and equitable under the circumstances and complied in all respects with 11 U.S.C. § 102(1) and Bankruptcy Rules 2002, 6004, and 6006.

4. The sale of the Purchased Assets, the terms and conditions of the Agreement (including all schedules and exhibits affixed thereto), and the Transactions be, and hereby are, authorized and approved in all respects.

5. The Purchaser's Successful Bid is comprised of (a) \$125,000,000 in cash (the "Cash Consideration"), (b) \$10,000,000 to be paid either (i) through the issuance by the Purchaser of the Purchaser Notes, or (ii) in cash (the "Additional Cash Consideration"), and (c) the assumption of the Assumed Liabilities. Pursuant to the Bid Procedures, the Purchaser delivered to the Escrow Holder the Good Faith Deposit in the cash amount equal to \$9,500,000 to be held in the Good Faith Deposit Escrow Account pending completion of a Purchase Price adjustment based on the Final Working Capital Statement as described more particularly in Section 2.2 of the Agreement. Notwithstanding anything to the contrary in the Agreement, if the Purchaser elects to issue the Purchaser Notes (instead of the Additional Cash Consideration) (the

"Note Election"), then the Purchaser Notes in the face amount of \$9,500,000 shall replace the \$9,500,000 of cash held in the Good Faith Deposit Escrow Account. The Escrow Holder shall hold the Purchaser Notes deposited into the Good Faith Deposit Escrow Account on the same terms and conditions as it held the Good Faith Deposit. Notwithstanding anything to the contrary in the Agreement, (A)(1) the Purchaser shall be entitled to receive all interest accruing on the Good Faith Deposit through the Closing, and (2) all interest accruing on the Good Faith Deposit Escrow Account from and after the Closing shall be allocated and paid, on a *pro rata* basis, to the party entitled to receive the cash or Purchaser Notes (as applicable) in the Good Faith Deposit Escrow Account following completion of the Purchase Price adjustment pursuant to Section 2.2 of the Agreement, (B) the Purchaser's right to purchase or have a third party purchase the Purchaser Notes after the Closing (as contemplated by Section 2.1(a) of the Agreement) shall terminate when the Purchaser Notes are released from escrow following completion of the Purchase Price adjustment pursuant to Section 2.2 of the Agreement, and (C) in the event Purchaser elects to issue the Purchaser Notes (instead of the Additional Cash Consideration), Sellers shall be deemed to have agreed that any Purchaser Notes returned or delivered to the Purchaser pursuant to Section 2.2(b)(ii) of the Agreement may be cancelled by Purchaser in Purchaser's sole discretion. The Debtors shall promptly provide to counsel to the Prepetition First Lien Agents <sup>and Yucaipa</sup> any written notices or correspondence relating to the Good Faith Deposit and Net Working Capital, including, without limitation, a copy of the Final Working Capital Statement. The Debtors shall (i) <sup>consult</sup> ~~confer in good faith~~ with the Prepetition First Lien Agents regarding ~~any such notices or correspondence relating to~~ the Good Faith Deposit and Net Working Capital Shortfall, and (ii) not agree to release from escrow the Good Faith Deposit to



pay the Working Capital Shortfall, if any, without the prior written consent of the Prepetition First Lien Agents or further order of this Court.

6. The sale of the Purchased Assets and the consideration provided by the Purchaser under the Agreement are fair and reasonable and shall be deemed for all purposes to constitute a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and any other applicable Law.

7. The Purchaser is hereby granted and is entitled to all of the protections provided to a good faith purchaser under Bankruptcy Code § 363(m), including, without limitation, with respect to all of the Transactions (part of which includes the transfer of the Assigned Contracts as part of the sale of the Purchased Assets pursuant to Bankruptcy Code § 365 and this Order).

8. The Debtors shall be, and hereby are, authorized and directed to fully assume, perform under, consummate, and implement the terms of the Agreement together with any and all additional instruments and documents that may be necessary or desirable in connection with implementing and effectuating the terms of the Agreement, this Order, and/or the sale of the Purchased Assets including, without limitation, bills of sale, certificates, deeds, assignments, and other instruments of transfer, and to take all further actions as may reasonably be requested by the Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser, or reducing to possession, any or all of the Purchased Assets or Assumed Liabilities, as may be necessary or appropriate to the performance of the Debtors' obligations as contemplated by the Agreement, without any further corporate, limited liability company, or other action or orders of this Court.

9. The Debtors and each other person or entity having duties or responsibilities under the Agreement, any agreements or instruments related thereto or this Order, and their

respective directors, officers, employees, members, managers, agents, representatives, and attorneys, are authorized, directed and empowered, subject to the terms and conditions contained in the Agreement and this Order, to carry out all of the provisions of the Agreement and any related agreements or instruments; to issue, execute, deliver, file, and record, as appropriate, the documents evidencing and consummating the Agreement and any related agreements or instruments; to take any and all actions contemplated by the Agreement, any related agreements or instruments, or this Order; and to issue, execute, deliver, file, and record, as appropriate, such other contracts, instruments, releases, indentures, mortgages, quitclaim deeds, deeds, bills of sale, assignments, leases, or other agreements or documents and to perform such other acts and execute and deliver such other documents, as are consistent with, and necessary, desirable or appropriate to implement, effectuate, and consummate, the Agreement, any related agreements or instruments, this Order and the Transactions, all without further application to, or order of, the Court or further action by their respective directors, officers, employees, members, managers, agents, representatives, and attorneys, and with like effect as if such actions had been taken by unanimous action of the respective directors, officers, employees, members, agents, representatives, and attorneys of such entities. The secretary or any assistant secretary of each Debtor (or any comparable officer) shall be, and hereby is, authorized to certify or attest to any of the foregoing actions (but no such certification or attestation shall be required to make any such action valid, binding, and enforceable). The Debtors are further authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable Governmental Body any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Transactions and this Order, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable Laws of all

applicable Governmental Bodies or as any of the officers of the Debtors may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act. Without limiting the generality of the foregoing, this Order shall constitute all approvals and consents, if any, required by the corporate Laws of the State of Delaware and all other applicable business, corporation, limited liability company, trust, and other Laws of the applicable Governmental Bodies with respect to the implementation and consummation of the Agreement, any related agreements or instruments, this Order, and the Transactions.

10. Effective as of the Closing, (a) upon payment of the Purchase Price, the sale of the Purchased Assets by the Debtors to the Purchaser shall constitute a legal, valid, and effective transfer of the Purchased Assets notwithstanding any requirement for approval or consent by any Person and shall vest the Purchaser with all right, title, and interest of the Debtors in and to the Purchased Assets, free and clear of all Liens of any kind (other than the Permitted Encumbrances and Assumed Liabilities) pursuant to Bankruptcy Code § 363(f), and (b) the assumption of the Assumed Liabilities by the Purchaser shall constitute a legal, valid and effective delegation and assignment of all Assumed Liabilities to the Purchaser and shall divest the Debtors of all liability with respect to any Assumed Liabilities.

11. The sale of the Purchased Assets is not subject to avoidance pursuant to Bankruptcy Code § 363(n).

12. At the Closing, the Debtors shall be, and hereby are, authorized, empowered, and directed, pursuant to Bankruptcy Code §§ 105, 363(b), 363(f) and 365, to sell the Purchased Assets and to assume and assign the Assigned Contracts to the Purchaser. The Debtors hereby instruct, and this Court hereby authorizes and directs, the Purchaser and the Escrow Holder to

remit directly (A) to the Prepetition First Lien Agents and (B) solely as it relates to any Disputed Pro Rata Share (as defined below), <sup>to</sup> the Disputed Obligations Escrow (as defined below):

- (a) on the Closing Date, (i) \$115,500,000, less the Purchased Cash Deficiency and less the cash necessary to fund a wind-down budget (in a form and <sup>amount + substance</sup> agreed to by the Debtors (following consultation with <sup>Yvesaipa and</sup> the Committee) and the Prepetition First Lien Agents or approved by order of the U.S. Bankruptcy Court; the "Wind Down Budget"; and (ii) (x) any Additional Cash Consideration; or (y) in the event that the Purchaser elects to exercise the Note Election (and does not pay the Additional Cash Consideration), then \$500,000 in face amount of the Purchaser Notes and the entirety of the cash in the Good Faith Deposit Escrow Account; and
- (b) upon resolution of any dispute regarding the Final Working Capital Statement (pursuant to Section 2.2 of the Agreement), the portion of the Good Faith Deposit (if any) that would otherwise be required to be released to the Debtors (Sections 12(a)(i) and (ii) and 12(b) hereof, collectively, the "Sale Proceeds").

13. The Sale Proceeds shall be used (i) first, to indefeasibly pay in full in cash all obligations owing under the DIP Credit Agreement (the "DIP Payment"), and (ii) second, to provide for an indefeasible payment to the Prepetition First Lien Agents on account of the Obligations (as defined in the Prepetition First Lien Credit Agreement),<sup>6</sup> such payment to be distributed in accordance with the terms of the Prepetition First Lien Credit Agreement and

<sup>6</sup> "Prepetition First Lien Credit Agreement" means the Amended and Restated First Lien Secured Super Priority Debtor-in-Possession and Exit Credit and Guaranty Agreement, dated May 15, 2007, by and among, *inter alia*, Allied Systems Holdings, Inc. and Allied Systems Ltd. (L.P.) as borrowers (the "Borrowers"), certain subsidiaries of the Borrowers as guarantors, the lenders party thereto from time to time (the "Prepetition First Lien Lenders"), and CIT, as administrative and collateral agent (as amended, modified, supplemented or restated from time to time).

related credit documents, including the distribution of a Pro Rata Share (as defined in the Prepetition First Lien Credit Agreement) of the payment to the applicable Prepetition First Lien Lender. Notwithstanding the foregoing, the Sale Proceeds allocable to any Pro Rata Share of the Obligations (based on the amount of the Obligations set forth in the register maintained by the Prepetition First Lien Agents as of the Petition Date (as the same may be modified by agreement of Yucaipa and the Prepetition First Lien Agents or in accordance with a final order of a court of competent jurisdiction) regardless of any defects in, challenges to or reduction in such holdings that may be asserted or claimed, the "Disputed Pro Rata Share") that are subject to a pending filed objection or challenge (including, without limitation, with respect to the applicable Prepetition First Lien Lender's status as a "Lender," any dispute as to the amount of the Obligations held, or any claim for subordination) (the "Disputed First Lien Obligations"), shall be paid directly at Closing by the Purchaser into the Disputed Obligations Escrow (as defined below). For avoidance of doubt, the Obligations held by Yucaipa are <sup>currently</sup> Disputed First Lien Obligations, and Yucaipa's Disputed Pro Rata Share of the Obligations (and the Sale Proceeds distributable to the Prepetition First Lien Agents and other Prepetition First Lien Lenders) is equal to 55.2% thereof as of the date of this Order. Concurrently with any distribution of the Sale Proceeds to the Prepetition First Lien Agents or the Debtors (whether at the Closing or otherwise), the Purchaser shall deposit such Disputed Pro Rata Share (and any other Sale Proceeds allocable to any other Disputed First Lien Obligations) with an independent, third party escrow agent reasonably acceptable to Yucaipa and the Prepetition First Lien Agents and pursuant to an escrow agreement having terms and conditions reasonably acceptable to Yucaipa and the Prepetition First Lien Agents (the "Disputed Obligations Escrow"). The fees and expenses of the Disputed Obligations Escrow shall be paid by the Prepetition First Lien Agents

(as an expense of Prepetition First Lien Agents under the Prepetition First Lien Credit Agreement) or through the Wind-Down Budget. The Sale Proceeds (including the applicable Disputed Pro Rata Share of any and all non-cash Sale Proceeds) held in such Disputed Obligations Escrow are referred to as the "Reserved Funds." Unless otherwise agreed by all parties to such dispute, the Reserved Funds shall be distributed to the holder of applicable Disputed First Lien Obligations upon the entry of a final non-appealable order of a court of competent jurisdiction (an "Allowance Order") finding that such Disputed First Lien Obligations constitute valid and enforceable First Lien Obligations ("Allowed First Lien Obligations") to the extent provided in the Allowance Order. If any Disputed First Lien Obligation is subordinated, disallowed or otherwise determined by a final non-appealable order of a court of competent jurisdiction to not constitute Allowed First Lien Obligations, then the Reserved Funds allocable to such portion of the Disputed First Lien Obligations shall be distributed to the holders of Allowed First Lien Obligations other than the applicable holder of such Disputed First Lien Obligations pursuant to the terms of the Prepetition First Lien Credit Agreement and the remainder (if any) promptly distributed to Yucaipa. All payments made to the Prepetition First Lien Agents and Prepetition First Lien Lenders (including any Reserved Funds deposited into the Disputed Obligations Escrow) pursuant to this Order shall not be subject to disgorgement for any reason.

14. Any Sale Proceeds left in the Debtors' estates to fund the Wind-Down Budget shall: (i) constitute cash collateral of the Prepetition First Lien <sup>Lenders</sup> Agents, (ii) be maintained by the Debtors in a segregated account, and (iii) only be used to fund the specific items and in the amounts set forth in Wind-Down Budget. In the event that there are Sale Proceeds left in the Debtors' estates to fund the Wind-Down Budget that exceed the Debtors' good faith estimate of

the estates' wind-down expenses ("Surplus Cash"), then the Debtors shall promptly distribute Surplus Cash <sup>(a)</sup> to the Prepetition First Lien Agents for distribution under the First Lien Credit Agreement <sup>and (b) Disputed Obligations Escrow</sup> ~~subject only to the limitations set forth above~~ with respect to First Lien Lenders holding Disputed First Lien Obligations. Any Sale Proceeds left in the Debtors' estates to fund the Wind-Down Budget shall be paid to the Prepetition First Lien Agents <sup>and Disputed Obligations Escrow, as applicable,</sup> prior to the entry of any order converting these Cases to chapter 7, appointing a chapter 11 trustee or closing these Chapter 11 Case, unless the Wind Down Budget contemplates otherwise.

15. Upon payment of the Purchase Price, the sale of the Purchased Assets shall vest the Purchaser with all right, title and interest of the Debtors to the Purchased Assets free and clear of any and all Liens (other than the Permitted Encumbrances and Assumed Liabilities) with all such Liens to attach only to the net proceeds of the sale of the Purchased Assets actually received by the Debtors with the same priority, validity, force, and effect, if any, as they now have in or against the Purchased Assets, subject to all claims and defenses the Debtors may possess with respect thereto. Following the Closing Date, no holder of any Liens in the Purchased Assets (other than the Permitted Encumbrances and Assumed Liabilities) shall interfere with the Purchaser's use and enjoyment of the Purchased Assets based on or related to such Liens, or any actions that the Debtors may take in the Chapter 11 Case. Upon payment of the Purchase Price, all Persons having Liens of any kind or nature whatsoever against or in any of the Debtors or the Purchased Assets are forever barred, estopped and permanently enjoined from pursuing or asserting any such Liens (other than the Permitted Encumbrances and the Assumed Liabilities) against the Purchaser, any of Purchaser's assets, property, successors or assigns, or the Purchased Assets. No Person shall take any action to prevent, interfere with or otherwise enjoin consummation of the Transactions.

16. The provisions of this Order authorizing the sale of the Purchased Assets free and clear of Liens (other than the Permitted Encumbrances and Assumed Liabilities) shall be self-executing, and neither the Debtors nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order. However, the Debtors and the Purchaser, and each of their respective officers, employees, and agents are hereby authorized and empowered to take all actions and to execute and deliver any and all documents and instruments that either the Debtors or the Purchaser deem necessary, desirable or appropriate to implement and effectuate the terms of the Agreement and this Order.

17. On the Closing Date, the Purchaser and the Debtors at their own expense are authorized to (a) execute such documents and take all other actions as may be necessary to release Liens (other than the Permitted Encumbrances) filed against the Purchased Assets, if any, as may have been recorded or may otherwise exist, and (b) file a copy of this Order in the appropriate real estate records, the secretary of state records and any other filing location selected by the Purchaser or the Debtors and, once filed, this Order shall constitute conclusive evidence of the release of all Liens (other than Permitted Encumbrances) from the Purchased Assets. For the avoidance of doubt, if any Person that has filed financing statements, mortgages or other documents or agreements evidencing any Liens in or against the Purchased Assets (other than the Permitted Encumbrances) shall not have delivered to the Debtors' counsel or the Escrow Holder prior to the Closing after request therefor, in proper form for filing and executed by the appropriate parties, terminations statements, instruments of satisfaction, or releases of all such Liens that the Person has with respect to the Purchased Assets, the Debtors are hereby authorized and directed to execute and file such statements, instruments, releases, and other documents on



behalf of the Person with respect to such Purchased Assets at Closing, and the Purchaser is hereby authorized to execute and file such statements, instruments, releases, and other documents on behalf of the Person with respect to such Purchased Assets after the Closing.

18. To the greatest extent available under applicable Law, (a) the Purchaser shall be authorized, as of the Closing Date, to operate under any license, Permit, approval, certificate of occupancy, authorization, operating permit, registration, plan and the like of any Governmental Body relating to the Purchased Assets (collectively, the "Permits"), (b) all such Permits are deemed to have been, and hereby are, deemed to be transferred to the Purchaser as of the Closing Date, and (c) each Governmental Body that has issued or granted a Permit and who did not object to the sale of the Purchased Assets shall be deemed to have consented to the transfer of such Permit to the Purchaser as of the Closing Date.

19. All of the Debtors' interests in the Purchased Assets to be acquired by the Purchaser under the Agreement shall be, as of the Closing Date and upon the occurrence of the Closing, transferred to and vested in the Purchaser. Upon the occurrence of the Closing, this Order shall be considered and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets acquired by the Purchaser under the Agreement and/or a bill of sale, deeds, or assignment transferring good and marketable, indefeasible title and interest in the Purchased Assets to the Purchaser.

20. Except as expressly provided in the Agreement, the Purchaser is not assuming nor shall it or any affiliate of the Purchaser be in any way liable or responsible, as a successor, successor-in-interest, successor employer, substantial continuation, or otherwise, for any Liabilities, debts, or obligations of the Debtors in any way whatsoever relating to or arising from the Debtors' ownership or use of the Purchased Assets prior to the consummation of the

Transactions, or any Liabilities calculable by reference to the Debtors or their operations or the Purchased Assets, or relating to continuing or other conditions existing on or prior to consummation of the Transactions, which Liabilities, debts, and obligations are hereby extinguished insofar as they may give rise to liability, successor, successor-in-interest, successor employer, substantial continuation, or otherwise, against the Purchaser or any affiliate of the Purchaser.

21. All Persons presently or on or after the Closing Date in possession of some or all of the Purchased Assets are directed to surrender possession of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

22. Subject to the terms of the Agreement and the occurrence of the Closing Date, the assumption by the Debtors of the Assigned Contracts and the sale and assignment of such agreements and unexpired leases to the Purchaser, as provided for or contemplated by the Agreement, be, and hereby is, authorized and approved pursuant to Bankruptcy Code §§ 363 and 365.

23. The Assigned Contracts shall be deemed valid and binding and in full force and effect and assumed by the Debtors and sold and assigned to the Purchaser at the Closing, pursuant to Bankruptcy Code §§ 363 and 365, subject only to the payment of the Cure Costs.

24. Upon the Closing, in accordance with Bankruptcy Code §§ 363 and 365, the Purchaser shall be fully and irrevocably vested in all right, title, and interest in and to each Assigned Contract. The Debtors shall reasonably cooperate with, and take all actions reasonably requested by, the Purchaser to effectuate the foregoing.

25. Pursuant to Bankruptcy Code §§ 365(b)(1)(A) and (B), except as contemplated by Section 1.4(n) of the Agreement, the Purchaser shall promptly pay at Closing or cause to be paid

at Closing to the non-debtor parties to any Assigned Contracts the requisite Cure Costs, if any, set forth on the Contract Notice filed with the Court, except to the extent that a Cure Cost was amended on the record of the Sale Hearing, following the assumption and assignment thereof. The Cure Costs are hereby fixed at the amounts set forth on the Contract Notice, or the amounts set forth on the record of the Sale Hearing, as the case may be, and the non-debtor parties to the Assigned Contracts are forever bound by such Cure Costs.

26. All defaults or other obligations under the Assigned Contracts arising prior to the Closing (without giving effect to any acceleration clauses, assignment fees, increases, advertising rates, or any other default provisions of the kind specified in Bankruptcy Code § 365(b)(2)) shall be deemed cured by payment of the Cure Costs.

27. Any provision in any Assigned Contract that purports to declare a breach, default, or payment right as a result of an assignment or a change of control in respect of the Debtors is unenforceable, and all Assigned Contracts shall remain in full force and effect, subject only to payment of the appropriate Cure Costs, if any. No sections or provisions of any Assigned Contract that purport to provide for additional payments, penalties, charges, or other financial accommodations in favor of the non-debtor party to the Assigned Contract shall have any force and effect with respect to the Transactions and assignments authorized by this Order, and such provisions constitute unenforceable anti-assignment provisions under Bankruptcy Code § 365(f) and/or are otherwise unenforceable under Bankruptcy Code § 365(e) and no assignment of any Assigned Contract pursuant to the terms of the Agreement shall in any respect constitute a default under any Assigned Contract. The non-debtor party to each Assigned Contract shall be deemed to have consented to such assignment under Bankruptcy Code § 365(c)(1)(B), and the Purchaser shall enjoy all of the Debtors' rights and benefits under each such Assigned Contract

as of the applicable date of assumption without the necessity of obtaining such non-debtor party's written consent to the assumption or assignment thereof.

28. The Purchaser has satisfied all requirements under Bankruptcy Code §§ 365(b)(1)(C) and 365(f)(2)(b) to provide adequate assurance of future performance under the Assigned Contracts.

29. The Debtors and their estates shall be relieved of any liability for any breach of any of the Assigned Contracts occurring from and after Closing, pursuant to and in accordance with Bankruptcy Code § 365(k).

30. Pursuant to Bankruptcy Code §§ 105(a), 363, and 365, all parties to the Assigned Contracts are forever barred and enjoined from raising or asserting against the Purchaser any assignment fee, default, breach or Claim or pecuniary loss, or condition to assignment, arising under or related to the Assigned Contracts existing as of the Closing or arising by reason of the Closing, except for any amounts that are Assumed Liabilities being assumed by the Purchaser under the Agreement.

31. Each and every federal, state, and local governmental agency or department (including each Governmental Body) is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Transactions contemplated by the Agreement and this Order. This Order and the Agreement shall govern the acts of all such federal, state, and local governmental agencies and departments, including any filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other persons and entities who may be required by operation of Law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Purchased Assets, and each such entity is

hereby directed to accept this Order for recordation as conclusive evidence of the free, clear, and unencumbered transfer of title to the Purchased Assets conveyed to Purchaser pursuant to the Agreement.

32. To the extent permitted by Bankruptcy Code § 525, no Governmental Body may revoke or suspend any Permit relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of this Chapter 11 Case or the consummation of the Transactions.

33. The Purchaser has not assumed and is not otherwise obligated for any of the Debtors' Liabilities other than the Assumed Liabilities as set forth in the Agreement, and the Purchaser has not purchased any of the Excluded Assets as set forth in the Agreement. Consequently, upon payment of the Purchase Price, all Persons, Governmental Units (as defined in Bankruptcy Code §§ 101(27) and 101(41)) and all holders of Liens (other than the Permitted Encumbrances) based upon or arising out of Liabilities retained by the Debtors are hereby enjoined from taking any action against the Purchaser or the Purchased Assets to recover any Liens or on account of any Liabilities of the Debtors other than Assumed Liabilities pursuant to the Agreement. All Persons holding or asserting any Liens in or relating to the Excluded Assets are hereby enjoined from asserting or prosecuting such Liens or any cause of action against the Purchaser or the Purchased Assets for any Liability associated with the Excluded Assets.

34. The Purchaser is not a "successor", "successor-in-interest", "successor employer" or "substantial continuation" to or of the Debtors or their estates by reason of any theory of Law or equity, and the Purchaser shall not assume, nor be deemed to assume, or in any way be responsible for any Liability or obligation of any of the Debtors and/or their estates including, but not limited to, any bulk sales Law, successor liability, successor-in-interest liability,

successor employer liability, substantial continuation liability, or similar liability except to the extent expressly included in the Assumed Liabilities or provided in the Agreement or contractual or statutory obligations the Purchaser had or has independent of the sale. Neither the purchase of the Purchased Assets by the Purchaser, nor the facts that the Purchaser is using any of the Purchased Assets previously operated by the Debtors, employs any individuals who were previously employed by the Debtors, operates the same type of business previously operated by the Debtors, or has prior notice of a claim against the Debtors, will cause the Purchaser or any of its affiliates to be deemed a successor, successor-in-interest, successor employer or substantial continuation in any respect to the Debtors' business within the meaning of any foreign, federal, state or local revenue, pension, ERISA, COBRA, Tax, labor, employment, environmental, or other Laws, rule or regulation (including, without limitation, filing requirements under any such Laws, rules or regulations), or under any products liability Law or doctrine with respect to the Debtors' liability under such Law, rule or regulation or doctrine, except to the extent expressly included in the Assumed Liabilities or provided in the Agreement or contractual or statutory obligations the Purchaser had or has independent of the sale.

35. For the avoidance of doubt and with the exception of contractual or statutory obligations the Purchaser had or has independent of the sale, upon payment of the Purchase Price, transfer of title and possession of the Purchased Assets shall be free and clear of any Liabilities and other Liens pursuant to any successor, successor-in-interest, successor employer or substantial continuation theory, including the following: (a) any employment or labor agreements, (b) all deeds of trust, security deeds, mortgages, liens, and security interests, (c) any pension or medical benefit plan of the Debtors, compensation or other employee benefit plan of the Debtors, welfare, agreements, practices and programs, (d) any other employee, workers' compensation,

occupational disease or unemployment or temporary disability related Claim, including, without limitation, Claims and other Liens that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act of 1974, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the Worker Adjustment and Retraining Act of 1988, (vii) the Age Discrimination and Employee Act of 1967 and Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act of 1990, (ix) the Consolidated Omnibus Budget Reconciliation Act of 1985, (x) state discrimination Laws, (xi) state unemployment compensation Laws or any other similar state Laws, or (xii) any other state or federal benefits or Claims and other Liens relating to any employment with the Debtors or any predecessors, (e) environmental or other Claims and other Liens arising from existing conditions on or prior to the Closing (including, without limitation, the presence of hazardous, toxic, polluting or contaminating substances or waste) that may be asserted on any basis, including, without limitation, under the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. §§ 9601, et seq., or other state or federal statute, (f) any bulk sales or similar Law, (g) any Tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and (h) any and all theories of successor liability, including any theories on successor products liability grounds or otherwise.

36. Except to the extent expressly included in the Assumed Liabilities or provided in the Agreement, the Purchaser and its affiliates shall have no liability, obligation, or responsibility under the WARN Act or the Comprehensive Environmental Response, Compensation and Liability Act, or any foreign, federal, state or local labor, employment, or environmental Law by

virtue of the Purchaser's purchase of the Purchased Assets or assumption of the Assumed Liabilities.

37. Except to the extent expressly included in the Assumed Liabilities, pursuant to Bankruptcy Code §§ 105 and 363, all Persons including, but not limited to, the Debtors, the Committee, all debt holders, equity security holders, the Debtors' employees or former employees, Governmental Bodies, lenders, parties to or beneficiaries under any Seller Plan, trade and other creditors asserting or holding a Lien of any kind or nature whatsoever against, in, or with respect to any of the Debtors or the Purchased Assets (other than the Permitted Encumbrances and Assumed Liabilities), arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date, or the transfer of the Purchased Assets to the Purchaser, shall be forever barred, estopped, and permanently enjoined from asserting, prosecuting, or otherwise pursuing such Lien, including assertion of any right of setoff or subrogation, and enforcement, attachment, or collection of any judgment, award, decree, or order, against the Purchaser or any affiliate, successor or assign thereof and each of their respective current and former members, managers, officers, directors, attorneys, employees, partners, affiliates, financial advisors, and representatives (each of the foregoing in its individual capacity), or the Purchased Assets.

38. Without limiting the generality of the foregoing, the Purchaser shall not assume or be obligated to pay, perform or otherwise discharge any workers' compensation debts, obligations, and liabilities of the Debtors arising pursuant to state Law or otherwise. This Order is intended to be all inclusive and shall encompass, but not be limited to, workers' compensation Claims or suits of any type, whether now known or unknown, whenever incurred or filed, which have occurred or which arise from work-related injuries, diseases,



death, exposures, intentional torts, acts of discrimination, or other incidents, acts, or injuries prior to the Closing Date, including, but not limited to, any and all workers' compensation Claims filed or to be filed, or reopenings of those Claims, by or on behalf of any of the Debtors' current or former employees, persons on laid-off, inactive or retired status, or their respective dependents, heirs or assigns, as well as any and all premiums, assessments, or other obligations of any nature whatsoever of the Debtors relating in any way to workers' compensation liability.

39. Subject to the terms of the Agreement, the Agreement and any related agreements and/or instruments may be waived, modified, amended, or supplemented by agreement of the Debtors and the Purchaser, without further action or order of the Court; provided, however, that any such waiver, modification, amendment, or supplement is not materially adverse to the Debtors and does not reduce in any way the Purchase Price.

40. Nothing contained herein or in the Agreement shall affect any rights LSREF2 may have in connection with the security deposit or the letter of credit proceeds currently in the possession of LSREF2 in connection with the Agreement of Lease dated October 19, 2007 for the Debtors' headquarters building in Atlanta, Georgia.

41. With respect to the property in Ellis County, Texas, any valid, undisputed 2013 ad valorem taxes on the real and personal property will be paid at closing if such date is on or before January 31, 2014. If closing has not occurred by that date, the Debtors shall pay any valid, undisputed 2013 taxes as billed on or before January 31, 2014. The 2013 taxes shall be paid (if valid and undisputed) based upon the tax office records and, pursuant to 11 U.S.C. § 503(b)(1)(D) no administrative expense claim or request for payment need be filed for these taxes to be paid. Any disputed ad valorem taxes on the real and personal property will be

addressed by a court of competent jurisdiction and paid as may be required by the disposition of such dispute.

42. Notwithstanding anything to the contrary in the Agreement or in this Order approving the sale of assets of the Debtors' Michigan businesses, this Order will not enjoin, suspend, or restrain the assessment, levy or collection of unemployment taxes under Michigan state law and does not constitute a declaratory judgment with respect to any employer's liability for taxes under Michigan state law. This Order is without prejudice to any rights the Purchaser, the Debtors or any of their successors-in-interest may have to challenge the assessment, levy or collection of unemployment taxes or any unemployment experience rating assessed by the Michigan Unemployment Insurance Agency.

43. The Debtors' sale of claims against and alleged rights to receive payment from (the "Alleged Claims") any one or more of General Motors Holdings LLC, General Motors LLC, and General Motors of Canada Limited (collectively, "GM"), including, without limitation, alleged claims for "Transportation Services Charges" in the amounts of \$2,755,404.35 and \$1,324,682.84 listed in Debtors' Schedule B21 (the "Alleged Accounts Receivable"), is expressly subject to any and all of GM's valid defenses and rights, including, but not limited to, GM's rights of recoupment and setoff under Michigan law and GM's claims and defenses asserted in United States District Court for the Eastern District of Michigan (the "Michigan Court") Case No. 11-11162 (the "Michigan Case"). Purchaser shall not assign, sell, or otherwise transfer any right or interest in the Alleged Claims or Alleged Accounts Receivable without the prior written consent of GM and any such assignment, sale, or transfer without GM's prior written consent is void. In the event that Purchaser seeks to pursue or enforce the Alleged Claims, the Purchaser and Debtors agree and consent to exclusive jurisdiction and venue in the

Michigan Court and that any further litigation relating to the Alleged Claims, Alleged Accounts Receivable, or GM's related defenses shall be exclusively in the Michigan Case, except that if the Michigan Court cannot exercise jurisdiction and venue, Purchaser and Debtors agree and consent to exclusive venue and jurisdiction in a court of competent jurisdiction located in Oakland County, Michigan. Further, in the event that Purchaser seeks to pursue or enforce the Alleged Claims, Purchaser and Debtors consent to any request by GM to the U.S. Bankruptcy Court for relief from the automatic stay to litigate in the Michigan Court or another Michigan court any and all claims relating to the Alleged Claims, Alleged Accounts Receivable, and GM's related defenses and damages claims, including, without limitation, GM's claims for damages relating to the alleged breach by Allied Systems, Ltd. (L.P.) ("Allied Systems") of its obligations under the Service Contract for Logistics Services (the "Service Contract") between GM and Allied Systems. Nothing contained in this order or any prior order of this U.S. Bankruptcy Court shall affect or otherwise impair to the extent valid (i) any setoff or recoupment rights or other defenses of GM, or the priority of any setoff or recoupment claims, or any rights attendant thereto, including, without limitation, GM's rights under the Service Contract, and (ii) GM's defenses to the existence and alleged amount of the Alleged Claims and Alleged Accounts Receivable including, without limitation, (a) on account of GM processing a \$100 million debit on May 20, 2011 to recoup and/or set off a portion of GM's damages caused by Allied Systems' alleged breach of the Service Contract and (b) on account of the Stipulation as to Amounts of Certain Damages Claims in the Michigan Case.

44. The failure specifically to include any particular provisions of the Agreement or any related agreements or instruments in this Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court, the Debtors, and the Purchaser that the

Agreement and any related agreements and instruments are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Order prior to Closing.

45. Nothing in this Order or the Agreement releases, nullifies, precludes, or enjoins the United States' enforcement of any liability under environmental Laws against the Purchaser or other future owner or operator as the current owner or operator of the Purchased Assets from and after the Closing Date.

46. No bulk sale Law or any similar Law of any state or other jurisdiction shall apply in any way to the sale and the Transactions contemplated by the Agreement.

47. *Except as otherwise provided herein,* Nothing in this Order shall alter or amend the Agreement and the obligations of the Debtors and the Purchaser thereunder.

48. This Order and the Agreement shall be binding upon and govern the acts of all Persons including, without limitation, the Debtors, the Debtors' estates, the Purchaser, and each of their respective directors, officers, employees, agents, successors, and permitted assigns, including, without limitation, any Chapter 11 trustee hereinafter appointed for the Debtors' estates, any trustee appointed in a Chapter 7 case if this Chapter 11 Case is converted from Chapter 11, any Chapter 11 plan agent or trustee, liquidating agent or trustee, or any other agent or trustee charged with administering any assets of the Debtors or their estates, all creditors of each Debtor (whether known or unknown), holders of Liens in or with respect to the Purchased Assets, filing agents, filing officers, title agents, recording agencies, secretaries of state, and all other Persons who may be required by operation of Law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title in or to the Purchased Assets.

49. Nothing in any order of this Court or contained in any plan of reorganization or liquidation confirmed in this Chapter 11 Case, or in any subsequent or converted cases of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code, shall conflict with or derogate from the provisions of the Agreement or the terms of this Order.

50. The stays imposed by Bankruptcy Rules 6004(h), 6006(d), and 7062 are hereby waived, and this Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. In the absence of any Person obtaining a stay pending appeal, the Debtors and the Purchaser are free to close under the Agreement at any time, subject to the terms of the Agreement. In the absence of any Person obtaining a stay pending appeal, if the Debtors and the Purchaser close under the Agreement, the Purchaser shall be deemed to be acting in "good faith" and shall be entitled to the protections of Bankruptcy Code § 363(m) as to all aspects of the Transactions if this Order or any authorization contained herein is reversed or modified on appeal.

51. The automatic stay provisions of Bankruptcy Code § 362 are vacated and modified to the extent necessary to implement the terms and conditions of the Agreement and the provisions of this Order, and the stay imposed by Bankruptcy Rule 4001(a)(3) is hereby waived with respect thereto.

52. This Court shall retain jurisdiction to enforce the terms and provisions of this Order and the Agreement (including, without limitation, all documents and instruments executed in connection with the Closing) in all respects and to decide any disputes concerning this Order, the Agreement, or the rights and duties of the parties hereunder or thereunder or any issues relating to the Agreement and this Order including, but not limited to, the interpretation of the terms, conditions and provisions hereof and thereof, the status, nature and extent of the

Purchased Assets and any Assigned Contracts, and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the Purchased Assets free and clear of all Liens (except Permitted Encumbrances and Assumed Liabilities) and the payment of the Sale Proceeds to the Prepetition First Lien Agents.

53. As soon as practicable after the Closing, the Debtors shall file a report of sale in accordance with Bankruptcy Rule 6004(f)(1).

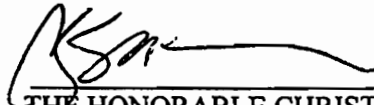
54. The definition of the term "Current Liabilities" contained in the Agreement is hereby amended and restated to provide as follows:

**"Current Liabilities"** means the following Assumed Liabilities: (a) amounts owed to third parties arising in the Ordinary Course of Business after the Petition Date (and arising on or prior to the Closing Date), which are not past due more than thirty (30) days as of the Closing Date, and which are entitled to priority status under Section 503(b) of the Bankruptcy Code or under the CCAA, (b) all accrued but unpaid base salary or wages due to any Employees (excluding all other types of compensation, health, welfare and pension benefits and bonuses, severance and incentive compensation) and all accrued but unpaid vacation and paid time off due to any Employees as of the Closing Date, (c) all cargo claims arising after the Petition Date under Sellers' customer Contracts and accrued as of the Closing Date, (d) amounts owed pursuant to the Retention Incentive Agreements as of the Closing Date, and (e) all accrued but unpaid health, welfare and pension benefits and contributions owed to or in respect of Employees of Allied Canada as of the Closing Date, which health, welfare and pension benefits are not due and payable at or prior to the Closing, in an aggregate amount that does not exceed \$450,000 (the **"Assumed HWP Benefits"**), in each case determined in accordance with GAAP.

55. Pursuant to Sections 1.3(f) and 1.3(i) of the Agreement, the Assumed Liabilities shall include the Assumed HWP Benefits.

56. Pursuant to Section 6.1 of the Agreement, the Employment Offering Purchaser Entity has agreed to assume any and all obligations and responsibilities of Allied Canada as a result of the application of Section 44 of the Canada Labour Code.

Dated: September 17, 2013  
Wilmington, Delaware




THE HONORABLE CHRISTOPHER S. SONTCHI  
UNITED STATES BANKRUPTCY JUDGE

# TAB C



EXECUTION VERSION

This is Exhibit C referred to in the  
affidavit of Ava Kim  
sworn before me, this 3rd  
day of October 2013  
  
A COMMISSIONER FOR TAKING AFFIDAVITS

ASSET PURCHASE AGREEMENT

by and among

JACK COOPER HOLDINGS CORP.,

as Purchaser,

and

ALLIED SYSTEMS HOLDINGS, INC.

and

THE SUBSIDIARIES OF ALLIED SYSTEMS HOLDINGS, INC.  
SET FORTH ON THE SIGNATURE PAGES HERETO,

as Sellers

DATED AS OF SEPTEMBER 12 2013

## TABLE OF CONTENTS

	<u>Page No.</u>
ARTICLE I. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES.....	1
1.1 Purchase and Sale of Assets.....	1
1.2 Excluded Assets .....	5
1.3 Assumption of Liabilities.....	8
1.4 Excluded Liabilities .....	8
1.5 Updates to the Purchased Assets, the Excluded Assets, the Assumed Liabilities and Excluded Liabilities; Cure Costs; Seller Disclosure Schedule Updates .....	10
1.6 No Successors .....	12
ARTICLE II. CONSIDERATION.....	12
2.1 Consideration .....	12
2.2 Adjustment of Purchase Price.....	12
2.3 Good Faith Deposit.....	14
ARTICLE III. CLOSING AND TERMINATION.....	15
3.1 Closing .....	15
3.2 Closing Deliveries by Sellers.....	15
3.3 Closing Deliveries by the Purchaser .....	17
3.4 Termination of Agreement.....	17
3.5 Procedure Upon Termination.....	19
3.6 Effect of Termination.....	19
ARTICLE IV. REPRESENTATIONS AND WARRANTIES OF THE SELLERS.....	20
4.1 Corporate Organization and Qualification.....	20
4.2 Allied and Subsidiaries .....	20
4.3 Authority Relative to This Agreement.....	21
4.4 Conflicts; Consents of Third Parties .....	21

4.5	Absence of Certain Developments.....	22
4.6	Litigation.....	23
4.7	Intellectual Property.....	23
4.8	Agreements, Contracts and Commitments; Certain Other Agreements .....	24
4.9	Regulatory Matters; Permits .....	26
4.10	Brokers and Finders .....	26
4.11	Title to Assets .....	26
4.12	Real Property .....	27
4.13	Compliance with Law .....	27
4.14	Tax Returns; Taxes .....	28
4.15	Employees.....	29
4.16	Benefit Plans .....	31
4.17	Affiliate Matters.....	32
4.18	Insurance Policies .....	33
4.19	Environmental Matters.....	33
4.20	Customers, Vendors and Suppliers .....	34
4.21	Accounts Receivable.....	34
4.22	Equipment.....	34
4.23	Absence of Undisclosed Liabilities .....	34
4.24	Foreign Subsidiary Financial Statements.....	34
4.25	Owner Operators.....	35
4.26	No Other Representations or Warranties .....	35
ARTICLE V. REPRESENTATIONS AND WARRANTIES OF THE PURCHASER .....		36
5.1	Organization and Qualification.....	36
5.2	Authority Relative to This Agreement.....	36
5.3	Consents and Approvals; No Violation .....	36

5.4	Brokers and Finders .....	37
5.5	Adequate Assurances Regarding Assigned Contracts .....	37
5.6	Litigation.....	37
5.7	Financing.....	37
5.8	No Other Representations or Warranties; Investigation .....	38
ARTICLE VI. EMPLOYEES.....		38
6.1	Employees.....	38
6.2	Seller Plans.....	39
6.3	WARN Act.....	39
6.4	No Third-Party Beneficiaries .....	40
6.5	Information .....	40
6.6	Service Credit.....	40
6.7	Welfare Plans .....	41
6.8	Rollovers .....	41
6.9	Payroll Withholding.....	42
6.10	FMLA Information .....	42
6.11	Communications .....	42
ARTICLE VII. BANKRUPTCY COURT MATTERS.....		42
7.1	Bankruptcy Court Approval of the Sale Orders; Determination of Cure Costs ....	42
ARTICLE VIII. COVENANTS AND AGREEMENTS.....		43
8.1	Conduct of Business of Allied Entities.....	43
8.2	Access to Information .....	44
8.3	Assignability of Certain Contracts, Etc. ....	46
8.4	Rejected Contracts .....	46
8.5	Further Agreements .....	46
8.6	Further Assurances.....	46

8.7	Preservation of Records .....	48
8.8	Publicity .....	48
8.9	Communication with Acquired Customers.....	49
8.10	Notification of Certain Matters.....	49
8.11	Environmental Matters Access and Cooperation.....	49
8.12	Notification of Additional Bids .....	50
8.13	Canadian Recognition Order.....	50
8.14	Foreign Subsidiary Stock.....	50
8.15	Antitrust Filings .....	51
8.16	Cooperation Related to Antitrust Filings .....	51
8.17	Cooperation Related to Financing. ....	52
ARTICLE IX. CONDITIONS TO CLOSING .....		53
9.1	Conditions Precedent to the Obligations of Sellers .....	53
9.2	Conditions Precedent to the Obligations of the Purchaser.....	54
9.3	Frustration of Closing Conditions.....	56
9.4	Information Officer's Certificate .....	56
ARTICLE X. ADDITIONAL DEFINITIONS .....		57
10.1	Certain Definitions.....	57
ARTICLE XI. TAXES.....		72
11.1	Additional Tax Matters .....	72
11.2	Canadian Tax Elections. ....	73
11.3	Owned Real Property Tax Proration.....	73
ARTICLE XII. MISCELLANEOUS.....		74
12.1	Payment of Expenses .....	74
12.2	Survival of Representations and Warranties; Survival of Confidentiality.....	74
12.3	Entire Agreement; Amendments and Waivers .....	74

12.4	Counterparts.....	75
12.5	Governing Law .....	75
12.6	Jurisdiction, Waiver of Jury Trial .....	75
12.7	Notices .....	76
12.8	Binding Effect; Assignment.....	77
12.9	Severability .....	78
12.10	Injunctive Relief.....	78
12.11	Non-Recourse .....	78
12.12	Time of the Essence.....	79
12.13	Allied as Representative of Sellers .....	79
12.14	Certain Interpretations .....	79

## **EXHIBITS**

Exhibit A	Form of Bill of Sale
Exhibit B	Form of Assignment and Assumption Agreement
Exhibit C	Form of U.S. Sale Order
Exhibit D	Form of Canadian Sale Order

## ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of September 12, 2013 (the "Execution Date"), is entered into by and among Allied Systems Holdings, Inc., a Delaware corporation ("Allied"), the subsidiaries of Allied set forth on the signature pages hereto (collectively with Allied, "Sellers" and each, a "Seller") and Jack Cooper Holdings Corp., a Delaware corporation (the "Purchaser"). Sellers and the Purchaser are sometimes individually referred to in this Agreement as a "Party" and collectively as the "Parties." Certain capitalized terms used herein are defined in Article X.

### RECITALS

WHEREAS, Sellers currently conduct the Business and the Purchaser desires to purchase the Business;

WHEREAS, each Seller is: (i) a debtor and debtor in possession in those certain bankruptcy cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101 *et seq.* (the "Bankruptcy Code") filed on May 17, 2012 in the United States Bankruptcy Court for the District of Delaware (the "U.S. Bankruptcy Court"), as jointly administered under Case No. 12-11564 (CSS) (collectively, the "Chapter 11 Case"), and/or (ii) a debtor in those certain cases under Part IV of the *Companies' Creditors Arrangement Act* (the "CCAA") filed on June 12, 2012 in the Ontario Superior Court of Justice (the "Canadian Court"), and together with the U.S. Bankruptcy Court, the "Bankruptcy Courts"), as administered under Court File No. 12-CV-9757-00CL (the "CCAA Case"), and together with the Chapter 11 Case, the "Bankruptcy Cases"); and

WHEREAS, in connection with the Bankruptcy Cases and subject to the terms and conditions contained herein and following the entry of the Sale Orders and subject to the terms and conditions thereof, (i) Sellers shall sell, transfer and assign to the Purchaser, and the Purchaser shall purchase and acquire from Sellers, the Purchased Assets free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances and Assumed Liabilities), and (ii) the Purchaser shall assume from Sellers the Assumed Liabilities, all as more specifically provided herein and in the Sale Orders.

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Purchaser and Sellers hereby agree as follows:

### ARTICLE I.

#### PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

1.1 Purchase and Sale of Assets. Pursuant to Sections 105, 363 and 365 of the Bankruptcy Code and Sections 36 and 49 of the CCAA and on the terms and subject to the conditions set forth in this Agreement and the Sale Orders, the Purchaser shall purchase, acquire and accept from each Seller, and each Seller shall sell, transfer, assign, convey and deliver to the Purchaser, on the Closing Date, free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances and Assumed Liabilities), all of the assets, properties, interests and



rights of any nature, tangible and intangible, real or personal, wherever located, of such Seller related to or used, or held for use, in connection with the operation of the Business, now existing or hereafter acquired prior to the Closing Date (but excluding those disposed of after the Execution Date in compliance with the terms and conditions of this Agreement), whether or not reflected on the books or financial statements of such Seller as the same shall exist on the Closing Date, including the following such assets, properties, interests and rights (but in all cases excluding the Excluded Assets) (collectively, the “Purchased Assets”):

(a) (i) all Contracts with customers of Sellers, and all rights pursuant thereto, entered into on or prior to the Execution Date by any Seller and set forth on Section 1.1(a) of the Seller Disclosure Schedule, (ii) any carrier Contract with customers of Axis Group, Inc. or any of its Subsidiaries entered into in the Ordinary Course of Business between the Execution Date and the Closing Date (provided, that Allied has delivered a true, correct and complete copy of each such carrier Contract to Purchaser no later than three (3) Business Days following the execution of such Contract), (iii) any other Contract with customers of Sellers entered into between the Execution Date and the Closing Date, provided that the execution thereof has been approved by the Purchaser in writing, and (iv) any other Contract with a customer of any Seller added to the list of Assumed Customer Contracts in accordance with Section 1.5 (such Contracts described in subsections (i)-(iv), collectively, the “Assumed Customer Contracts”);

(b) all Accounts Receivable;

(c) the Purchased Cash and all of Sellers’ rights to the return of any cash collateral that is collateralizing any letters of credit or other obligation assumed by the Purchaser, but excluding any cash tendered as part of the Purchase Price (except as provided in Section 2.2);

(d) all Documents used in or relating to the Business or in respect of the Purchased Assets or Assumed Liabilities, including the Acquired Customers, products, services, marketing, advertising and promotional activities, trade shows and all files, supplier lists, vendor lists, records, literature and correspondence as reasonably available;

(e) (i) all Contracts with suppliers and vendors, and all rights pursuant thereto, entered into on or prior to the Execution Date by any Seller and set forth on Section 1.1(e) of the Seller Disclosure Schedule, (ii) any other Contract with a supplier or vendor of any Seller entered into between the Execution Date and the Closing Date, provided that the execution thereof has been approved by the Purchaser in writing, and (iii) any other Contract with a supplier or vendor of any Seller added to the list of Assumed Vendor Contracts in accordance with Section 1.5 (such Contracts described in subsections (i)-(iii), collectively, the “Assumed Vendor Contracts”);

(f) all credits, prepaid expenses, advance payments, deposits, escrows, and retainers of Sellers related to the Purchased Assets or Assumed Liabilities, including (i) security deposits with third party suppliers, vendors or service providers, (ii) pre-paid ad valorem taxes and lease and rental payments, (iii) rebates, (iv) tenant reimbursements, and (v) pre-payments, in each case other than in connection with any Excluded Assets or Excluded Liabilities;

(g) all Equipment, including the tractors, trailers, rigs, lowboys, and other titled vehicles listed on Section 1.1(g) of the Seller Disclosure Schedule (it being understood that each listing shall include: (i) the VIN, (ii) the location of the title for each such vehicle; and (iii) the aggregate net book value as of May 31, 2013 for all titled vehicles set forth on Section 1.1(g) of the Seller Disclosure Schedule), but excluding the Excluded Lowboys;

(h) (i) all Personal Property Leases set forth on Section 1.1(h) of the Seller Disclosure Schedule, and all of the rights of any and all Sellers to such personal property (including Equipment, if any), (ii) any other Personal Property Lease entered into by Sellers between the Execution Date and the Closing Date, provided that the execution thereof has been approved by the Purchaser in writing, and (iii) any other leases and subleases added to the list of Assumed Personal Property Leases in accordance with Section 1.5 (collectively, the "Assumed Personal Property Leases"); provided, however, notwithstanding any other provision of this Agreement, the Purchaser shall not assume or acquire any Personal Property Lease that constitutes a capital lease or finance lease and all such Personal Property Leases that constitute capital leases or finance leases shall be Excluded Assets.

(i) the names "Allied" and "Allied Systems", the names of all of the other Sellers and, in all cases, any derivations thereof (the "Purchased Names");

(j) (i) all Owned Real Property (except all Excluded Owned Real Property) set forth on Section 1.1(j)(i) of the Seller Disclosure Schedule, (ii) all leases and subleases for the Leased Real Property set forth on Section 1.1(j)(ii) of the Seller Disclosure Schedule and all of Sellers' right, title and interest in and thereto, and (iii) any other leases and subleases added to the list of Assumed Real Property Leases in accordance with Section 1.5 (such leases and subleases described in subsections (ii) and (iii), collectively, the "Assumed Real Property Leases" and the underlying Leased Real Property, the "Assumed Leased Real Property");

(k) (i) all Contracts between Sellers and any independent contractors who are not employees of Sellers but who have been retained to render services (y) on behalf of Sellers or (z) on behalf of third parties where Sellers act as intermediaries or brokers, including, in each case, Contracts with (1) Owner Operators, (2) independent sales agents, and (3) qualified third-party carriers, but only to the extent such Contracts are set forth on Section 1.1(k) of the Seller Disclosure Schedule, (ii) any other such Contracts as described in subsection (i) and entered into by Sellers between the Execution Date and the Closing Date, provided that the execution thereof has been approved by the Purchaser in writing and (iii) any other Contract added to the list of Assumed Independent Contractor Contracts in accordance with Section 1.5 (such Contracts described in subsections (i) through (iii), collectively, the "Assumed Independent Contractor Contracts");

(l) to the extent assignable or transferable in accordance with the terms and conditions of the applicable Permits or under applicable Law, all Permits and all pending applications therefor (collectively, the "Transferable Permits" and any of the foregoing that are not so transferable, the "Non-Transferable Permits");

(m) all rights under (i) non-disclosure or confidentiality, non-compete, non-solicitation, or similar agreements executed by Employees, agents or other third parties in favor

of Sellers, including the Acquired Customers, and (ii) any such agreements executed by potential purchasers of the Sellers' assets, whether in connection with the Bankruptcy Cases or otherwise;

(n) to the extent the assignment or transfer thereof is not prohibited by applicable Law or the Sale Orders, all rights, claims, credits, causes of action or rights of set off with respect to third parties relating to the Purchased Assets (including, for the avoidance of doubt, those arising under, or otherwise relating to, the Assigned Contracts) or Assumed Liabilities, including rights under vendors' and manufacturers' warranties, indemnities, guaranties, and avoidance claims and causes of action under the Bankruptcy Code or applicable state, provincial, territorial, or federal Law (including all rights and avoidance claims of Sellers arising under Chapter 5 of the Bankruptcy Code, or similar Canadian federal, provincial or territorial legislation, other than the Excluded Avoidance Claims), and any rights, benefits and proceeds arising therefrom;

(o) any counterclaims, setoffs or defenses that any Seller may have with respect to any Assumed Liabilities;

(p) to the extent assignable or transferable in accordance with the terms and conditions of the applicable insurance policies, applicable Law or the Sale Orders, all claims, demands, proceedings and causes of action asserted by any Seller prior to the Closing under Sellers' insurance policies relating to the Business, which claims, demands, proceedings and causes of action relate directly to any Purchased Asset or Assumed Liability, and all rights, benefits, recoveries, and proceeds arising therefrom (collectively, the "Transferable Insurance Rights");

(q) all Tax Returns or Tax Records of Sellers related to any Purchased Assets (but excluding any Tax Return or Tax Records related to Income Taxes attributable to the ownership of the Purchased Assets or the operation of the Business on or prior to the Closing Date, provided that Sellers shall promptly provide to the Purchaser copies of the foregoing Tax Returns or Tax Records if reasonably requested by the Purchaser and to the extent that such Tax Returns or Tax Records are available);

(r) [intentionally deleted];

(s) (i) the Seller Intellectual Property, including the Seller Intellectual Property listed on Section 1.1(s)(i) of the Seller Disclosure Schedule (collectively, the "Assumed Intellectual Property"), (ii) all Contracts for off the shelf software, licenses of software or hardware that are widely available commercially and any licenses implied in the sale of software or hardware included in the Purchased Assets pursuant to which any Seller is granted a license to, or any rights under, any Intellectual Property of any third Person, (iii) all Contracts set forth on Section 1.1(s)(iii) of the Seller Disclosure Schedule pursuant to which any Seller is granted a license to, or any rights under, any Intellectual Property of any third Person, (iv) all Contracts set forth on Section 1.1(s)(iv) of the Seller Disclosure Schedule and pursuant to which any Seller granted to a third Person a license to, or any rights under, any Seller Intellectual Property, and (v) any other Contract added to the list of Assumed Intellectual Property Licenses in accordance with Section 1.5 (such Contracts described in subsections (ii)-(v), collectively, the "Assumed Intellectual Property Licenses");

(t) all goodwill and other intangible assets associated with the Business or the Purchased Assets;

(u) all of the shares of capital stock or other equity interests of the Foreign Subsidiaries (other than any Seller) owned by any Seller and set forth on Section 1.1(u) of the Seller Disclosure Schedule (the “Foreign Subsidiary Stock”);

(v) all personnel files for Transferred Employees, except to the extent that any transfer or assignment is prohibited by applicable Law;

(w) all Documents (whether copies or originals) relating to formation, qualifications to conduct business as a foreign corporation or other legal entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock ledgers, stock certificates, by-laws and other documents relating to the organization and existence of any Foreign Subsidiary as a corporation or other legal entity, as applicable (together with analogous documentation);

(x) all Inventory;

(y) (i) the Retention Incentive Agreements listed on Section 1.1(y) of the Seller Disclosure Schedule and any associated funding media, assets, reserves, credits and service agreements, and all Documents created, filed or maintained in connection with such Retention Incentive Agreements and any applicable annuity contracts, insurance policies or other funding instruments related thereto, and (ii) any other Seller Plan of any Seller added to the list of Assumed Plans in accordance with Section 1.5 (such Seller Plans described in subsections (i) and (ii), collectively, the “Assumed Plans” and, together with the Assumed Customer Contracts, the Assumed Vendor Contracts, the Assumed Personal Property Leases, the Assumed Real Property Leases, the Assumed Independent Contractor Contracts, the Assumed Intellectual Property Licenses, and the Contracts (if any) that constitute Purchased Assets pursuant to Section 1.1(aa) or Section 1.1(bb), the “Assigned Contracts”);

(z) all Indebtedness payable to any Seller (other than the Excluded Intercompany Indebtedness), including any Indebtedness payable by any Foreign Subsidiary;

(aa) any Contract, asset, property, interest or right set forth on Section 1.1(aa) of the Seller Disclosure Schedule; and

(bb) any asset, property, interest or right (including any Contract) added to the definition of Purchased Assets in accordance with Section 1.5.

1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall any Seller be deemed to sell, transfer, assign or convey, and the Purchased Assets shall not include, and each Seller shall retain all right, title and interest to, in and under, the following assets, properties, interests and rights of each Seller (collectively, the “Excluded Assets”):

(a) all Non-Assumed Contracts;

(b) all Documents (whether copies or originals) (i) to the extent they relate solely to the Excluded Assets or Excluded Liabilities, (ii) that a Seller is required by Law to retain and is prohibited by Law from providing a copy of to the Purchaser, or (iii) prepared primarily in connection with the transactions contemplated by this Agreement, including bids received from other third parties;

(c) all shares of capital stock or other equity interests of any Seller or securities convertible into, or exchangeable or exercisable for, any such shares of capital stock or other equity interests;

(d) all shares of capital stock or other equity interests of Haul Insurance Limited, a company organized under the Laws of the Cayman Islands, and all assets of Haul Insurance Limited, including any Cash or Cash Equivalents;

(e) (i) any rights, claims, credits, causes of action, or rights of set off held by Sellers with respect to third parties relating to the Excluded Assets or Excluded Liabilities, (ii) any rights, claims or causes of action held by Sellers or their estates against Yucaipa, including the Pending Yucaipa Litigation, and any rights, benefits and proceeds arising therefrom and (iii) any avoidance claims or causes of action under the Bankruptcy Code or applicable state, provincial, territorial or federal Law that relate to the vendors, suppliers, or other contract counterparties (other than customers) of Sellers set forth on Section 1.2(e) of the Seller Disclosure Schedule and solely to the extent related to the Excluded Assets, including all rights and avoidance claims of Sellers arising under Chapter 5 of the Bankruptcy Code or similar Canadian federal, provincial or territorial legislation with respect to the Excluded Assets, and any rights, benefits and proceeds arising therefrom (collectively, the “Excluded Avoidance Claims”);

(f) all (i) credits, prepaid expenses, advance payments, deposits, escrows, and retainers that Sellers may have relating to any Excluded Assets or Excluded Liabilities and (ii) prepaid or unearned insurance premiums;

(g) each Seller’s rights under this Agreement;

(h) any cash tendered as part of the Purchase Price (except as contemplated in Section 2.2), any Cash or Cash Equivalents in excess of the Purchased Cash, and all of Sellers’ rights to the return of any cash collateral that is collateralizing any letters of credit or other obligation that is not assumed by the Purchaser pursuant to this Agreement;

(i) other than the Assumed Plans, all of the Seller Plans, including the Management Incentive Retention Agreements, any KEIP, and any ERISA Affiliate Plan, and any agreement relating to any of the foregoing, and any associated funding media, assets, reserves, credits and service agreements, and all Documents created, filed or maintained in connection with the Seller Plans (other than the Assumed Plans), any ERISA Affiliate Plan and any agreement relating to the foregoing, and any applicable annuity contracts, insurance policies or other funding instruments (collectively, the “Excluded Plans”);

(j) all collective bargaining agreements and other agreements with any labor union and employment or similar agreements applicable to any Employee of Sellers, other than those specifically included as Purchased Assets or Assumed Liabilities;

(k) any claim, right, or interest of any Seller in or to any refund, rebate, reimbursement, abatement or other recovery for Taxes, together with any interest due thereon or penalty rebate arising therefrom, for any Tax Period (or portion thereof) ending on or before the Closing Date;

(l) except to the extent that any Tax Return or Tax Record of Sellers is acquired pursuant to Section 1.1(q), all Tax Returns or Tax Records of Sellers;

(m) all Documents relating to formation, qualifications to conduct business as a foreign corporation or other legal entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, seals, minute books, stock transfer books, stock ledgers, stock certificates, by-laws and other documents relating to the organization and existence of any Seller as a corporation or other legal entity, as applicable (together with analogous documentation), provided that Sellers shall promptly provide to the Purchaser copies of the foregoing Documents if reasonably requested by the Purchaser and to the extent that such Documents are available in the Sellers' books and records;

(n) the Owned Real Property set forth on Section 1.2(n) of the Seller Disclosure Schedule and all of Sellers' right, title and interest in and thereto (the "Excluded Owned Real Property");

(o) all shares of capital stock or other equity interests of AX International Limited, a company organized under the Laws of Bermuda, and all assets of AX International Limited (other than its equity interest in any Foreign Subsidiary, including Arrendadora de Equipo para el Transporte de Automóviles, S.de R.L. de C.V.), including any Cash or Cash Equivalents;

(p) any Contract, asset, property, interest or right set forth on Section 1.2(p) of the Seller Disclosure Schedule;

(q) the Non-Transferable Permits;

(r) all intercompany loans and other intercompany indebtedness payable by any Seller to any other Seller, Haul Insurance Limited or AX International Limited (collectively, the "Excluded Intercompany Indebtedness");

(s) (i) except as provided in Section 1.1(p), all of Sellers' insurance policies and rights and benefits thereunder, and (ii) any letters of credit related thereto;

(t) all personnel files for Employees other than the Transferred Employees;

(u) any asset, property, interest or right (including any Contract) added to the definition of Excluded Assets in accordance with Section 1.5; and

- (v) the Excluded Lowboys.

1.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement and the Sale Orders, the Purchaser shall assume only the following Liabilities of Sellers (collectively, the “Assumed Liabilities”):

- (a) any and all Liabilities of Sellers under each Assigned Contract (other than the Assumed Plans) arising and accruing from and after the Closing Date and related to such Assigned Contract;

- (b) except as provided in Section 1.4(n), all Cure Costs;

- (c) as set forth on Section 1.3(c) of the Seller Disclosure Schedule (which for the avoidance of doubt shall be listed as line items and/or categories and not dollar amounts), the obligation to pay any amounts owed to third parties arising in the Ordinary Course of Business after the Petition Date (and arising on or prior to the Closing Date), which are not past due more than thirty (30) days as of the Closing Date, and which are entitled to priority status under Section 503(b) of the Bankruptcy Code or under the CCAA;

- (d) any and all Liabilities with respect to the Assumed Plans, whether arising prior to, on or after the Closing Date;

- (e) any and all Liabilities for Transfer Taxes as provided in Section 11.1(a);

- (f) any and all Liabilities for which the Purchaser is expressly responsible pursuant to Article VI;

- (g) the filing fees for the Antitrust Filings and the Liabilities of Sellers required to be paid or reimbursed by Purchaser at or prior to Closing as provided in Section 8.15;

- (h) any and all cargo claims arising after the Petition Date under Sellers’ customer Contracts and which remain outstanding as of the Closing Date; and

- (i) any Liability added to the definition of Assumed Liabilities in accordance with Section 1.5.

1.4 Excluded Liabilities. Except for the Assumed Liabilities, the Purchaser shall not assume, or become liable for the payment or performance of, any Liabilities of Sellers of any kind or nature whatsoever, whether accrued or unaccrued, including the following Liabilities (collectively, the “Excluded Liabilities”), which shall remain Liabilities of Sellers:

- (a) all Liabilities of Sellers relating to or otherwise arising, whether before, on or after the Closing, out of, or in connection with, any of the Excluded Assets;

- (b) all Liabilities of Sellers in respect of Non-Assumed Contracts;

- (c) all Liabilities (including all litigation and related claims) arising out of or in connection with events occurring on or prior to the Closing Date (including all Liabilities



related to or arising out of the operation of the Business prior to the Closing), no matter when raised;

(d) any and all Liabilities relating to any environmental, health or safety matter (including any Liability or obligation under any Environmental Law), arising out of or relating to any Seller's operation of its business or its leasing, ownership or operation of real property on or prior to the Closing Date, no matter when raised;

(e) all Liabilities of each Seller in respect of Indebtedness, whether or not relating to the Business;

(f) any and all Liabilities with respect to the Excluded Plans, including Liabilities for unpaid contributions or withdrawal liability in connection with any of the Excluded Plans whether such Liabilities arise before, on or after the Closing;

(g) any and all Liabilities for Taxes arising in connection with the transactions contemplated by this Agreement, except for Transfer Taxes as provided in Section 11.1(a);

(h) any and all Liabilities for Income Taxes or other Taxes attributable to the ownership of the Purchased Assets or the operation of the Business on or prior to the Closing Date;

(i) any payments due to any equity holders of Sellers other than (i) any Liabilities assumed by Purchaser pursuant to Section 1.3(f) and accrued as of the Closing and owed in the Ordinary Course of Business to equity holders who are Employees, and (ii) trade payables included in Assumed Liabilities under Section 1.3(c) owed to customers, vendors and other contract counterparties that are not Affiliates of any Allied Entity and that received equity interests in any Seller in connection with such Seller's prior plan of reorganization;

(j) all Liabilities set forth on Section 1.4(j) of the Seller Disclosure Schedule;

(k) all obligations to pay the amounts owed for goods or services received by Sellers in respect of any trade and vendor accounts payable, except for amounts included as Assumed Liabilities pursuant to Sections 1.3(b) and (c);

(l) any and all Liabilities of any Seller under any collective bargaining agreement, any other agreement with any labor union, and/or any employment or similar agreements applicable to any Employee of Sellers (except to the extent provided in Section 6.1 with respect to the Canadian Collective Bargaining Agreements);

(m) except as expressly set forth in Article VI and except pursuant to Section 1.3(d), any Liability relating to the employment or termination of employment of any (x) Person arising from or related to the operation of the Business on or prior to Closing or the transactions contemplated by this Agreement (including any workers' compensation claims and any severance or stay or incentive bonuses), or (y) Person who is not a Transferred Employee, including any Liability under the WARN Act or under any Applicable Employment Legislation; and



(n) if any Contracts between Sellers and Sellers' customers (including Ford and including any such Contracts that are amended or modified after the Execution Date) are included as Assumed Customer Contracts, all Cure Costs relating to such Contracts (except as provided in Section 1.3(h)).

For the avoidance of doubt, except as expressly noted above, none of the Excluded Liabilities shall be included as Assumed Liabilities.

**1.5 Updates to the Purchased Assets, the Excluded Assets, the Assumed Liabilities and Excluded Liabilities; Cure Costs; Seller Disclosure Schedule Updates.**

(a) Notwithstanding anything in this Agreement to the contrary, upon written notice to Sellers, the Purchaser may (in its sole discretion) amend the definitions of the terms Purchased Assets, Excluded Assets, Assumed Liabilities and Excluded Liabilities to:

(i) include in the definition of Purchased Assets and to exclude from the definition of Excluded Assets, any Contract of any Seller not previously included in the Purchased Assets, at any time prior to the Closing, and require Sellers to give notice to the non-debtor parties to any such Contract;

(ii) exclude from the definition of Purchased Assets and to include in the definition of Excluded Assets, any Assigned Contract of any Seller previously included in the Purchased Assets and not otherwise included in the definition of Excluded Assets, at any time prior to the Closing;

(iii) other than the Excluded Assets set forth in Sections 1.2(b), (e), (f), (g), (h), (k), (l), (m), (q), (r), (s), (t) and (v), include in the definition of Purchased Assets and to exclude from the definition of Excluded Assets, any asset, property, interest, or right (other than a Contract) of any Seller previously included in the Excluded Assets and not otherwise included in the definition of Purchased Assets, at any time on or before the commencement of the Sale Hearing;

(iv) exclude from the definition of Purchased Assets and to include in the definition of Excluded Assets, any asset, property, interest, or right (other than a Contract) of any Seller previously included in the Purchased Assets and not otherwise included in the definition of Excluded Assets, at any time prior to the Closing;

(v) include in the definition of Assumed Liabilities and to exclude from the definition of Excluded Liabilities, any Liability of any Seller not previously included in the Assumed Liabilities, at any time prior to the Closing, and require Sellers to give such notice to any third party as is required for the assumption of such Liability;

*provided* that no such change of the definition of the Purchased Assets, the definition of the Excluded Assets, the definition of the Assumed Liabilities or the definition of the Excluded Liabilities shall increase or decrease the amount of the Purchase Price (except pursuant to Section 2.2).

The Parties acknowledge and agree that changes in the definitions of Purchased Assets, Excluded Assets, Assumed Liabilities and/or Excluded Liabilities that are permitted pursuant to this Section 1.5(a) may result in changes in the aggregate amount of Assumed Liabilities and Excluded Liabilities and any such changes in the amounts of such Liabilities shall be permitted at any time prior to the applicable deadlines set forth in Sections 1.5(a)(i)-(v) for changing such definitions.

(b) If any change made by the Purchaser pursuant to Section 1.5(a) results in the Seller Disclosure Schedule being incorrect or incomplete, then, within five (5) Business Days of such change, Sellers shall be permitted to update, in writing to the Purchaser, the Seller Disclosure Schedule as necessary to correct or complete the Seller Disclosure Schedule.

(c) If any Contract is added to (or excluded from) the Purchased Assets as permitted by this Section 1.5, Sellers shall promptly take such steps as are reasonably necessary, subject to the Purchaser providing payment or adequate assurance of payment of any Cure Costs (to the extent such Cure Costs are the responsibilities of the Purchaser under Section 1.3), including prompt delivery of notice to the non-debtor counterparty, to cause such Contracts to be assumed by Sellers, and assigned to the Purchaser, on the Closing Date (or excluded under the Sale Orders and this Agreement), provided, however, Sellers shall not be required to obtain or provide any consents, approvals, waivers, authorizations or notices that are overridden or canceled by the Sale Orders or other related order of the Bankruptcy Courts. Without limiting any of the Purchaser's rights pursuant to this Section 1.5, in the event that the Sale Orders do not approve the assignment or transfer of one or more of the Assigned Contracts, or if a non-debtor counterparty to such Assigned Contract objects to the proposed Cure Cost or to the assignment of such Assigned Contract, the Purchaser may, in its sole discretion, prior to the payment of such Cure Cost or the assumption and assignment of such Assigned Contract, exclude such Contract from the Assigned Contracts.

(d) If, subsequent to the entry of the Sale Orders, the Purchaser exercises its rights under Section 12.8 to designate any other Person to be the assignee under any Assigned Contract, the Purchaser shall give prompt notice thereof to Sellers and shall provide such information as may be necessary regarding such designee to evidence such designee's ability to provide adequate assurance of future performance (as required by Section 365 of the Bankruptcy Code). Upon receipt of such notice from Purchaser, Sellers shall promptly take such steps as are reasonably necessary to provide notice to the counterparty to such Assigned Contract (with an opportunity for such counterparty to object). The Purchaser and Sellers agree that, notwithstanding the occurrence of the Closing, the assignment of any such Assigned Contract shall not become effective until the earlier of (i) the passage of the notice period without the filing of any objection by the counterparty, and (ii) the entry of an order at the applicable Bankruptcy Court overruling any such objection; provided that if the effective date of assignment of any Assigned Contract is after the Closing due to an exercise of the Purchaser's rights under Section 12.8, the Purchaser shall be liable for any and all liabilities and obligations of the Sellers arising under such Assigned Contract from and after the Closing through and including the effective date of assumption or rejection of such Assigned Contract (excluding any liabilities and obligations relating to rejection of such Assigned Contract), and shall indemnify the Sellers for any losses or liabilities incurred by Sellers after the Closing as a result of the delay

in effectuating the assignment of any such Assigned Contract (excluding, for the avoidance of doubt, any liabilities and obligations relating to rejection of such Assigned Contract).

1.6 No Successors. The Purchaser and/or any Designated Purchaser shall not be deemed, as a result of any action taken in connection with the purchase of the Purchased Assets or the operation of the Purchased Assets and the Business from and after the Closing, to: (1) be a successor, successor employer, or successor in interest (or other similarly situated party) to any of the Sellers; (2) have, *de facto* or otherwise, merged with or into any of Sellers; or (3) be a continuation or substantial continuation of Sellers or any business of Sellers.

## ARTICLE II.

### CONSIDERATION

#### 2.1 Consideration.

(a) The aggregate consideration (collectively, the “Purchase Price”) to be paid for the purchase of the Purchased Assets shall be: (i) cash in an amount equal to One Hundred Twenty-Five Million Dollars (\$125,000,000.00) and (ii) the Purchaser Notes; provided, however, that (A) the Purchaser shall have the option of paying Ten Million Dollars (\$10,000,000) in cash at the Closing in lieu of issuing the Purchaser Notes and (B) upon issuance of such Purchaser Notes, Sellers shall enter into an agreement granting the Purchaser the right to purchase or have a third party purchase the Purchaser Notes at any time after the Closing for an amount in cash equal to the Purchaser Notes’ face value plus accrued but unpaid interest. After the Closing, the Purchase Price shall be subject to adjustment as provided in Section 2.2 below. The Purchase Price shall be paid as contemplated by Sections 2.2, 2.3, and 3.3.

(b) In addition to the foregoing consideration, as consideration for the grant, sale, assignment, transfer and delivery of the Purchased Assets, the Purchaser shall assume and discharge the Assumed Liabilities.

#### 2.2 Adjustment of Purchase Price.

(a) Within ninety (90) days after the Closing Date, the Purchaser shall cause to be prepared, at the Purchaser’s expense, a final working capital statement of the Business (together with supporting calculations in reasonable detail, the “Final Working Capital Statement”) setting forth the Purchaser’s good faith determination of the Net Working Capital as of the Closing Date (the “Final Working Capital”). Upon completion of such statement, the Purchaser shall deliver the Final Working Capital Statement to Sellers.

(b) The Purchase Price shall be adjusted as follows:

(i) if on the Closing Date, the U.S. Sellers deliver to the Purchaser an amount of Cash and Cash Equivalents that is less than the amount of the Purchased Cash (such deficiency, the “Purchased Cash Deficiency”), then the amount funded by the Purchaser pursuant to Section 3.3(a) shall be reduced by the Purchased Cash Deficiency; and

(ii) in addition, if the Final Working Capital, as set forth on the Final Working Capital Statement as conclusively determined as set forth in Section 2.2(d) (the Final Working Capital as so determined, the “Certified Working Capital”), is less than the Target Working Capital Amount (such deficiency, the “Working Capital Shortfall Amount”), then (x) Allied and the Purchaser shall jointly instruct the Escrow Holder to pay to the Purchaser an amount equal to the lesser of (1) the Working Capital Shortfall Amount, and (2) the Good Faith Deposit, and (y) Sellers shall pay to the Purchaser an amount equal to the remaining Working Capital Shortfall Amount after application of the Good Faith Deposit (if any). Any payment to the Purchaser pursuant to this Section 2.2(b) shall be made within ten (10) days following the date on which the Final Working Capital Statement (including the Certified Working Capital calculation) becomes final pursuant to Section 2.2(d). Any payment made to the Purchaser pursuant to this Section 2.2(b) shall be made by wire transfer of immediately available federal funds to an account designated by Purchaser. Upon the satisfaction of any payments owed to the Purchaser pursuant to this Section 2.2(b), Allied and the Purchaser shall jointly instruct the Escrow Holder to pay to Sellers (to an account designated by Sellers) the remaining balance of the Good Faith Deposit (if any).

(c) If the Certified Working Capital is greater than the Target Working Capital Amount, then Allied and the Purchaser shall jointly instruct the Escrow Holder to deliver the Good Faith Deposit to Sellers. Any payment pursuant to this Section 2.2(c) shall be made within ten (10) days following the date on which the Final Working Capital Statement (including the Certified Working Capital calculation) becomes final pursuant to Section 2.2(d). Any payment made pursuant to this Section 2.2(c) shall be made by wire transfer of immediately available federal funds to an account designated by Sellers.

(d) Unless Sellers notify the Purchaser in writing within thirty (30) days after receipt by Sellers of the Final Working Capital Statement of any objections thereto (specifying in reasonable detail the basis therefor), such statement shall be final and binding for all purposes. During such thirty (30) day period, Sellers and their Representatives shall have the right to review the relevant books and records of the Purchaser, and work papers prepared by, the Purchaser and/or the Purchaser’s accountants solely to the extent that they relate to the Final Working Capital Statement and to such historical financial information (but only to the extent in the Purchaser’s possession) relating to the Final Working Capital Statement as Seller may reasonably request for the purpose of reviewing the Final Working Capital Statement and to prepare any statement of objections, provided, that such review right shall be in a manner that does not interfere with the normal business operations of the Purchaser. If Sellers timely notify the Purchaser of any such objection, the Purchaser and Sellers shall attempt in good faith to reach an agreement as to the matters in dispute. If the Parties shall have failed to resolve any such dispute within ten (10) Business Days after receipt of timely notice of such objection, then any such disputed matter may, at the election of the Purchaser or Sellers, be submitted to and determined by an Independent Accounting Firm. Any matter submitted to the Independent Accounting Firm shall be limited to matters in dispute as between Sellers and the Purchaser and shall be resolved within the range of such dispute. The Independent Accounting Firm shall make a determination as soon as practicable within 30 (thirty) days (or such other time as the Parties shall agree in writing) after their engagement. The fees and expenses of such Independent Accounting Firm incurred in resolving the disputed matter shall be equitably apportioned by

such accountants based on the extent to which the Purchaser, on the one hand, or Sellers, on the other hand, is or are determined by such accountants to be the prevailing Party or Parties in the resolution of such disputed matters. The Final Working Capital Statement shall, after resolution of any dispute pursuant to this Section 2.2(d), be final, binding and conclusive on all Parties hereto.

### 2.3 Good Faith Deposit

(a) Pursuant to the Bid Procedures, prior to the Execution Date, the Purchaser delivered to Escrow Holder a wire transfer in an amount equal to Nine Million Five Hundred Thousand Dollars (\$9,500,000.00) (the "Good Faith Deposit"), to be applied as provided in Section 2.3(b). The Good Faith Deposit shall be held in escrow by Escrow Holder in an interest bearing account (the "Good Faith Deposit Escrow Account"). All interest accruing on such Good Faith Deposit Escrow Account shall be credited to the Purchaser.

(b) The Purchaser and Sellers agree that the Good Faith Deposit shall be administered in accordance with the following provisions of this Section 2.3(b), and the Purchaser and Sellers agree to provide promptly joint instructions to the Escrow Holder accordingly:

(i) **[intentionally deleted].**

(ii) **[intentionally deleted].**

(iii) (1) if the Closing is consummated with the Purchaser, the Good Faith Deposit (with any accrued interest actually earned thereon) shall secure the obligations of the Parties set forth in Sections 2.2(b) and (c) and be distributed in accordance with Sections 2.2(b) and (c);

(2) if this Agreement is terminated by Sellers pursuant to Section 3.4(i) or Section 3.4(l), within two (2) Business Days: (i) the Good Faith Deposit (with any accrued interest actually earned thereon) shall be paid to Sellers as liquidated damages and (ii) at the Purchaser's option, the Purchaser shall deliver to Sellers either (A) the Purchaser Notes or (B) Ten Million Dollars (\$10,000,000) in cash in lieu of issuing the Purchaser Notes. In the event the Good Faith Deposit and the Purchaser Notes (or \$10,000,000 cash, if applicable) are paid to Sellers pursuant to this Section 2.3(b)(iii)(2), the Good Faith Deposit and the Purchaser Notes (or \$10,000,000 cash, if applicable) will be deemed liquidated damages in favor of Sellers and not as a penalty; it being agreed that Sellers' actual damages are impossible to estimate and that the amount of liquidated damages is a good faith estimate of the actual damages that would be suffered by Sellers as a result of a termination of this Agreement pursuant to Section 3.4(i) or Section 3.4(l), and that such liquidated damages shall be in lieu of any other right or remedy of Sellers (at law or in equity) and shall constitute the sole and exclusive remedy of Sellers whether at law or in equity (including against any Representative of the Purchaser); provided, however, that in the event the Purchaser issues and delivers the Purchaser Notes pursuant to this Section 2.3(b)(iii)(2), Sellers shall enter into an agreement granting the Purchaser the right to purchase or have a third party purchase the

Purchaser Notes at any time following their issuance for an amount in cash equal to the Purchaser Notes' face value plus accrued but unpaid interest;

(3) if this Agreement is terminated pursuant to any provision of Section 3.4 other than any termination by Sellers pursuant to Section 3.4(i) or Section 3.4(l), the Good Faith Deposit (with any accrued interest actually earned thereon) shall be returned to the Purchaser within two (2) Business Days; and

(4) if the Purchaser's bid is not determined by the U.S. Bankruptcy Court to be the "highest or best" bid for the Purchased Assets at the Sale Hearing: (i) the Good Faith Deposit (with any accrued interest actually earned thereon) shall be returned to the Purchaser within two (2) Business Days; and (ii) the Purchaser shall have no obligation to issue and deliver the Purchaser Notes.

### **ARTICLE III.**

#### **CLOSING AND TERMINATION**

3.1 Closing. Subject to the satisfaction of the conditions set forth in Sections 9.1 and 9.2 hereof or the waiver thereof by the Party entitled to waive the applicable condition, the closing of the purchase and sale of the Purchased Assets, the delivery of the Purchase Price, the assumption of the Assumed Liabilities and the consummation of the other transactions contemplated by this Agreement (the "Closing") shall take place at the Atlanta office of King & Spalding LLP (or at such other place as the Parties may designate in writing), on the date that is two (2) Business Days following the date on which all of the conditions set forth in Section 9.1 and Section 9.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived by the Party entitled to waive the applicable condition, unless another time or date, or both, are agreed to in writing by the Parties hereto. The date on which the Closing shall be held is referred to in this Agreement as the "Closing Date." Unless otherwise agreed by the Parties in writing, upon the delivery of the Information Officer's Certificate, the Closing shall be deemed effective and all right, title and interest of each Seller in the Purchased Assets to be acquired by the Purchaser hereunder shall be considered to have passed to the Purchaser and the assumption of all of the Assumed Liabilities shall be considered to have occurred as of 12:01 a.m. Eastern Time on the Closing Date.

3.2 Closing Deliveries by Sellers. At the Closing, Sellers shall deliver to the Purchaser:

(a) a duly executed bill of sale with respect to the Purchased Assets, substantially in the form attached hereto as Exhibit A;

(b) a duly executed assignment and assumption agreement with respect to the Assigned Contracts and Assumed Liabilities, substantially in the form attached hereto as Exhibit B;

(c) true and correct copies of the Sale Orders, certified by the clerks of the applicable Bankruptcy Courts;

(d) a true and correct copy of the Information Officer's Certificate; provided that all events to be certified therein by the Information Officer have occurred; provided further Sellers shall cause the Information Officer's Certificate to be filed with the Canadian Court immediately thereafter;

(e) a duly executed non foreign person affidavit of each Seller (other than any Seller organized in a non-U.S. jurisdiction) (or, in the case of a Seller that is a disregarded entity for U.S. federal income tax purposes, the Person treated as the "transferor" with respect to such Seller within the meaning of Treasury Regulations Section 1.1445-2(b)(2)(iii)) dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code, stating that such Seller is not a "foreign person" as defined in Section 1445 of the Code;

(f) the officer's certificates required to be delivered pursuant to Sections 9.2(d) and 9.2(e);

(g) certificates representing the Foreign Subsidiary Stock, duly endorsed in blank or accompanied by duly executed stock powers or other instruments of assignment requested by and reasonably satisfactory in form and substance to the Purchaser;

(h) certificates of title and title transfer documents to all titled motor vehicles and trailers included within the Purchased Assets;

(i) special warranty or limited warranty deeds (as customary in the applicable jurisdiction) with respect to each parcel of Owned Real Property included within the Purchased Assets, which deeds shall be expressly made subject to the Permitted Encumbrances and shall otherwise be in the form required or customarily utilized in the applicable jurisdiction, and certifications of Sellers and other documents to be executed and delivered on behalf of Sellers that are normal and customary or required in the closing of real estate transactions in the applicable jurisdiction, including such certificates or documents that are reasonably required to be delivered to the Purchaser's title insurance company, in form and substance reasonably satisfactory to Purchaser; provided, however, for purposes of this Section 3.2(i) and Section 9.2(j) below, the term "Permitted Encumbrances" shall include any matter of title or survey, including zoning requirements but excluding monetary Encumbrances, with respect to which Purchaser fails to object in writing to Sellers within forty-five (45) days after entry by the U.S. Bankruptcy Court of the U.S. Sale Order;

(j) physical possession of all of the Purchased Assets capable of passing by delivery with the intent that title in such Purchased Assets shall pass by and upon such delivery;

(k) one or more Intellectual Property assignments to transfer the Seller Intellectual Property included in the Purchased Assets to the Purchaser, each in recordable form to the extent necessary to assign such rights, in form and substance reasonably satisfactory to the Purchaser, duly executed by Sellers;



(l) such other documents or instruments that Purchaser reasonably requests at or prior to Closing to effect (or evidence of record) the transactions contemplated hereby;

(m) a statement that sets forth all Employees (including former Employees) who experienced an Employment Loss in the ninety (90) days immediately preceding the Closing Date;

(n) duly executed lien releases, each in recordable form, evidencing the release of all monetary liens on the Purchased Assets as of the Closing Date, in form and substance reasonably satisfactory to the Purchaser; and

(o) a duly executed Mutual Release.

3.3 Closing Deliveries by the Purchaser. At the Closing, the Purchaser shall deliver to (or at the direction of) Sellers:

(a) Subject to Section 2.2(b)(i), the Purchase Price less the Good Faith Deposit;

(b) a duly executed assignment and assumption agreement substantially in the form attached hereto as Exhibit B;

(c) the officer's certificates required to be delivered pursuant to Sections 9.1(c) and 9.1(d);

(d) [intentionally deleted];

(e) a duly executed Mutual Release;

(f) evidence reasonably satisfactory to Sellers of payment of the Cure Costs for which the Purchaser has responsibility under Section 1.3 (or establishment of appropriate reserves therefor);

(g) cash in an amount equal to the sum of the amounts payable by Purchaser pursuant to Section 6.1 and Section 6.6; and

(h) such other documents or instruments that Allied reasonably requests at or prior to Closing to effect (or evidence of record) the transactions contemplated hereby.

3.4 Termination of Agreement. This Agreement may be terminated as follows:

(a) by the mutual written consent of Allied and the Purchaser at any time prior to the Closing;

(b) by either the Purchaser or Allied, if the Closing shall not have been consummated on or prior to the close of business on December 31, 2013 (the "Outside Date"); provided, however, that the Purchaser and Allied shall have the right to extend the Outside Date upon such Parties' mutual written agreement on or prior to the Outside Date; provided, further,



that the right to terminate this Agreement under this Section 3.4(b) shall not be available to any Party that has committed a material breach of this Agreement, which material breach has resulted in the failure of the Closing to occur on or before such date;

(c) by either the Purchaser or Allied, if there shall be any Law that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited, or there shall be in effect a final non-appealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby; it being agreed that the Parties hereto shall promptly appeal any adverse determination which is appealable (and pursue such appeal with reasonable diligence), provided that no Party shall be obligated to pursue any such appeal beyond the Outside Date;

(d) by the Purchaser, if any Chapter 11 Case is converted to a case or cases under Chapter 7 of the Bankruptcy Code;

(e) by the Purchaser, if the Bidding Procedures Order shall fail to be in full force and effect or shall have been vacated, stayed, reversed, modified or amended without the prior written consent of the Purchaser;

(f) by the Purchaser, if (i) the U.S. Sale Order shall not have been entered by the U.S. Bankruptcy Court on or before Wednesday, September 18, 2013 and the Canadian Sale Order shall not have been entered by the Canadian Court by the close of business on the day that is fourteen (14) days (or with respect to the Canadian Sale Order, such later date as may be selected by the Purchaser in its sole discretion) after the entry of the U.S. Sale Order by the U.S. Bankruptcy Court (subject to court availability) or (ii) following its entry, and its recognition by the Canadian Court, the Sale Orders (y) shall fail to be in full force and effect or shall have been vacated, stayed or reversed and the Sales Orders are not reinstated or such stay has not been lifted prior to the Outside Date, or (z) shall have been modified or amended in any respect without the prior written consent of the Purchaser; provided, however, that the right to terminate this Agreement under this Section 3.4(f) shall not be available to the Purchaser if the Purchaser has committed a material breach of this Agreement, which material breach has been the cause of, or resulted in, the failure of the Sale Orders to meet these requirements on or before such date. For the avoidance of doubt, the failure to satisfy any condition to Closing set forth in Section 9.2 of this Agreement shall not be deemed a material breach of this Agreement by the Purchaser;

(g) **[intentionally deleted];**

(h) by Purchaser, if after the Execution Date one or more Sellers: (i) execute a definitive agreement providing for the consummation of an Alternative Transaction, or (ii) file a plan of reorganization or liquidation that provides for the consummation of an Alternative Transaction;

(i) by Allied, if the Purchaser has breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Section 9.1(c) and/or Section 9.1(d) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by the Purchaser within thirty (30) days through the exercise of its commercially reasonable efforts,

then for so long as the Purchaser continues to exercise such commercially reasonable efforts Sellers may not terminate this Agreement under this Section 3.4(i) unless such breach is not cured within thirty (30) days from written notice to the Purchaser of such breach; provided, further, that Sellers are not then in material breach of the terms of this Agreement; and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured;

(j) by the Purchaser, if Sellers have breached any representation, warranty, covenant or agreement contained in this Agreement and as a result of such breach the conditions set forth in Section 9.2(d) and/or Section 9.2(e) hereof, as the case may be, would not then be satisfied at the time of such breach; provided, however, that if such breach is curable by Sellers within thirty (30) days through the exercise of their respective commercially reasonable efforts, then for so long as Sellers continue to exercise such commercially reasonable efforts the Purchaser may not terminate this Agreement under this Section 3.4(j) unless such breach is not cured within thirty (30) days from written notice to Sellers of such breach; provided, further, that the Purchaser is not then in material breach of the terms of this Agreement; and provided, further, that no cure period shall be required for a breach which by its nature cannot be cured;

(k) by the Purchaser, if between the Execution Date and the Closing Date, there occurs a Material Adverse Effect;

(l) by Allied, if all of the conditions set forth in Section 9.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing) or waived and the Purchaser fails to deliver the payment required by Section 3.3(a) at the Closing; or

(m) automatically, if this Agreement and the transactions contemplated hereby are not determined by the U.S. Bankruptcy Court to be the "highest or best" bid for the Purchased Assets at the Sale Hearing.

3.5 Procedure Upon Termination. In the event of a termination of this Agreement pursuant to Section 3.4, (a) if such termination is by the Purchaser or Sellers, or both, written notice thereof shall be given promptly by the terminating Party to the other Parties hereto, specifying the provision hereof pursuant to which such termination is made, (b) except as contemplated by Section 3.6, this Agreement shall thereupon terminate and become void and of no further force and effect, and (c) the consummation of the transactions contemplated by this Agreement shall be abandoned without further action of the Parties hereto. If this Agreement is terminated as provided herein, each Party shall redeliver all documents, work papers and other material of any other Party relating to the transactions contemplated hereby, whether obtained before or after the execution hereof, to the Party furnishing the same.

3.6 Effect of Termination. In the event this Agreement is validly terminated as provided herein, then each of the Parties shall be relieved of its duties and obligations arising under this Agreement effective as of the date of such termination and such termination shall be without Liability to the Purchaser or Sellers; provided, however, that Section 2.3, Section 3.4, Section 3.5, this Section 3.6, and Article XII shall survive any such termination and shall be enforceable hereunder.

## ARTICLE IV.

### REPRESENTATIONS AND WARRANTIES OF THE SELLERS

Sellers hereby, jointly and severally, make the representations and warranties in this Article IV to the Purchaser as of the Execution Date and as of the Closing Date (except with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date), except as qualified or supplemented by Sections in the Seller's disclosure schedule attached to and delivered pursuant to this Agreement (regardless of whether there is an express reference to the Seller Disclosure Schedule in the representations and warranties contained in this Article IV, as the same may be amended or modified in accordance with Section 1.5 hereof (the "Seller Disclosure Schedule"). Each such Section of the Seller Disclosure Schedule is numbered by reference to representations and warranties in a specific Section of this Article IV. The information disclosed in any numbered part of the Seller Disclosure Schedule shall be deemed to be disclosed with respect to every other representation and warranty in this Article IV if such disclosure is reasonably apparent on its face.

4.1 Corporate Organization and Qualification. Allied is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of Delaware. Except as a result of the commencement of the Bankruptcy Cases, Allied is qualified and in good standing as a foreign corporation in each jurisdiction where the properties owned, leased or operated or the conduct of its Business require such qualification. Each of the other Allied Entities is duly organized, validly existing and in good standing under the Laws of its respective jurisdiction of organization. Except as a result of the commencement of the Bankruptcy Cases and except as set forth in Section 4.1 of the Seller Disclosure Schedule, each of the other Allied Entities is qualified and in good standing as a foreign entity in each jurisdiction where the properties owned, leased or operated or the conduct of its respective Business require such qualification. Each Allied Entity has all requisite corporate, limited liability company or other organizational power and authority to own, lease and operate its properties and to carry on the Business as it is now being conducted, subject to the provisions of the Bankruptcy Code.

4.2 Allied and Subsidiaries.

(a) Section 4.2(a) of the Seller Disclosure Schedule sets forth a true and complete list of the names and jurisdictions of organization of each Allied Entity.

(b) Section 4.2(b) of the Seller Disclosure Schedule sets forth each corporation, association or other entity (other than another Allied Entity) in which each Allied Entity owns, of record or beneficially, any direct or indirect equity or other ownership interest or any right (contingent or otherwise) to acquire the same.

(c) Except as set forth in Section 4.2(c) of the Seller Disclosure Schedule, at the Closing all Foreign Subsidiary Stock will be owned, directly or indirectly, by one or more Sellers free and clear of all Encumbrances, other than Permitted Encumbrances. All of the issued and outstanding shares of capital stock of each of the Foreign Subsidiaries have been duly authorized and are validly issued, fully paid and nonassessable, and have not been issued in violation of any preemptive right, rights of first refusal or similar rights. All of the outstanding

shares of capital stock of each of the Foreign Subsidiaries were issued in compliance with all applicable Laws, including securities Laws. Except as set forth on Section 4.2(c) of the Seller Disclosure Schedule, there are no issued or outstanding shares of capital stock, equity securities or securities containing any equity features of any Foreign Subsidiary, and there are no subscriptions, options, warrants, calls, commitments, phantom shares, phantom equity interests or other rights, agreements, undertakings or arrangements existing or outstanding obligating any Allied Entity to issue, deliver or sell, or cause to be issued, delivered or sold, any such shares of capital stock, equity securities or securities containing any equity features of any Foreign Subsidiary.

4.3 Authority Relative to This Agreement. Except for such authorization as is required by the Bankruptcy Courts and receipt of any Regulatory Approvals, and subject to and assuming entry of the Sale Orders, each Seller has all requisite corporate, limited liability company or other organizational power and authority to (a) execute and deliver this Agreement, (b) execute and deliver each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Sellers in connection with the consummation of the transactions contemplated by this Agreement (collectively, the “Sellers’ Documents”), and (c) perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby. Subject to and assuming entry of the Sale Orders, the execution and delivery of this Agreement and the Sellers’ Documents, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized by all requisite corporate, limited liability company or other organizational action on the part of Sellers. This Agreement has been, and at or prior to the Closing, each of the Sellers’ Documents will be, duly and validly executed and delivered by each Seller and (assuming the due authorization, execution and delivery by the other Parties hereto and thereto, and the entry of the Sale Orders) this Agreement constitutes, and each of the Sellers’ Documents when so executed and delivered will constitute, legal, valid and binding obligations of each Seller, enforceable against each Seller in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization and moratorium Laws, other similar Laws affecting creditors’ rights and general principles of equity affecting the availability of specific performance and other equitable remedies (collectively, “Bankruptcy Exceptions”).

4.4 Conflicts; Consents of Third Parties.

(a) Except as set forth on Section 4.4(a) of the Seller Disclosure Schedule, except for such consents, approvals, waivers, authorizations or notices that can be overridden or canceled by the Sale Orders or other related orders of the Bankruptcy Courts and subject to and assuming entry of the Sale Orders, none of the execution and delivery by Sellers of this Agreement or any Sellers’ Document, the consummation of the transactions contemplated hereby or thereby, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or constitute a breach or default (with or without notice or lapse of time, or both) under, or give rise to a right of acceleration, payment, amendment, termination or cancellation under any provision of (i) Allied’s certificate of incorporation, Allied’s bylaws, or the certificate of incorporation or bylaws (or other comparable organizational documents) of any of the other Allied Entities; (ii) any Material Contract or Required Material Permit that constitutes a Purchased Asset; (iii) any order of any Governmental Body applicable to any Allied Entity or any of the properties or assets of the Allied Entities, including the Purchased Assets, or

the Business as of the Execution Date; or (iv) any applicable Law, other than under the Antitrust Laws.

(b) Except as set forth on Section 4.4(b) of the Seller Disclosure Schedule, no order, Permit or declaration or filing with, or notification to, any Governmental Body is required on the part of the Allied Entities in connection with the execution and delivery of this Agreement or the Sellers' Documents, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by the Allied Entities of any other action contemplated hereby or thereby, except for (i) the entry of the Sale Orders, and (ii) such orders, Permits, declarations, filings and notifications as may be required under the Antitrust Laws.

4.5 Absence of Certain Developments. Except for actions taken in connection with the Bankruptcy Cases or otherwise authorized by the Bankruptcy Courts on or prior to the Execution Date, except as contemplated or expressly required or permitted by this Agreement, or except as set forth in Section 4.5 of the Seller Disclosure Schedule, since December 31, 2012, the Business has been conducted in the Ordinary Course of Business, and none of the Allied Entities has:

(a) acquired any material assets, other than acquisitions of Equipment or Inventory in the Ordinary Course of Business;

(b) sold, leased, transferred or assigned assets having in the aggregate a fair market value in excess of \$500,000;

(c) accelerated, terminated, modified, amended, or cancelled any Material Contract, or waived, released or assigned any rights or claims thereunder in a manner adverse to the Allied Entities;

(d) imposed or created any Encumbrance (other than Permitted Encumbrances) upon any of the Purchased Assets, tangible or intangible, that would be binding on the Purchaser;

(e) created, incurred, assumed or guaranteed any Indebtedness that would be an Assumed Liability or would otherwise be binding on the Purchaser;

(f) transferred, assigned, abandoned or, other than in the Ordinary Course of Business, granted any license or sublicense of any rights under or with respect to any Assumed Intellectual Property;

(g) experienced any damage, destruction or other casualty loss affecting the tangible Purchased Assets and resulting in aggregate losses in excess of \$1,000,000;

(h) other than pursuant to the KEIP and other than in the Ordinary Course of Business, granted or increased any bonus opportunity or granted or increased any other type of compensation or benefits, including retention, severance or termination pay, to any of its current or former directors, officers, Employees or consultants;

(i) other than pursuant to the KEIP or the Retention Incentive Agreements, paid any bonus to any former or current Employee, officer or director;

(j) delayed or postponed the payment of undisputed accounts payable or any other undisputed Liabilities of the Business in any material respect (except as required by the Bankruptcy Code);

(k) other than pursuant to the KEIP, adopted, amended or agreed to adopt or amend (i) any Seller Plan or welfare, pension, retirement, profit-sharing, incentive compensation or similar plan, program, payment or arrangement for any Employee, except pursuant to the existing Seller Plans or as required by applicable Law, or (ii) any employment, retention, severance, termination or change of control agreement;

(l) changed any finance or Tax accounting methods, principles or practices, except insofar as may have been required by a change in GAAP or applicable Law;

(m) made any Tax election or any settlement or compromise of any Tax Liability;

(n) received any written notice of any cancellation or termination of any Assigned Contract that is a Material Contract, including such Assigned Contracts with Acquired Customers; and

(o) entered into or agreed to enter into any lease or other contractual arrangement pursuant to which the Allied Entities would be required to make payments in excess of \$500,000 from and after the Execution Date and prior to the end of the earlier of (i) the terms of the applicable agreement, and (ii) the twelve month anniversary of the Execution Date.

4.6 Litigation. Except in connection with the Bankruptcy Cases and except as set forth in Section 4.6 of the Seller Disclosure Schedule, there is no litigation, action, claim, suit, proceeding, or, to the Knowledge of Sellers, investigation (collectively, "Actions"), pending, or, to the Knowledge of Sellers, threatened against any Allied Entity relating to the Business or the Purchased Assets that would give rise to an Assumed Liability. Except in connection with the Bankruptcy Cases and as set forth in Section 4.6 of the Seller Disclosure Schedule, no Allied Entity is subject to any judgment, decree, injunction, or order of any court, arbitration panel or other Governmental Body that relates to the Business or the Purchased Assets and for which the Allied Entities have continuing obligations or Liabilities.

#### 4.7 Intellectual Property.

(a) Section 4.7(a) of the Seller Disclosure Schedule sets forth a true, complete and correct list of all (i) patents, registered trademarks, registered copyrights, Internet domain names, and applications for any of the foregoing, in each case that are material to the operation of the Business and that are Owned Intellectual Property (collectively, the "Registered IP") and (ii) other material Owned Intellectual Property that constitutes trademarks, service marks, trade names, logos, brand names and a list of all material Licensed Intellectual Property that is used in connection with the operation of the Business (except for Intellectual Property licensed pursuant to off the shelf software and licenses implied in the sale of such software or hardware and

licenses of software or hardware that are widely available commercially for a purchase price of less than \$100,000).

(b) Except as set forth on Section 4.7(b) of the Seller Disclosure Schedule, (i) each of the Allied Entities owns the Owned Intellectual Property, free from any requirement of any present or future material royalty payments or license fees; and (ii) no action is pending, or to the Knowledge of Sellers, threatened, challenging the validity, enforceability, registration, ownership or use of any of the Registered IP.

(c) To the Knowledge of Sellers, neither the Allied Entities nor any of their respective products or services is infringing upon, misappropriating, diluting or otherwise violating, the Intellectual Property of any third party and, to the Knowledge of Sellers, no Person is infringing upon, misappropriating, diluting or otherwise violating, any Seller Intellectual Property. There is no pending claim, action or proceeding alleging that the Allied Entities are infringing, misappropriating, diluting or otherwise violating the Intellectual Property rights of any Person, and to the Knowledge of Sellers, no such claims are threatened.

(d) Except as set forth on Section 4.7(d) of the Seller Disclosure Schedule, at the Closing the Allied Entities will own or have the right to use the Seller Intellectual Property as used in the conduct of the Business as currently conducted, free and clear from any Encumbrances (other than Permitted Encumbrances and subject to the terms and conditions of any agreement pursuant to which such Seller Intellectual Property was obtained).

#### 4.8 Agreements, Contracts and Commitments; Certain Other Agreements.

(a) Section 4.8(a) of the Seller Disclosure Schedule sets forth the following types of executory Contracts that are unexpired as of the Execution Date relating to the Business to which any Allied Entity is a party or by which it is bound or any of the Purchased Assets are bound as of the Execution Date (such Contracts set forth below are collectively referred to as the "Material Contracts"):

- (i) Contracts with Top Customers;
- (ii) Contracts requiring payments by or to any Allied Entity in excess of \$250,000 during the twelve month period ended April 30, 2013;
- (iii) Contracts with Top Suppliers;
- (iv) Contracts pursuant to which the Allied Entities, from and after the Execution Date through the twelve (12) month anniversary of the Execution Date, would be required to make payments in excess of \$250,000 on an annualized basis, assuming such Contracts were renewed on substantially similar terms;
- (v) employment agreements, consulting agreements, or similar agreements;
- (vi) severance agreements, change of control agreements, or similar agreements;



- (vii) collective bargaining agreements with any labor unions;
- (viii) each Assumed Plan;
- (ix) Contracts pursuant to which any Seller leases, subleases, licenses, uses or occupies any Leased Real Property;
- (x) Personal Property Leases involving annual payments in excess of \$250,000 relating to tangible personal property, including Equipment, used by any Allied Entity in the Business or to which any Allied Entity is a party or by which the personal property, including Equipment, of any Allied Entity is bound;
- (xi) Contracts that: (y) limit or restrict in any material respect any Allied Entity or any of its Affiliates from engaging in any business or other activity in any jurisdiction; or (z) create or purport to create any exclusive relationship or arrangement that is restrictive on any Allied Entity or the Business;
- (xii) Contracts granting to any Person (other than any Allied Entity or any direct or indirect subsidiary of any Allied Entity) an option or a right of first refusal, first-offer or similar preferential right to purchase or acquire any of the Purchased Assets;
- (xiii) Contracts involving annual payments in excess of \$250,000 (i) with respect to Seller Intellectual Property licensed or transferred to any third party or (ii) pursuant to which a third party has licensed or transferred any Intellectual Property to an Allied Entity (in the case of both (i) and (ii), except for off the shelf software or hardware or hardware and licenses implied in the sale of such software or hardware and licenses of software or hardware that are widely available commercially for a purchase price of less than \$50,000);
- (xiv) joint venture or partnership Contracts or Contracts entitling any Person (other than any Allied Entity or any direct or indirect subsidiary of any Allied Entity) to any profits, revenues or cash flows of the Allied Entities or requiring payments or other distributions based on such profits, revenues or cash flows (excluding in each case compensation to Employees or independent contractors in the Ordinary Course of Business (including base salary and bonus opportunity)); and
- (xv) Contracts with any Governmental Body.

(b) Except as set forth on Section 4.8(b) of the Seller Disclosure Schedule or as a result of the Bankruptcy Cases, no Allied Entity has received any written notice of any outstanding or uncured default by such Allied Entity under any Material Contract.

(c) Except as set forth on Section 4.8(c) of the Seller Disclosure Schedule, Sellers have heretofore delivered or made available to the Purchaser true, correct and complete copies of all Material Contracts that are in writing, including all amendments, modifications, schedules and supplements thereto and all waivers with respect thereto in each case that are currently in effect; provided, however, that Sellers shall be entitled to redact any Material Contracts to the extent necessary, as determined by Sellers upon advice of counsel, to avoid



violation of any Antitrust Laws. Assuming (i) the entry of the Sale Orders, (ii) the payment of all applicable Cure Costs, (iii) due execution by the non-debtor party or parties thereto, as of the Closing Date, to the Knowledge of Sellers, each Material Contract will be in full force and effect and, subject to the Bankruptcy Exceptions, enforceable in accordance with its terms.

(d) Section 4.8(d) of the Seller Disclosure Schedule sets forth a true, correct and complete list of all of the customer cargo claims (organized by customer Contract) that have been submitted in writing by Sellers' customers, are outstanding (including claims being disputed in good faith by Sellers) as of July 23, 2013, and are arising under contracts of customers of Sellers.

#### 4.9 Regulatory Matters; Permits.

(a) All of the Permits that are necessary for the operation of the Business as currently conducted and the ownership of the Purchased Assets are held by the Allied Entities and are in full force and effect, except as a result of the Bankruptcy Cases.

(b) Each Allied Entity is in compliance with its obligations under each of the Required Material Permits, except as a result of the Bankruptcy Cases.

(c) Each Required Material Permit is valid and in full force and effect and there is no proceeding, notice of violation, order of forfeiture or complaint or investigation against any Allied Entity relating to any of the Required Material Permits pending or, to the Knowledge of the Sellers, threatened, before any Governmental Body, in each case except as a result of the Bankruptcy Cases.

4.10 Brokers and Finders. Except as set forth in Section 4.10 of the Seller Disclosure Schedule, Sellers have not employed, and to the Knowledge of Sellers, no other Person has made any arrangement by or on behalf of Sellers with any investment banker, broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement which would be entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby.

4.11 Title to Assets. At Closing, the Allied Entities will have, and shall convey to the Purchaser at the time of the transfer of the Purchased Assets to the Purchaser and the filing of the Information Officer's Certificate, good and marketable title or a valid leasehold interest in and to each of the Purchased Assets free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances and Assumed Liabilities). At Closing, the Allied Entities will have, and shall convey to the Purchaser at the time of the transfer of the Purchased Assets to the Purchaser, valid leasehold interests in the Assumed Personal Property Leases and the Assumed Real Property Leases, free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances and Assumed Liabilities). The Purchased Assets constitute all of the properties, assets and rights (other than the Excluded Assets) used by the Allied Entities to conduct and operate the Business as currently conducted and operated by the Allied Entities. The Purchased Assets sold by each Canadian Seller constitute all or substantially all of the property (other than Excluded Assets) used by such Canadian Seller in carrying on its business.

#### 4.12 Real Property.

(a) Section 4.12(a) of the Seller Disclosure Schedule sets forth the street address of each parcel of Owned Real Property. At the Closing, the Allied Entities will have good and marketable, indefeasible, fee simple title to the Owned Real Property subject only to Permitted Encumbrances. Sellers have made available to the Purchaser true, correct and complete copies of the recorded deeds and other instruments by which the Allied Entities acquired the Owned Real Property.

(b) Section 4.12(b)(i) of the Seller Disclosure Schedule sets forth a complete and correct list of all Leased Real Property specifying the address or other information sufficient to identify all such Leased Real Property. Subject to Permitted Encumbrances, each Assumed Real Property Lease grants the Allied Entities the right to use and occupy the applicable Assumed Leased Real Property in accordance with the terms thereof. Except for Permitted Encumbrances and except as set forth on Section 4.12(b)(ii) of the Seller Disclosure Schedule, the Allied Entities have not leased, subleased or granted to any Person the right to access, enter upon, use, occupy, lease, manage, operate, maintain, broker or purchase any portion of the Allied Entities' interest in the Leased Real Property that will not be terminated on or prior to the Closing Date. Sellers have made available to the Purchaser true, correct and complete copies of all Assumed Real Property Leases. With respect to each Assumed Real Property Lease, no Allied Entity owes any brokerage commissions or finder's fees with respect to any such Assumed Real Property Lease which is not paid or accrued in full.

(c) No material damage or destruction has occurred with respect to any Real Property for which an Allied Entity may be liable.

(d) Utilities and other services necessary for the operation of each Owned Real Property and each Assumed Leased Real Property are readily available at such property.

(e) No Real Property that is included in the Purchased Assets is subject to any decree, order or action of a Governmental Body (or, to the Knowledge of Sellers, threatened decree, order or action of a Governmental Body) that would prevent the operation of such Real Property for the purposes for which it is currently being utilized.

4.13 Compliance with Law. Each Allied Entity is in compliance in all respects with all applicable Laws. No Allied Entity has received any written notice of any alleged violation of any Law applicable to it or them. No Allied Entity is in default in any respect of any order of any Governmental Body applicable to the Purchased Assets or the transactions contemplated under this Agreement. None of the representations and warranties contained in this Section 4.13 shall be deemed to relate to Tax matters (which are governed by Section 4.14), employment matters (which are governed by Section 4.15), employee benefits matters (which are governed by Section 4.16), or environmental matters (which are governed by Section 4.19).

**4.14 Tax Returns; Taxes.** Except as set forth in Section 4.14 of the Seller Disclosure Schedule:

(a) All Tax Returns required to have been filed by the Allied Entities have been duly filed and are true, correct and complete in all respects. No extension of time in which to file any such Tax Returns is in effect.

(b) All Taxes due and payable by the Allied Entities (whether or not shown on any Tax Return) have been paid in full or are accrued as Liabilities for Taxes on the books and records of the Allied Entities. The accruals and reserves with respect to Taxes (other than any reserve for deferred Taxes established to reflect timing differences between book and Tax income) are adequate to cover all Taxes of the Allied Entities accruing or payable with respect to Tax Periods (or portions thereof) ending before the Execution Date.

(c) No claims have been asserted in writing, no Taxes have been assessed and no proposals or deficiencies for any amount of Taxes of the Allied Entities are being asserted or, to the Knowledge of Sellers, are being proposed or threatened, and no audit or investigation of any Tax Return of the Allied Entities is currently underway, pending or, to the Knowledge of Sellers, threatened.

(d) Since January 1, 2011, no claim has been made against the Allied Entities by any Governmental Body in a jurisdiction where the Allied Entities do not currently file Tax Returns that the Allied Entities are or may be subject to taxation in such jurisdiction.

(e) The Allied Entities have withheld and paid all Taxes required to have been withheld and paid by them to the appropriate Government Body in connection with amounts paid or owing to any employee, independent contractor, creditor or shareholder thereof or other third party, and all Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.

(f) None of the Allied Entities has executed or filed with any Governmental Body any agreement or waiver extending the period for assessment, reassessment or collection of any Taxes. No Allied Entity has made an election, nor is any Allied Entity required, to treat any Purchased Asset as owned by another Person or as tax-exempt bond financed property or tax-exempt use property within the meaning of Section 168 of the Code or under any comparable provision of state or local Tax law.

(g) To the Knowledge of Sellers, none of the Allied Entities has any liability for Taxes of any other Person as a transferee or successor, by law or by contract other than any contract (except a contract which generally addresses tax sharing, tax indemnities or tax allocation) entered into in the Ordinary Course of Business or pursuant to commercial lending arrangements.

(h) None of the Allied Entities has engaged in any "listed transaction" within the meaning of Treasury Regulations Section 1.6011-4(b).

(i) No Canadian Seller has been, and is not now, a financial institution for the purposes of the Excise Tax Act (Canada). Each Canadian Seller is a registrant for the purposes

of the *Excise Tax Act* (Canada) and its registrant number is set forth on Section 4.14 of the Seller Disclosure Schedule.

(j) The Canadian Sellers shall have paid and satisfied all Canadian federal and provincial sales Taxes, goods and services Taxes, harmonized sales Taxes and other similar Taxes applicable to the Business operated by the Canadian Sellers or to the Purchased Assets sold by the Canadian Sellers (other than on the transfer thereof to the Purchaser) with respect to all periods prior to the Closing to the extent such Taxes are due and remittable on or before the Closing under applicable Law.

(k) None of the Purchased Assets constitutes “taxable Canadian property” for the purposes of the *Income Tax Act* (Canada) to an Allied Entity that is not a Canadian Seller.

(l) Each Canadian Seller is not a non-resident of Canada for the purposes of the *Income Tax Act* (Canada).

4.15 Employees. Except as set forth in Section 4.15 of the Seller Disclosure Schedule:

(a) Section 4.15(a) of the Seller Disclosure Schedule contains a true and correct list of the Employees (including the Owner Operators, if applicable, whether or not such Owner Operators are Employees) as of the Execution Date, specifying their position, current annual salary and bonus opportunity (other than pursuant to the Retention Incentive Agreements, the Management Retention Incentive Agreements and the KEIP), and amount of bonus paid with respect to the 2012 calendar year. To the Knowledge of Sellers, the Allied Entities are in compliance in all respects with all Laws relating to the employment and termination of employment of current and former Employees, and no Allied Entity has any direct or indirect Liability with respect to any misclassification of any Person as an independent contractor rather than as an employee, or with respect to any Employee leased from another employer.

(b) Except as set forth in Section 4.15(b) of the Seller Disclosure Schedule or as contemplated by this Agreement, the Allied Entities do not presently intend to take any action that would result in a “mass layoff” or “plant closing” as defined in the WARN Act or similar employment Laws in other applicable jurisdictions (collectively, “Applicable Employment Legislation”) between the Execution Date and the Closing Date. With respect to any Employment Loss that occurred within the one year preceding the Execution Date, the Allied Entities have complied with all of the requirements of the WARN Act or of other Applicable Employment Legislation.

(c) There are no claims or proceedings pending or, to the Knowledge of Sellers, threatened, between the Allied Entities and any present or former Employee or group of present or former Employees. As of the Execution Date, there are no strikes, slowdowns, work stoppages, lockouts, or, to the Knowledge of Sellers, threats thereof, by or with respect to any Employees of the Allied Entities.

(d) No Allied Entity is a party to or bound by, either directly or by operation of Law, any collective bargaining agreement, labor contract, letter of understanding, letter of intent, voluntary recognition agreement or similar agreement with any labor union, trade union or employee organization or group which may qualify as a trade union in respect of or affecting

Employees or have any bargaining rights (whether acquired by certification, voluntary recognition or otherwise) with respect to Employees, nor, to the Knowledge of Sellers, is any Allied Entity subject to any union or employee association organization effort, nor is any Allied Entity engaged in any labor negotiation. As of the Execution Date, there are no, and within the twelve (12) month period prior to the Execution Date there have not been any, (i) strikes, work stoppages, work slowdowns, concerted refusals to work overtime, handbilling, picketing, lockouts or similar labor disruptions or disputes pending or, to the Knowledge of Sellers, threatened against or involving any Allied Entity, or (ii) unfair labor practice charges, grievances or complaints pending or, to the Knowledge of Sellers, threatened by or on behalf of any present or former Employee or group of present or former Employees (or any Person acting on behalf of any such Employee or group of Employees). No Allied Entity has an obligation to make any severance or termination payment to any Employee in excess of any amount payable under applicable Law.

(e) The Allied Entities are in compliance in all respects with all applicable Laws respecting labor, employment, employment practices and standards, anti-discrimination, retaliation, fair employment practices, terms and conditions of employment, immigration, human rights, employment equity, pay equity, privacy, workers' compensation, Canada Pension Plan, unemployment insurance, employer health tax, occupational health and safety, plant closings, compensation, leaves of absence, and wages and hours. The Allied Entities have withheld all amounts required by Law or by agreement to be withheld from the wages, salaries and other payments to Employees, and are not liable for any arrears of wages or any Taxes or any penalty for failure to comply with any of the foregoing. To the Knowledge of Sellers, no Employees are in violation of any term of any employment Contract, non-disclosure agreement, noncompetition agreement, or any restrictive covenant to a former employer relating to the right of any such Employee to be employed by the Allied Entities because of the nature of the business conducted by the Allied Entities or to the use of trade secrets, confidential or proprietary information of others.

(f) All levies, assessments or other amounts owing under the *Workplace Safety and Insurance Act* (Ontario) and under the workers' compensation legislation of any other jurisdiction where the Allied Entities carry on business or employ Employees have been paid in full. The Allied Entities have not been and are not subject to any additional or penalty assessment under such legislation which has not been paid and have not been given notice of any audit. The accident cost experience of the Allied Entities is such that there are no pending nor, to the Knowledge of Sellers, potential assessments, experience rating charges or claims which could adversely affect the premium payments or accident cost experience in connection with the Business.

(g) All matters relating to the employment of each Employee of Sellers in Canada (other than Axis Canada Company), including all matters relating to any pension entitlements and pension plan administration, are subject to federal jurisdiction in Canada. Without limiting the foregoing, all of Sellers' business in Canada (other than with respect to Axis Canada Company) is subject to the Canada Labour Code and the Pension Benefits Standards Act.

(h) There are no outstanding or, to the Knowledge of Sellers, threatened inspection orders, violations, investigations or prosecutions against any of the Allied Entities or the Business under any health and safety Laws.

4.16 Benefit Plans. Except as provided in Section 4.16 of the Seller Disclosure Schedule:

(a) Each Assumed Plan is listed in Section 4.16(a) of the Seller Disclosure Schedule.

(b) Section 4.16(b) of the Seller Disclosure Schedule sets forth a list of each of the Assumed Plans which is (i) a “multiemployer plan” (as defined in Section 3(37) of ERISA), a “multiple employer plan” (within the meaning of Section 413(c) of the Code), or a “multiple employer welfare arrangement” (as defined in Section 3(40)(A) of ERISA), or is or has been subject to Title IV of ERISA or Code Section 412 or 430; (ii) “a multi-employer plan” as defined in subsection 8500(1) of the *Income Tax Regulations* (Canada) and/or subsection 1(1) of the *Pension Benefits Standards Act* (British Columbia); (iii) a “multi-employer pension plan” as defined in subsection 1(1) of the *Pension Benefits Act* (New Brunswick) and/or paragraph 2(v) of the *Pension Benefits Act, 1997* (Newfoundland & Labrador) and/or paragraph 2(w) of the *Pension Benefits Act* (Nova Scotia) and/or subsection 1(1) of the *Pension Benefits Act* (Ontario) and/or section 2 of the *Pension Benefits Standards Act, 1985* (Canada) and/or Section 11 of the *Supplemental Pension Plans Act* (Quebec); (iv) a “specified multi-employer plan” as defined in paragraph 1(1)(qq) of the *Employment Pension Plans Act* (Alberta) and/or paragraph 2(1)(ee) of the *Pension Benefits Act* (Saskatchewan); (v) a “multi-unit pension plan” as defined in subsection 26.1(1) of the *Pension Benefits Act* (Manitoba); (vi) a “negotiated contribution plan” as defined in section 2 of the *Pension Benefits Standards Act, 1985* (Canada); and (vii) a “negotiated cost plan” as defined in section 2 of the *Pension Benefits Standards Act* (British Columbia).

(c) Each Assumed Plan and each Seller Plan that is a 401k plan has been established, registered (where required), administered and invested in accordance with its terms and in compliance with all applicable Laws. Each Assumed Plan and each Seller Plan that is a 401k plan and that is intended to be a “qualified plan” within the meaning of Section 401(a) of the Code (“Qualified Plan”) and each trust that is intended to be exempt under Section 501 of the Code (“Exempt Trust”) has received a determination letter or may rely upon an opinion letter from the Internal Revenue Service to the effect that such Qualified Plan is so qualified and such Exempt Trust is so exempt, and, to the Knowledge of Sellers, nothing has occurred since the date of the most recent Internal Revenue Service determination or opinion letter, as applicable, that would reasonably be expected to adversely affect the tax-qualified status of any Qualified Plan or the tax-exempt status of any Exempt Trust.

(d) There is no action, order, writ, injunction, judgment or decree outstanding or proceeding, arbitral action, governmental audit, or investigation relating to, or seeking benefits under, any Assumed Plan that is pending or, to the Knowledge of Sellers, threatened against any of the Allied Entities (other than any claims for benefits under the Assumed Plans in the Ordinary Course of Business). None of the Allied Entities or, to the Knowledge of Sellers, any fiduciary of any Assumed Plan, has any liability with respect to any transaction in violation of

Sections 404 or 406 of ERISA or any “prohibited transaction,” as defined in Section 4975(c)(1) of the Code, for which no exemption exists under Section 408 of ERISA or Section 4975(c)(2) or (d) of the Code.

(e) No Assumed Plan provides post-retirement or post-termination employee welfare benefits (including death, medical or health benefits) to or in respect of any Employees or former employees of the Allied Entities or their beneficiaries other than pursuant to COBRA or other applicable Law. No Assumed Plan is subject to Title IV of ERISA, except as listed in Section 4.16(b) of the Seller Disclosure Schedule. All contributions or premiums required to be made by the Allied Entities to or under each Assumed Plan have been made in a timely fashion in accordance with applicable Law, the terms of the applicable Assumed Plan and any applicable collective bargaining agreement, except in respect of obligations arising prior to the Petition Date as a result of the Bankruptcy Cases.

(f) Section 4.16(f) of the Seller Disclosure Schedule sets forth a list of each of the Assumed Plans that is a “registered pension plan” or a “retirement compensation arrangement”, each as defined under the *Income Tax Act* (Canada).

(g) The Canadian MEPP Plans constitute the only “registered pension plans”, as defined under the *Income Tax Act* (Canada), that the Canadian Sellers are required to contribute to pursuant to the Canadian Collective Bargaining Agreements. The sole financial obligation of any Allied Entity in respect of any Canadian MEPP Plan is currently, and will following the Closing Date continue to be, to make fixed, required contributions in the amounts and manner set forth in the applicable Canadian Collective Bargaining Agreement, trust agreement or participation agreement. Except for such fixed, required contributions, no Canadian MEPP Plan imposes any Liability in respect of any funding deficiency or employer withdrawal. All contributions required to be made to a Canadian MEPP Plan have been made when due, and no amounts are in arrears. There is no Canadian MEPP Plan for which the Allied Entities, the Purchaser or any Employment Offering Purchaser Entity are or could reasonably be expected to be liable for any deficiency or any withdrawal liability.

(h) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (whether alone or in conjunction with any other event) will result in forgiveness of Indebtedness, the creation of any additional Liability under any Canadian MEPP Plan beyond fixed, required contributions in the normal course, or the acceleration or creation of any rights of any Person to benefits under any Canadian MEPP Plan (including the acceleration of the accrual or vesting of any benefits or payments under any such Canadian MEPP Plan, the acceleration or creation of any rights under any employment, severance, retention, parachute or change in control agreement or the right to receive any transaction bonus or other similar payment) or the obligation to take action to secure any benefits or payment payable under any Canadian MEPP Plan.

4.17 Affiliate Matters. Except as set forth in Section 4.17 of the Seller Disclosure Schedule and except for any employment or severance agreements, the Retention Incentive Agreements, the Management Retention Incentive Agreements, the KEIP, any Seller Plans and any indemnification agreements with any directors or officers and except with respect to (i) shareholders who own less than three percent (3%) of the issued and outstanding stock of Allied,



(ii) entities in which any such shareholder owns any beneficial interest and (iii) any Affiliate of any such shareholder or any such entity, no (a) shareholder, officer or director of the Allied Entities, (b) entity in which any such shareholder, officer or director owns any beneficial interest (other than any Allied Entity, any direct or indirect subsidiary of any Allied Entity, or a publicly held corporation whose stock is traded on a national securities exchange or in the over-the-counter market and less than five percent (5%) of the stock of which is beneficially owned by such shareholders, officers or directors in the aggregate), or (c) Affiliate of any of the foregoing (other than any Allied Entity or any direct or indirect subsidiary of any Allied Entity): (i) is a party to any Contract with, or relating to, the Allied Entities, their respective businesses, the Purchased Assets or the Assumed Liabilities; or (ii) owns any property (real, personal or mixed, tangible or intangible) used by the Allied Entities in the operation of the Business. Section 4.17 of the Seller Disclosure Schedule sets forth a true, correct and complete list of all accounts receivable, notes receivable and other receivables and accounts payable owed to or due from any such Person described above by or to any Allied Entity but solely with respect to the Business except for any compensation payable to such officers or directors in their capacity as Employees, officers or directors in the Ordinary Course of Business or pursuant to any employment or severance agreements, the Retention Incentive Agreements, the Management Retention Incentive Agreements, the KEIP, any Seller Plans or any indemnification agreements.

4.18 Insurance Policies. All insurance policies owned or held by any Allied Entity related to or otherwise applicable to the Business (the “Insurance Policies”) (or substitute policies with substantially similar terms and underwritten by insurance carriers with substantially similar or higher ratings) are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing Date have been paid (or will be paid prior to the Closing), and no written notice of cancellation or termination has been received by any Allied Entity with respect to any Insurance Policy. Except as set forth in Section 4.18 of the Seller Disclosure Schedule, other than (i) workers’ compensation claims, and (ii) any claim asserted in an amount equal to or less than Two Hundred Fifty Thousand Dollars (\$250,000), there are no pending, or to the Knowledge of Sellers, threatened claims under any Insurance Policy.

4.19 Environmental Matters. Except as set forth in Section 4.19 of the Seller Disclosure Schedule, to the Knowledge of Sellers (a) each Allied Entity is in compliance in all respects with all Environmental Laws, (b) there is no investigation, suit, claim, action or judicial or administrative proceeding relating to or arising under Environmental Laws that is pending or, to the Knowledge of Sellers, threatened against any Allied Entity, any Owned Real Property, any Leased Real Property or any of the other Purchased Assets, (c) none of the Owned Real Property or Leased Real Property has been listed on the federal National Priorities List under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or any other similar state list of known or suspected contaminated sites, (d) no Hazardous Materials have been treated, stored or Released by any Allied Entity or, to the Knowledge of the Sellers, by any other Person at, on or under the Owned Real Property or Leased Real Property in any manner or concentration that requires investigation, removal or remediation under Environmental Laws or would otherwise cause any Allied Entity or any future owner or operator of any Owned Real Property or Leased Real Property to incur liability under Environmental Laws, and (e) no Allied Entity has received any notice of or entered into any order, settlement, judgment, injunction or decree involving uncompleted, outstanding or unresolved obligations, liabilities or requirements relating to or arising under Environmental Laws.



4.20 Customers, Vendors and Suppliers. Section 4.20 of the Seller Disclosure Schedule sets forth a complete and accurate list of Top Customers and Top Suppliers and the amounts received by or paid to the Allied Entities from each such Top Customer and the amounts received by or paid to each such Top Supplier from the Allied Entities during the twelve month period ended April 30, 2013. “Top Customers” are the top twenty-four (24) customers that have purchased the most products or services from the Business, in terms of dollar amount, during the twelve month period ended April 30, 2013. “Top Suppliers” are the top fifty (50) vendors and/or suppliers that have sold the most products or services to the Business, in terms of dollar amount, during the twelve month period ended April 30, 2013. The Top Customers represent approximately 95% of the revenue earned by the Business during the twelve month period ended April 30, 2013. The Top Suppliers represent approximately 70% of the vendor and supplier expenses of the Business during the twelve month period ended April 30, 2013. No Top Customer or Top Supplier has given any Allied Entity written notice terminating, canceling or reducing, or threatening to terminate, cancel or reduce, any Contract with Allied Entity. Except as set forth on Section 4.20 of the Seller Disclosure Schedule, no Top Customer or Top Supplier has proposed, or given any Allied Entity notice of its intention to propose, any price structure changes or any other changes (in each case that would be adverse to any Allied Entity) to any Contract with any Allied Entity, nor, to the Knowledge of Sellers, does any Top Customer or Top Supplier intend to propose a change to the price structure (that would be adverse to any Allied Entity) of any such Contract or any other change (that would be adverse to any Allied Entity) to any such Contract.

4.21 Accounts Receivable. The Allied Entities have provided reserves for Accounts Receivable in accordance with GAAP and Allied’s accounting policies as consistently applied in the Ordinary Course of Business by the Allied Entities. All Accounts Receivable represent valid obligations arising from bona fide business transactions in the Ordinary Course of Business.

4.22 Equipment. Section 1.1(g) of the Seller Disclosure Schedule sets forth a true, correct and complete list of all tractors, trailers, rigs, lowboys and other titled motored vehicles owned by Sellers as of July 18, 2013.

4.23 Absence of Undisclosed Liabilities. Except as set forth in Section 4.23 of the Seller Disclosure Schedule, the Allied Entities do not have any Liabilities of a type that would be required to be reflected in, reserved against or otherwise described on a balance sheet prepared in accordance with GAAP or the notes thereto, except (i) Liabilities reflected on the liabilities side of the balance sheets of the Allied Entities as of December 31, 2012, (ii) Liabilities that have arisen after December 31, 2012 in the Ordinary Course of Business or otherwise in accordance with the terms and conditions of this Agreement and which are not material, individually or in the aggregate, (iii) Liabilities that are or will be Excluded Liabilities; and (iv) payment obligations of the Allied Entities that have not accrued or been incurred, and non-payment performance obligations of the Allied Entities, in each case, under Contracts entered into in the Ordinary Course of Business and in compliance with applicable Law.

4.24 Foreign Subsidiary Financial Statements.

(a) Sellers have made available to Purchaser true, correct and complete copies of the Foreign Subsidiary Financial Statements. The Foreign Subsidiary Financial Statements

present fairly in all material respects the financial condition of the relevant Foreign Subsidiary as of the respective dates thereof, and the results of operations of the relevant Foreign Subsidiary for the respective periods indicated, subject in the case of any unaudited Foreign Subsidiary Financial Statements to the absence of footnotes and similar presentations items and year-end audit adjustments normal in nature and amount. The Foreign Subsidiary Financial Statements have been prepared and presented in accordance with GAAP consistently applied during the periods therein (except as noted therein and for the absence of footnotes and similar presentation items and year-end audit adjustments normal in nature and amount).

(b) Except as set forth in Section 4.24 of the Seller Disclosure Schedule or in the Foreign Subsidiary Financial Statements, no Foreign Subsidiary has outstanding any Indebtedness, nor has it engaged in any “off balance sheet” or similar financing, of a type which would not be required to be shown or reflected in the Foreign Subsidiary Financial Statements. Section 4.24 of the Seller Disclosure Schedule sets forth all monetary liens encumbering the assets of the Foreign Subsidiaries.

#### 4.25 Owner Operators.

(a) Section 4.15(a) of the Seller Disclosure Schedule contains a true and correct list of the Owner Operators as of the Execution Date. To the Knowledge of Sellers, the Allied Entities are in compliance in all respects with all Laws relating to the engagement of their current Owner Operators, and no Allied Entity has any direct or indirect Liability with respect to any misclassification of any Person as an independent contractor rather than an Owner Operator.

(b) There are no claims or proceedings pending or, to the Knowledge of Sellers, threatened, between the Allied Entities and any present Owner Operator or group of present Owner Operators.

4.26 No Other Representations or Warranties. Except for the representations and warranties contained in this Article IV (as modified by the Seller Disclosure Schedule), no Seller nor any other Person has made or is making any express or implied representation or warranty with respect to the Allied Entities, the Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated by this Agreement, and Sellers disclaim any other representations or warranties, whether made by Sellers, any Affiliate of Sellers or any of their respective Representatives. Except for the representations and warranties contained in this Article IV (as modified by the Seller Disclosure Schedule), Sellers expressly disclaim and negate any representation or warranty, expressed or implied, at common law, by statute, or otherwise, relating to the condition of the Purchased Assets (including any implied or express warranty of merchantability or fitness for a particular purpose). Sellers make no representations or warranties to the Purchaser regarding the probable success or profitability of the Business. Notwithstanding anything contained in this Agreement to the contrary, Sellers acknowledge and agree that the Purchaser is not making any representations or warranties whatsoever, express or implied, beyond those expressly given by the Purchaser in Article V (as modified by the Purchaser Disclosure Schedule). Sellers further represent that neither the Purchaser nor any of its Affiliates or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding the Purchaser or any of its

Affiliates or the transactions contemplated by this Agreement not expressly set forth in this Agreement.

## **ARTICLE V.**

### **REPRESENTATIONS AND WARRANTIES OF THE PURCHASER**

The Purchaser hereby makes the representations and warranties in this Article V to Sellers as of the Execution Date and as of the Closing Date (except with respect to representations and warranties made as of a particular date, which shall be deemed to be made only as of such date), except as qualified or supplemented by Sections in the Purchaser's disclosure schedule attached to and delivered pursuant to this Agreement (the "Purchaser Disclosure Schedule"):

5.1 Organization and Qualification. The Purchaser is a corporation duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation. The Purchaser is qualified and in good standing as a foreign entity in each jurisdiction where the properties owned, leased or operated, or the business conducted by it require such qualification except as would not have or reasonably be expected to have a material adverse effect on the Purchaser's ability to consummate the transactions contemplated by this Agreement. The Purchaser has all requisite corporate power and authority to own its properties and to carry on its business as it is now being conducted except as would not have or reasonably be expected to have a material adverse effect on the Purchaser's ability to consummate the transactions contemplated by this Agreement.

5.2 Authority Relative to This Agreement. The Purchaser has the requisite corporate power and authority to (a) execute and deliver this Agreement, (b) execute and deliver each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed by the Purchaser in connection with the consummation of the transactions contemplated hereby and thereby (collectively, the "Purchaser's Documents"), and (c) perform its obligations hereunder and thereunder and consummate the transactions contemplated hereby and thereby. The execution, delivery and performance by the Purchaser of this Agreement and each applicable Purchaser's Document have been duly authorized by all necessary corporate action on behalf of the Purchaser. This Agreement has been, and at or prior to the Closing each applicable Purchaser's Document will be, duly and validly executed and delivered by the Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto and thereto) this Agreement constitutes, and each the Purchaser's Document when so executed and delivered will constitute, legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with their respective terms, subject to the Bankruptcy Exceptions.

5.3 Consents and Approvals; No Violation.

(a) Except as set forth on Section 5.3(a) of the Purchaser Disclosure Schedule, none of the execution and delivery by the Purchaser of this Agreement or the Purchaser's Documents, the consummation of the transactions contemplated hereby or thereby, or the compliance by the Purchaser with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or

give rise to a right of acceleration, payment, amendment, termination or cancellation under any provision of (i) the governing documents of the Purchaser, (ii) any Contract (including any Contracts related to financing) or Permit to which the Purchaser is a party or by which the Purchaser or its properties or assets are bound, (iii) any order of any Governmental Body applicable to the Purchaser or by which any of the properties or assets of the Purchaser are bound, or (iv) any applicable Law, other than (x) under the Antitrust Laws, or (y) in the case of clauses (ii), (iii), and (iv), except as would not have or reasonably be expected to have a material adverse effect on the Purchaser's ability to consummate the transactions contemplated by this Agreement.

(b) Except for the Antitrust Laws and except as set forth on Section 5.3(b) of the Purchaser Disclosure Schedule, no consent, waiver, approval, order, Permit or authorization of, or declaration or filing with, or notification to, any Governmental Body or other Person nor any other Regulatory Approval is required on the part of the Purchaser in connection with the execution and delivery of this Agreement or the Purchaser's Documents, the compliance by the Purchaser with any of the provisions hereof or thereof, the consummation of the transactions contemplated hereby or thereby or the taking by the Purchaser of any other action contemplated hereby or thereby, except for (i) such orders, Permits, declarations, filings and notifications as may be required under the Antitrust Laws, and (ii) such other orders, Permits, declarations, filings and notifications, the failure of which to obtain or make would not have or reasonably be expected to have a material adverse effect on the Purchaser's ability to consummate the transactions contemplated by this Agreement.

5.4 Brokers and Finders. The Purchaser has not employed, and to the knowledge of the Purchaser, no other Person has made any arrangement by or on behalf of the Purchaser with, any investment banker, broker, finder, consultant or intermediary in connection with the transactions contemplated by this Agreement which would be entitled to any investment banking, brokerage, finder's or similar fee or commission in connection with this Agreement or the transactions contemplated hereby and with respect to which the Sellers would have any liability.

5.5 Adequate Assurances Regarding Assigned Contracts. As of the Closing, the Purchaser will be capable of satisfying the conditions contained in Sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code and Section 11.3 of the CCAA with respect to the Assigned Contracts.

5.6 Litigation. Except as set forth on Section 5.6 of the Purchaser Disclosure Schedule, there is no Action pending against the Purchaser or any of its Affiliates that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement.

5.7 Financing. The Purchaser will have at the Closing sufficient cash or other sources of immediately available funds to enable it to pay all amounts to be paid in cash by it hereunder. As of the Execution Date, the Purchaser has delivered to Allied a true and correct copy of the executed financial commitment obtained by the Purchaser in connection with the Financing (the "Commitment Letter"). As of the Execution Date (a) the Commitment Letter has not been amended, restated, modified or waived, and no such amendment, restatement, modification or waiver is contemplated, (b) the commitments contained in the Commitment Letter have not been

withdrawn, terminated or rescinded in any respect, (c) there are, and are contemplated to be, no other agreements, side letters or arrangements relating to the Financing contemplated by the Commitment Letter other than as expressly set forth in the Commitment Letter delivered to Allied pursuant to this Section 5.7, and (d) the Purchaser has no reason to believe that (i) any of the conditions in the Commitment Letter will not be satisfied at the Closing or (ii) the Financing will not be made available at the Closing. The Purchaser has fully paid any and all commitment or other fees required to be paid on or prior to the date hereof pursuant to the terms of the Commitment Letter. Sellers acknowledge that the Commitment Letter is intended to be solely for the benefit of the parties thereto and the indemnified parties referred to therein and may not be relied upon or enforced by any other Person.

5.8 No Other Representations or Warranties; Investigation. Notwithstanding anything contained in this Agreement to the contrary, the Purchaser acknowledges and agrees that no Seller is making any representations or warranties whatsoever, express or implied, beyond those expressly given by Sellers in Article IV (as modified by the Seller Disclosure Schedule), and the Purchaser acknowledges and agrees that, except for the representations and warranties contained therein, the Purchased Assets and Assumed Liabilities are being transferred on an “as is”, “where is” and “with all faults” basis. The Purchaser further represents that no Seller or any of its Affiliates or any other Person has made any representation or warranty, express or implied, as to the accuracy or completeness of any information regarding Sellers or any of their Affiliates, the Business, the Purchased Assets, the Assumed Liabilities or the transactions contemplated by this Agreement not expressly set forth in this Agreement. The Purchaser acknowledges that it has conducted to its satisfaction its own independent review and analysis of the Business, the Purchased Assets and the Assumed Liabilities, of the value of such Purchased Assets and of the business, operations, technology, assets, Liabilities, financial condition and prospects of the Business, and the Purchaser acknowledges that Sellers have provided the Purchaser with access to the personnel, properties, premises and records of the Business for this purpose. The Purchaser has conducted its own independent review of all orders of, and all motions, pleadings, and other submissions to, the Bankruptcy Courts in connection with the Bankruptcy Cases. In entering into this Agreement and in making the determination to proceed with the transactions contemplated by this Agreement, the Purchaser has relied upon its own investigation and analysis as well as the representations and warranties made by Sellers in Article IV (as modified by the Seller Disclosure Schedule).

## **ARTICLE VI.**

### **EMPLOYEES**

6.1 Employees. The Employment Offering Purchaser Entity shall be entitled (but shall not be required) to offer employment (commencing on or after the Closing Date) to the Employees of the Sellers who are employed in connection with the Business; provided that the Employment Offering Purchaser Entity shall assume any and all obligations and responsibilities as a result of the application of Section 44 of the *Canada Labour Code* as it relates to the Canadian Collective Bargaining Agreements (including to contribute to and participate in the Canadian MEPP Plans on and after the Closing Date to the extent required by the Canadian Collective Bargaining Agreements and the Canadian MEPP Plans, but only in respect of pensionable service earned after the Closing Date) and, for the avoidance of doubt, each

Employee of Allied Canada covered under a Canadian Collective Bargaining Agreement shall be employed by the applicable Employment Offering Purchaser Entity effective as of the Closing in accordance with the terms of the Canadian Collective Bargaining Agreements. Each such Employee who is offered employment by the Employment Offering Purchaser Entity shall be offered substantially similar salary, wage, benefit levels, and such other terms and conditions, to which the Purchaser's employees in similar capacities on the Closing Date are entitled, except to the extent otherwise required by applicable employment Laws or the Canadian Collective Bargaining Agreements. Sellers shall terminate, effective as of the Closing Date, all of their Employees who are Transferred Employees (other than Employees of Allied Canada covered under a Canadian Collective Bargaining Agreement). Each Employee to whom the Employment Offering Purchaser Entity has made an offer of employment pursuant to this Section 6.1 and that has accepted such offer and commences employment with the Employment Offering Purchaser Entity on or shortly following the Closing Date and each Employee of Allied Canada covered under a Canadian Collective Bargaining Agreement who shall be employed by the Employment Offering Purchaser Entity as of the Closing is hereinafter referred to as a "Transferred Employee." The Purchaser shall make a payment to Sellers on the Closing Date equal to the sum of the accrued but unpaid base salary and wages (excluding all other types of compensation, health, welfare and pension benefits and all bonuses, severance and incentive compensation) due and payable by Sellers to each Employee (whether or not a Transferred Employee) as of the Closing. In addition, the Purchaser shall make a payment to Sellers on the Closing Date equal to the sum of the severance and termination amounts owed to all Employees of Allied Canada not covered under a Canadian Collective Bargaining Agreement who are not hired by the Purchaser or an Employment Offering Purchaser Entity or whose employment terms give rise to a deemed termination in connection with or as a result of the Closing up to a maximum amount of \$570,000. Sellers shall pay such base salary, wages and severance and termination amounts to each applicable Employee and make the appropriate withholdings on and reporting of such amounts as well as pay the employer's share of taxes with respect to such amounts.

6.2 Seller Plans. Sellers shall retain all Liabilities with respect to the Excluded Plans (other than as specifically provided in Section 6.1), including Liabilities for unpaid contributions or withdrawal liability in connection with any of the Excluded Plans whether such Liabilities arise before, on or after the Closing. Purchaser shall assume all Liabilities with respect to the Assumed Plans.

6.3 WARN Act.

(a) Subject to Section 6.3(c), Sellers shall be solely responsible for any obligations under the WARN Act or under any Applicable Employment Legislation that might arise on or prior to the Closing, including as a consequence of the transactions contemplated by this Agreement as a result of the Purchaser's employment offer(s) and/or decision(s) not to employ certain Employees, including providing any notice of layoff or plant closing, or maintaining the Employees on Sellers' or the Employment Offering Purchaser Entity's payroll, as applicable, for any period of notice required by the WARN Act or Applicable Employment Legislation.

(b) Sellers shall, with the Purchaser's consent, which consent shall not be unreasonably withheld, take all actions and provide all notices to Employees as required under



the WARN Act or Applicable Employment Legislation or as reasonably requested by the Purchaser. Without limiting the generality of the foregoing, not later than two (2) Business Days following the conclusion of the Sale Hearing, Sellers shall provide (i) WARN Act notices, to the extent required by applicable Law, to all Employees who are employed in the United States, and (ii) comparable notices, to the extent required under applicable Law, under Applicable Employment Legislation to all Employees who are employed in the United States or Canada and to any applicable Governmental Body.

(c) If Sellers are unable to comply with their obligations under the WARN Act or under any Applicable Employment Legislation prior to the Closing solely because the Purchaser has not provided Sellers a sufficient period of time to comply with such obligations prior to the Closing, the Purchaser must either (i) elect to delay the Closing until Sellers have fully complied with such obligations; provided that the Closing may not be delayed to a date later than the Outside Date; or (ii) elect to assume (and be solely responsible for) such obligations.

6.4 No Third-Party Beneficiaries. Notwithstanding anything set forth in this Article VI, nothing contained herein, whether express or implied, (i) shall be treated as an amendment or other modification of any Seller Plan or (ii) shall limit the right of (y) any Employment Offering Purchaser Entity to amend, terminate or otherwise modify any Assumed Plan following the Closing Date or (z) any Seller to amend, terminate or otherwise modify any Excluded Plans following the Closing Date. Sellers and the Purchaser acknowledge and agree that all provisions contained in this Article VI with respect to current or former employees of Sellers are included for the sole benefit of Sellers and the Employment Offering Purchaser Entities, and that nothing herein, whether express or implied, shall create any third party beneficiary or other rights (i) in any other Person, including any current or former employees, directors, officers or consultants of Sellers, any participant in any Seller Plan, or any dependent or beneficiary thereof, or (ii) to continued employment with any Employment Offering Purchaser Entity.

6.5 Information. To the extent permitted by applicable Laws, Sellers shall make available to each Employment Offering Purchaser Entity information in Sellers' possession relating to each Transferred Employee of Seller as such Employment Offering Purchaser Entity may reasonably require in connection with its employment or engagement of such individuals, including initial employment dates, termination dates, reemployment dates, hours of service, compensation and tax withholding history in a form that shall be usable by such Employment Offering Purchaser Entity; provided, however, Sellers shall not provide certain Transferred Employee personal information (e.g., Social Security numbers, medical information, other personal information, etc.) without advance written permission from the Transferred Employee.

6.6 Service Credit. The Employment Offering Purchaser Entity shall, or shall cause one or more of its subsidiaries to, use its commercially reasonable efforts to provide Transferred Employees with service credit under the Purchaser's benefit plans in which the Transferred Employees become eligible to participate based on such Transferred Employees' service with Sellers (or any other service for which any Seller gave such Transferred Employee credit) for purposes of eligibility, participation, vesting and benefit accrual (other than under any defined benefit plan whether qualified or non-qualified); provided, however, that there shall be no duplication by the Employment Offering Purchaser Entity of any benefits provided by Sellers.

The Purchaser or the Employment Offering Purchaser Entity also shall, or shall cause one or more of its subsidiaries to, credit or, to the extent required by applicable Law, pay out to each Employee (whether or not a Transferred Employee) the amount of vacation and paid time off that such Employee had accrued under any applicable plan of any Seller as of the Closing Date; provided, however, to the extent applicable Law requires any Employees to be paid their accrued vacation and paid time off on the Closing Date, the Purchaser shall make a payment to Sellers on the Closing Date equal to the sum of the accrued vacation and paid time off due and payable to such Employees, and Sellers shall have sole responsibility for paying such accrued vacation and paid time off to such Employees and to make the appropriate withholdings on and reporting of such amounts as well as to pay the employer's share of taxes with respect to such amounts.

6.7 Welfare Plans. With respect to any welfare benefit plans maintained by the Purchaser or its applicable subsidiaries for the benefit of Transferred Employees on and after the Closing Date, the Employment Offering Purchaser Entity shall, or shall cause one or more of its subsidiaries to, use its commercially reasonable efforts to (a) give credit in determining any deductible limitations, co-payments and out-of-pocket maximums to any amounts paid by such Transferred Employees under Sellers' welfare benefit plans for the calendar year in which the Closing Date occurs with respect to similar welfare benefit plans maintained by the Employment Offering Purchaser Entity or one or more of its subsidiaries in which such Transferred Employees participate, (b) with respect to any health benefit plans maintained by the Employment Offering Purchaser Entity or its applicable subsidiaries, waive or cause to be waived eligibility waiting periods, evidence of insurability requirements or pre-existing condition limitations or exclusions with respect to the Transferred Employees' participation in any such health benefit plans, and (c) give such Transferred Employees credit for any unused contributions as of the Closing Date with respect to any health care or dependent care spending accounts of Sellers but only to the extent that the amount of such unused contributions are transferred to the Employment Offering Purchaser Entity. Beginning on the Closing Date and for a period of six (6) months following the Closing Date, with respect to individual non-Transferred Employees (and the covered dependents of such non-Transferred Employees) who lose coverage under a group health plan (as defined in Treasury Regulation Section 54.4980B-2, Q&A-1) of any of the Sellers (a "Sellers Group Health Plan") as a result of the consummation of the transactions contemplated by this Agreement (the "COBRA Beneficiaries"), the Employment Offering Purchaser Entity shall assume and be responsible for Liabilities arising from the requirement under Code Section 4980B to offer continuation coverage under any Sellers Group Health Plan by making continuation coverage available to such COBRA Beneficiaries under a group health plan (as defined in Treasury Regulation Section 54.4980B-2, Q&A-1) of the Purchaser or an Employment Offering Purchaser Entity (a "Purchaser Group Health Plan") for a premium (to be paid by the COBRA Beneficiaries) equal to one hundred two percent (102%) of the applicable premium (as defined in Section 4980B of the Code) for that Purchaser Group Health Plan for that six-month period. Sellers shall assume, retain and be solely responsible for all Liabilities (other than the specific Liabilities assumed by the Purchaser in the immediately preceding sentence) arising from the requirement under Code Section 4980B to offer continuation coverage under any Sellers Group Health Plan.

6.8 Rollovers. The Employment Offering Purchaser Entity shall, or shall cause one or more of its subsidiaries to, use commercially reasonable efforts to amend its 401(k) plan(s) to permit Transferred Employees to make rollover contributions from a defined contribution Seller



Plan to a 401(k) plan of the Purchaser of any direct eligible rollover distributions, within the meaning of Section 401(a)(31) of the Code, from any Seller Plan that is a 401(k) plan to the extent that the administrator of the Employment Offering Purchaser Entity plan has reasonably concluded that (a) such contributions are valid rollover contributions pursuant to Section 1.401(a)(31)-1, Q&A-14, of the Treasury Regulations and (b) such rollover contributions may include promissory notes for loans made to such Transferred Employees under the terms of Sellers' 401(k) plan(s); provided, however, that for each such loan Sellers provide true and complete documentation of such loan and payment history satisfactory to the administrator of the applicable Employment Offering Purchaser Entity plan.

6.9 Payroll Withholding. With respect to Transferred Employees, Sellers will provide the Purchaser with all payroll, withholding and other information necessary to complete Forms W-2 and W-3 in accordance with the "alternative procedure" described in Revenue Procedure 2004-53 (or Canadian equivalent), and the Purchaser agrees to complete such forms, and take withholdings, for the Transferred Employees for the calendar year in which the Closing Date occurs in accordance with such "alternative procedure."

6.10 FMLA Information. Subject to the limitations set forth in Section 6.5, prior to the Closing (in respect of Transferred Employees identified by the Purchaser before the Closing, and otherwise within a reasonable amount of time after Purchaser advises Sellers in writing of the names of Transferred Employees), Sellers will provide the Purchaser a true, correct and complete list of: (i) each Transferred Employee who is eligible to request FMLA leave as of the Closing Date and the amount of FMLA leave utilized by each such Employee during the current leave year; (ii) each Transferred Employee who will be on FMLA leave at the Closing Date and his or her job title, current salary and current bonus opportunity; and (iii) each Transferred Employee who has requested FMLA leave to begin after the Closing Date, a description of the leave requested and a copy of all notices provided to such Transferred Employee regarding such leave.

6.11 Communications. No Seller nor any Representative of Sellers shall make any communication to Employees regarding any Purchaser Benefit Plan or any compensation or benefits to be provided after the Closing Date without the advance approval of the Purchaser, which approval shall not be unreasonably withheld, delayed or conditioned.

## **ARTICLE VII.**

### **BANKRUPTCY COURT MATTERS**

#### **7.1 Bankruptcy Court Approval of the Sale Orders; Determination of Cure Costs.**

(a) Sellers shall use commercially reasonable efforts to obtain entry of the Sale Orders at the earliest practicable dates. Within two (2) Business Days of the issuance of the U.S. Sale Order, Allied, as foreign representative in the CCAA Case, shall file a motion seeking the Canadian Sale Order substantially in the form attached as Exhibit D, which motion shall be scheduled to be heard by the Canadian Court within five (5) Business Days of the entry of the U.S. Sale Order (subject to court availability). Allied shall serve the motion on all Persons reasonably requested by the Purchaser. Allied shall deliver to counsel for the Purchaser copies of

all of Allied's motion materials in advance of filing the same, as early as is practicable to enable review and comment, and shall provide the Purchaser's counsel with particulars of any objections thereto.

(b) In the event an appeal is taken or a stay pending appeal is requested with respect to the Sale Orders, (i) Sellers shall promptly notify the Purchaser of such appeal or stay request and shall promptly provide to the Purchaser a copy of the related notice of appeal or order of stay, and (ii) the Parties shall promptly defend such appeal with reasonable diligence. Sellers shall also provide the Purchaser with written notice of any motion or application filed in connection with any appeal from either of such orders.

(c) Sellers shall cause to be determined the amount of the Cure Costs in accordance with the Bidding Procedures Order at or prior to the Sale Hearing.

## **ARTICLE VIII.**

### **COVENANTS AND AGREEMENTS**

#### **8.1 Conduct of Business of Allied Entities.**

(a) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing, except (i) for any limitations on operations imposed by, or actions required by, the Bankruptcy Courts or the Bankruptcy Code prior to the Execution Date, (ii) as required by applicable Law, (iii) as otherwise expressly contemplated by this Agreement or as set forth on Section 8.1(a) of the Seller Disclosure Schedule, or (iv) with the prior written consent of the Purchaser, each Seller shall (and shall cause each Allied Entity controlled by such Seller to):

(1) conduct the Business and operate and maintain the Purchased Assets in the Ordinary Course of Business (including timely payment of post-petition accounts payable, purchasing and maintaining of Inventory, performing maintenance and repairs, due administration and timely payment and remittance of all required contributions that become due during such period under the Canadian MEPP Plans, making capital expenditures in accordance with the DIP Credit Agreement, and collecting Accounts Receivable);

(2) (x) use commercially reasonable efforts to preserve the goodwill of and relationships with Governmental Bodies, customers, suppliers, vendors, lessors, licensors, licensees, contractors, distributors, agents, Employees and others having business dealings with the Business; and (y) comply with all applicable Laws.

(b) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing, except (i) for any limitations on operations imposed by, or actions required by, the Bankruptcy Courts or the Bankruptcy Code prior to the Execution Date, (ii) as required by applicable Law, (iii) as otherwise expressly contemplated by this Agreement or as set forth on Section 8.1(b) of the

Seller Disclosure Schedule, or (iv) with the prior written consent of the Purchaser, each Allied Entity shall not take any of the actions or enter into any Contract to do anything set forth in Section 4.5 (other than with respect to matters listed in Section 4.5(n) or Section 4.5(g); it being understood and agreed that Sellers shall promptly notify the Purchaser in writing if any event, circumstance or fact of the type described in Section 4.5(n) or Section 4.5(g) arises during the period from the Execution Date until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing); provided, however, that the \$500,000 figure in Section 4.5(o) shall be deemed to be \$250,000 for purposes of this Section 8.1.

(c) Promptly after the Closing Date, Sellers will (i) revoke any filing that they may have made prior to the Closing Date with any Governmental Body relating to their use of the Purchased Names and of any like names or combinations of words or derivations thereof; (ii) at their expense, prepare and file with the appropriate Governmental Body appropriate documents, including articles of amendment, changing their names so as to effectuate the same and promptly deliver evidence of such name changes to the Purchaser; (iii) cease using the Purchased Names and any derivations thereof, including in the Bankruptcy Cases; and (iv) file all necessary and appropriate pleadings in the Bankruptcy Cases to change or otherwise modify the case captions in such Bankruptcy Cases to remove all references to the Purchased Names.

(d) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing, Sellers may cause or permit the Foreign Subsidiaries to transfer, whether by dividend, distribution, or otherwise, any cash or cash equivalents to any Seller or any of its Affiliates; provided, however, that the aggregate amount of such transfers by the Foreign Subsidiaries shall not exceed an amount equal to One Million Five Hundred Thousand Dollars (\$1,500,000); provided, further, that as of the Closing, the Foreign Subsidiaries shall hold cash and cash equivalents in an aggregate amount equal to not less than Five Hundred Thousand Dollars (\$500,000).

(e) From and after the Closing Date, Sellers shall prosecute in good faith all claims, demands, proceedings and causes of action asserted by any Seller prior to the Closing under Sellers' insurance policies relating to the Business, which claims, demands, proceedings and causes of action relate directly to any Purchased Asset or Assumed Liability. Sellers shall pay and deliver to Purchaser promptly following receipt all recoveries and proceeds received by Sellers with respect to such insurance claims, demands, proceedings and causes of action.

## 8.2 Access to Information.

(a) Each Seller agrees that, during the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing, the Purchaser shall be entitled, through its Representatives, and its Representatives shall be entitled, to have such reasonable access to and make such reasonable investigation and examination of the books and records, financial information, properties, businesses, assets, Equipment data and listings, Employees, accountants, auditors, counsel and operations of the Allied Entities as the Purchaser's Representatives may reasonably request; provided that Sellers shall be entitled to redact any such materials and/or restrict such access to the extent necessary, as determined by Sellers upon advice of counsel, to avoid violation of any Antitrust Laws. Any such investigations and examinations shall be conducted during regular

business hours upon reasonable advance notice and under reasonable circumstances and shall be subject to restrictions under applicable Law. Pursuant to this Section 8.2, Sellers shall make available to the Purchaser and its Representatives a list of the Accounts Receivable as of the last day of each month following the Execution Date, operating and property related data and such other information as such Persons reasonably request. Each Seller shall cause each Allied Entity controlled by such Seller, and shall use its commercially reasonable efforts to cause its Representatives, to reasonably cooperate with the Purchaser and the Purchaser's Representatives in connection with such investigations and examinations, and the Purchaser shall, and shall use its commercially reasonable efforts to cause its Representatives to, reasonably cooperate with such Sellers and their respective Representatives and shall use their commercially reasonable efforts to minimize any disruption to the Business.

(b) From and after the Closing Date, Sellers shall give the Purchaser and the Purchaser's Representatives reasonable access during normal business hours to the offices, facilities, plants, properties, assets, Employees, Documents (including any Documents included in the Excluded Assets), personnel files and books and records of the Allied Entities pertaining to the Business. In connection with the foregoing, each Seller shall cause each Allied Entity controlled by such Seller, and shall use its commercially reasonable efforts to cause its Representatives, to make available to the Purchaser such financial, technical, operating and other information pertaining to the Business, as the Purchaser's Representatives shall from time to time reasonably request and to discuss such information with such Representatives. It is understood and agreed that nothing in this Section 8.2(b) shall be deemed to be an obligation on the part of Sellers to maintain any offices, facilities, plants, properties, assets, Employees, Documents (including any Documents included in the Excluded Assets), personnel files and books and records of the Allied Entities pertaining to the Business after the Closing.

(c) From and after the Execution Date, the Sellers will provide the Purchaser and the Purchaser's Representatives with reasonable access to the customers of the Business (including Ford Motor Company and its Affiliates (collectively, "Ford")) and Sellers' vendors and/or suppliers; provided, however, that Sellers shall have the opportunity to participate in any contact or meeting with any such Persons, subject to any Antitrust Laws. Without limiting the generality of the foregoing, promptly following the Execution Date, Sellers shall use commercially reasonable efforts to facilitate (but not attend or participate in) discussions between the Purchaser and the Purchaser's Representatives and Ford regarding the Sellers' existing Contract(s) with Ford (including possible amendments or modifications thereto) and/or future business arrangements between the Purchaser and Ford, subject to any Antitrust Laws.

(d) No information received pursuant to an investigation made under this Section 8.2 shall be deemed to (i) qualify, modify, amend or otherwise affect any representations, warranties, covenants or other agreements of Sellers set forth in this Agreement or any certificate or other instrument delivered to the Purchaser in connection with the transactions contemplated hereby, (ii) amend or otherwise supplement the information set forth in the Seller Disclosure Schedule, (iii) limit or restrict the remedies available to the Parties under applicable Law arising out of a breach of this Agreement or otherwise available at Law or in equity, or (iv) limit or restrict the ability of any Party to invoke or rely on the conditions to the obligations of the Parties to consummate the transactions contemplated by this Agreement set forth in Article IX.

8.3 Assignability of Certain Contracts, Etc. The Sellers shall use commercially reasonable efforts to obtain, as part of the Canadian Sale Order or otherwise, an order of the Canadian Court authorizing the assignment of the Assigned Contracts to which the Canadian Sellers are parties. To the extent that the assignment to the Purchaser of any Assigned Contract pursuant to this Agreement is not permitted without the consent of a third party and such restriction cannot be effectively overridden or canceled by the Sale Orders or other related order of the Bankruptcy Courts, then this Agreement will not be deemed to constitute an assignment of or an undertaking or attempt to assign such Assigned Contract or any right or interest therein unless and until such consent is obtained; provided, however, that the Parties hereto will use their commercially reasonable efforts, before the Closing, to obtain all consents of such third parties that cannot be effectively overridden or canceled by the Sale Orders or other related order of the Bankruptcy Courts; provided, further, that if any such consents are not obtained prior to the Closing Date, Sellers and the Purchaser will reasonably cooperate with each other in any lawful and feasible arrangement designed to provide the Purchaser (such arrangement to be at the sole cost and expense of the Purchaser) with the benefits and obligations of any such Assigned Contract.

8.4 Rejected Contracts. No Seller shall reject or file any motion to reject any Contract in the Bankruptcy Cases during the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing without the prior written consent of the Purchaser.

8.5 Further Agreements. The Purchaser authorizes and empowers Sellers from and after the Closing Date to receive and to open all mail received by Sellers relating to the Purchased Assets, the Business or the Assumed Liabilities and to deal with the contents of such communications in accordance with the provisions of this Section 8.5. Each of Sellers shall (i) promptly deliver to the Purchaser any mail or other communication received by them after the Closing Date and relating to the Purchased Assets, the Business or the Assumed Liabilities, (ii) promptly transfer in immediately available funds to the Purchaser any cash, electronic credit or deposit received by such Seller but solely to the extent that such cash, electronic credit or deposit are Purchased Assets, and (iii) promptly forward to the Purchaser any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Purchased Assets. The Purchaser shall (x) promptly deliver to Sellers any mail or other communication received by it after the Closing Date and relating to the Excluded Assets or the Excluded Liabilities, (y) promptly wire transfer in immediately available funds to Sellers, any cash, electronic credit or deposit received by the Purchaser but solely to the extent that such cash, electronic credit or deposit are Excluded Assets, and (z) promptly forward to Sellers any checks or other instruments of payment that it receives but solely to the extent that such checks or other instruments are Excluded Assets. From and after the Closing Date, Sellers shall refer all inquiries with respect to the Business, the Purchased Assets and the Assumed Liabilities to the Purchaser, and the Purchaser shall refer all inquiries with respect to the Excluded Assets and the Excluded Liabilities to Sellers.

8.6 Further Assurances.

(a) Subject to the terms and conditions of this Agreement and applicable Law, Sellers and the Purchaser shall use their respective commercially reasonable efforts to take, or

cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper or advisable to consummate and make effective the transactions contemplated by this Agreement as soon as practicable, and shall coordinate and cooperate with each other in exchanging information, keeping the other Party reasonably informed with respect to the status of the matters contemplated by this Section 8.6 and supplying such reasonable assistance as may be reasonably requested by the other Party in connection with the matters contemplated by this Section 8.6. Without limiting the foregoing, during the period from the Execution Date and continuing until the termination of this Agreement in accordance with Section 3.4, the Parties shall use their commercially reasonable efforts to take the following actions but solely to the extent that such actions relate to the transactions contemplated by this Agreement:

(i) obtain any required consents, approvals (including Regulatory Approvals), waivers, Permits, authorizations, registrations, qualifications or other permissions or actions by, and give all necessary notices to, and make all filings with, and applications and submissions to, any Governmental Body or third party and provide all such information concerning such Party as may be necessary or reasonably requested in connection with the foregoing (other than any consents, approvals, waivers, authorizations or notices that can be overridden or canceled by the Sale Orders or other related order of the Bankruptcy Courts);

(ii) avoid the entry of, or have vacated or terminated, any injunction, decree, order, or judgment that would restrain, prevent, or delay the consummation of the transactions contemplated hereby;

(iii) take any and all reasonably necessary steps to avoid or eliminate every impediment under any applicable Law that is asserted by any Governmental Body with respect to the transactions contemplated hereby so as to enable the consummation of such transactions to occur as expeditiously as possible; and

(iv) at or following the Closing, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and other instruments, and cooperate and take such further actions, as may be reasonably necessary or appropriate to transfer and assign fully to the Purchaser and its successors and assigns, all of the Purchased Assets, and for the Purchaser and its successors and assigns, to assume the Assumed Liabilities, and to otherwise make effective the transactions contemplated hereby and thereby.

Subject to the terms and conditions of this Agreement, the Parties shall not take any action or refrain from taking any action the effect of which would be to delay or impede the ability of Sellers and the Purchaser to consummate the transactions contemplated by this Agreement, unless in such Party's reasonable judgment, taking such action or refraining from taking such action is consistent with achieving the ultimate objective of consummating the transactions contemplated hereby or is required by applicable Law.

(b) During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing: (i) Sellers, on the one hand, and the Purchaser, on the other hand, shall keep each other reasonably informed



as to the status of matters relating to the completion of the transactions contemplated hereby, including promptly furnishing the other with copies of notices or other communications received by Sellers or the Purchaser (as the case may be) from any Governmental Body with respect to the transactions contemplated by this Agreement; and (ii) Sellers shall, to the extent permitted by applicable Law, (y) provide to the Purchaser substantially final drafts of all of Sellers' pleadings, orders and notices to be filed in the Bankruptcy Cases in connection with this Agreement at least two (2) Business Days before the filing to the extent reasonably practicable and, if not reasonable practicable, as soon as possible, and consider in good faith Purchaser's reasonable comments related to such pleadings, orders and notices, and (z) Sellers shall cooperate and coordinate with the Purchaser's reasonable requests concerning court hearings, pleadings, orders and notices.

(c) The obligations of the Purchaser and Sellers pursuant to this Section 8.6 shall be subject to any orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Courts or the Bankruptcy Code or the CCAA (including in connection with the Chapter 11 Case), and each of Sellers' obligations as a debtor in possession to comply with any order of the Bankruptcy Courts (including the Bidding Procedures Order and the Sale Orders).

**8.7 Preservation of Records.** Sellers and the Purchaser agree that each of them shall preserve and keep the records held by them or their Affiliates relating to the Business, the Purchased Assets and Assumed Liabilities for a period of five (5) years from the Closing Date, in the case of the Purchaser, and until the closing of the Bankruptcy Cases or the liquidation and winding up of Sellers' estates, in the case of Sellers, and shall make such records available to the other Party as may be reasonably required by such other Party in connection with, among other things, any insurance claims by, actions or tax audits against or governmental investigations of Sellers or the Purchaser or any of their respective Affiliates or in order to enable Sellers or the Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby or thereby. In the event Sellers or the Purchaser wishes to destroy such records prior to or following the end of such applicable period, such Party shall first give sixty (60) days' prior written notice to the other Party and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within such sixty (60) day period, to take possession of the records within one hundred and twenty (120) days after the date of such notice, or such shorter period as the liquidation and winding up of Sellers' estates shall permit.

**8.8 Publicity.** Allied or the Purchaser may issue a press release or public announcement concerning this Agreement or the transactions contemplated hereby only with the prior written approval of the other Parties hereto, which approval will not be unreasonably withheld, conditioned or delayed, unless, in the sole judgment of the disclosing Party, such disclosure is otherwise required by applicable Law or by the Bankruptcy Courts with respect to filings to be made with the Bankruptcy Courts in connection with this Agreement. Without limiting the generality of the foregoing sentence, the Party intending to make such release shall use its commercially reasonable efforts, consistent with such applicable Law or any Bankruptcy Court requirement, to consult with the other Parties with respect to the text thereof. Further, Sellers acknowledge that the Purchaser will be required to post a current report on the website maintained for the holders of the Purchaser's 9.25% Senior Secured Notes due 2020 reporting this Agreement and providing a copy thereof (without the Seller Disclosure Schedule) within

four (4) Business Days of the execution of this Agreement. The Purchaser will provide a draft of such current report to Sellers within a reasonable period of time prior to posting for review and shall make such changes as shall be reasonably requested by Sellers, consistent with the Purchaser's reporting requirements.

8.9 Communication with Acquired Customers. Allied and the Purchaser shall send a joint letter to the Acquired Customers, in form and substance reasonably satisfactory to Sellers and the Purchaser, at a mutually satisfactory time after the U.S. Bankruptcy Court's entry of the U.S. Sale Order, which shall include, but not be limited to, advising the Acquired Customers about the existence of (but not the terms of) this Agreement and the pending transfer of the Acquired Customer's account and underlying Assigned Contract from Sellers to the Purchaser. Following the Execution Date, the Purchaser shall have the right, upon reasonable advance notice as circumstances may dictate and subject to the prior consent of Allied (which consent shall not be unreasonably withheld, conditioned or delayed), to contact and meet with any of Allied Entity's joint venturers and other partners, any non-debtor parties to any Contract of Sellers and any lenders with respect to any Purchased Assets or Assumed Liabilities; provided, however, that Sellers shall have the opportunity to participate in any such contact or meeting, subject to any Antitrust Laws.

8.10 Notification of Certain Matters. Sellers shall give prompt notice to the Purchaser, and the Purchaser shall give prompt notice to Sellers, of (i) any notice or other communication from any Person alleging that the consent of such Person which is or may be required in connection with the transactions contemplated by this Agreement is not likely to be obtained prior to Closing and (ii) any written objection or proceeding that challenges the transactions contemplated hereby or the entry of the Sale Orders by the Bankruptcy Courts. To the extent permitted by applicable Law, Sellers shall give prompt notice to the Purchaser of (i) any written notice from any Governmental Body of any alleged violation of Law applicable to any Allied Entity, (ii) the commencement of any investigation, inquiry or review by any Governmental Body with respect to the Business or that any such investigation, inquiry or review, to the Knowledge of Sellers, is contemplated, and (iii) the execution of any Material Contract entered into other than in the Ordinary Course of Business (and Sellers shall deliver or make available a copy thereof to the Purchaser).

8.11 Environmental Matters Access and Cooperation. Each Seller agrees that, during the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing, the Purchaser and its Representatives shall be entitled to have, upon reasonable advance notice, such reasonable access to and to make such reasonable investigation and examination of the environmental condition of the Real Property, including phase I and phase II reports, at the Purchaser's sole expense, as the Purchaser or its Representatives may reasonably request. Each Seller shall cause each Allied Entity controlled by such Seller, and shall use its commercially reasonable efforts to cause its Representatives, to cooperate with the Purchaser and the Purchaser's Representatives in connection with such investigations and examinations, and the Purchaser shall use its commercially reasonable efforts to cause its Representatives to reasonably cooperate with such Sellers and their respective Representatives and shall use their reasonable efforts to minimize any disruption to the Business; provided, however, that any invasive or subsurface investigations of any Real Property shall be conducted in such locations and in such manners as are approved in



advance by Allied (which approval shall not be unreasonably withheld, conditioned, or delayed); provided, further, that promptly following the Purchaser's investigation or examination of any Real Property, the Purchaser shall, at its sole expense, restore such Real Property to the condition in which it existed immediately prior to such investigation or examination. The Purchaser further agrees that it and its Representatives shall treat and maintain all information generated as a result of any phase I or phase II investigation of any Real Property as confidential business information and that such information shall not be shared with any Person or Governmental Body except as required by applicable Law and (to the extent reasonably practicable and not prohibited by applicable Law) unless the Purchaser has given written notice, at least five (5) Business Days in advance, to Allied prior to providing any such information to any third-party.

8.12 Notification of Additional Bids. Sellers shall give prompt notice to the Purchaser of, and shall provide the Purchaser with true, correct and complete copies of, any written expression of interest, inquiry, offer or bid received by Sellers from any other prospective buyer for the sale of the Purchased Assets.

8.13 Canadian Recognition Order. Sellers and Purchaser shall use their commercially reasonable efforts to include in the Canadian Sale Order (i) an exemption of any non-compliance with the provisions of the *Bulk Sales Act* (Ontario) or any other legislation dealing with the sale of assets in bulk out of the Ordinary Course of Business in any jurisdiction where the Sellers' assets are located, in respect of the purchase and sale of the Purchased Assets, (ii) a provision specifically authorizing the assignment of the Assigned Contracts to which the Canadian Sellers are parties to the Purchaser in accordance with the U.S. Sale Order, (iii) customary provisions approving the sale of the Purchased Assets that are situated in Canada or that are owned by the Canadian Sellers (the "Canadian Purchased Assets") and vesting the Canadian Purchased Assets in the Purchaser, free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances and Assumed Liabilities) to the extent permitted by applicable Law, and (iv) a provision recognizing and giving effect to the U.S. Sale Order pursuant to s.49 of the CCAA.

8.14 Foreign Subsidiary Stock. If after the Execution Date and prior to the Closing the Purchaser excludes any Foreign Subsidiary Stock as a Purchased Asset pursuant to Section 1.5 and instead wishes to purchase and acquire from such Foreign Subsidiary any assets and assume from such Foreign Subsidiary any liabilities, the applicable Seller shall cause such Foreign Subsidiary to enter into either (a) a purchase agreement with the Purchaser (or one of its Affiliates) or (b) an amendment to this Agreement, in each case with respect to the purchase, sale and assumption of such assets and liabilities on terms and conditions substantially consistent with the terms and conditions of the purchase of the Purchased Assets and assumption of Assumed Liabilities under this Agreement, but in all cases subject to any requirements of applicable Law with respect to such Foreign Subsidiary; provided, however, that the consummation of any such purchase agreement or amendment shall be conditioned on the Purchaser (or its Affiliate) having entered into collective bargaining agreements with any unions in respect of any Employees of such Foreign Subsidiary then currently subject to collective bargaining agreements, in each case to be effective as of such consummation, and such agreements shall have been fully ratified by the applicable members in accordance with all applicable requirements.

8.15 Antitrust Filings. In connection with and without limiting Section 8.6, the Parties shall (a) promptly file with the Federal Trade Commission (the “FTC”) and the Antitrust Division of the United States Department of Justice (the “Antitrust Division”) the notification and report form (the “HSR Filing”), if and to the extent required under the HSR Act, (b) promptly provide the information requested by any Governmental Body in connection with this Agreement or any of the transactions contemplated hereby, (c) promptly take, and cause each of their Affiliates to take, all actions and steps reasonably necessary to obtain any clearance, consent, approval or waiver required to be obtained under the Antitrust Laws in connection with this Agreement or any of the transactions contemplated hereby, and (d) duly make all notifications and other filings (together with the HSR Filing, the “Antitrust Filings”), if and to the extent required under the Antitrust Laws that the Parties deem advisable or appropriate, in each case with respect to the transactions contemplated by this Agreement and as promptly as practicable; provided, however, notwithstanding any other provision of this Agreement, (i) the Purchaser shall not be required to agree or offer to agree to divest, dispose of, hold separate or otherwise impair any material assets or any material business to secure any clearance, consent, approval or waiver under any applicable Antitrust Laws, and (ii) no Seller shall agree or offer to agree to any divestiture, disposal of any assets or impairment of any assets or businesses, or enter into any agreement or settlement discussions with the FTC, the Antitrust Division, or any other Governmental Body related to any clearance, consent, approval or waiver under any Antitrust Laws without the prior written consent of Purchaser. The Antitrust Filings shall be in substantial compliance with the requirements of the HSR Act or other Laws, as applicable. The filing fees for the Antitrust Filings shall be borne by Purchaser. During the period from the Execution Date and continuing until the earlier of the termination of this Agreement in accordance with Section 3.4 or the Closing, Purchaser shall reimburse the Sellers for the reasonable out-of-pocket costs and expenses incurred by Sellers and relating to the Antitrust Filings; provided, however, the aggregate amount of reimbursement payments made by Purchaser pursuant to this sentence shall not exceed an amount equal to Three Million Dollars (\$3,000,000); provided, further, Purchaser shall make the reimbursement payments contemplated by this sentence promptly following the delivery (and in no event later than seven (7) days after delivery) to Purchaser of billing statements and invoices (together with appropriate supporting documentation).

8.16 Cooperation Related to Antitrust Filings. Each Party shall, subject to applicable Law and except as prohibited by any applicable representative of any applicable Governmental Body: (a) promptly notify the other Party of any written communication to that Party from the FTC, the Antitrust Division, the attorney general of any state or any other Governmental Body relating to this Agreement and permit the other Party to review in advance any proposed written communication to any of the foregoing; (b) not agree to participate in any substantive meeting or discussion with any Governmental Body in respect of any filings, investigation or inquiry concerning this Agreement unless it consults with the other Party in advance and, to the extent permitted by such Governmental Body, gives the other Party the opportunity to attend and participate in such meeting or discussion; and (c) furnish the other Party with copies of all correspondence, filings, and written communications (and memoranda setting forth the substance thereof) between it and its Affiliates and their respective Representatives, on the one hand, and any Governmental Body or members or their respective staffs, on the other hand, with respect to this Agreement. Each Party shall (y) respond as promptly as practicable under the circumstances to any inquiries received from the FTC, the Antitrust Division or other Governmental Body for additional information or documentation and to all inquiries and requests received from the

attorney general of any state or other Governmental Body in connection with antitrust matters relating to this Agreement, and (z) not extend any waiting period under the HSR Act or other Antitrust Laws or enter into any agreement with the FTC, the Antitrust Division or other Governmental Body not to consummate the transactions contemplated by this Agreement without the prior written consent of the other Party hereto.

#### 8.17 Cooperation Related to Financing.

(a) At all times following entry of the U.S. Sale Order, Sellers shall provide and shall use their commercially reasonable efforts to cause their respective directors, officers, employees, investment bankers, attorneys, accountants and other advisors and Representatives to provide all commercially reasonable cooperation, at Purchaser's expense, as may be reasonably requested by the Purchaser in connection with the arrangement of the financing (the "Financing") which the Purchaser may pursue in connection with the Closing. Such cooperation by Sellers shall include: (i) furnishing the Purchaser and its Representatives and any potential sources of the Financing, as promptly as practicable, all financial statements and other financial data and financial information (including supporting and backup information) of the Purchased Assets reasonably required or requested in connection with the Financing, (ii) furnishing the Purchaser and its Financing sources as promptly as practicable with information relating to the Purchased Assets to the extent reasonably requested by the Purchaser to prepare a customary confidential information memorandum or offering memorandum, as the case may be (the information referred to in clause (i) and (ii) above, together with all such other information required or requested by the Purchaser or its Financing sources, the "Required Information"), (iii) cooperating reasonably with the Financing sources' due diligence, (iv) using commercially reasonable efforts to arrange for customary lien terminations and instruments of discharge to be delivered at Closing providing for the discharge and termination on the Closing Date of all liens discharged and terminated on the Closing Date, (v) at least three (3) days prior to the Closing, providing all documentation and other information about Sellers as is reasonably requested in writing by the Purchaser which relates to applicable "know your customer" and anti-money laundering rules and regulations including the USA PATRIOT ACT, and (vi) otherwise reasonably cooperating in connection with the consummation of the Financing; provided, however, that nothing herein shall require such cooperation to the extent it would interfere unreasonably with the business or operations of the Sellers and its Affiliates or subject such Person to actual liability, to bear any out-of-pocket cost or expense or to pay any commitment or other similar fee or make any other payment or incur any other liability in connection with the Financing or their performance of their respective obligations under this Section 8.17 and any information utilized in connection therewith; provided, further, that no Seller, its Affiliates or its or their respective Representatives shall be required to authorize, execute, deliver or perform under any agreement with respect to the Financing that is not contingent upon the Closing or that would be effective prior to the Closing Date. Sellers hereby consent to the use of their logos in connection with the Financing; provided that such logos are used solely in a manner that is not intended to or reasonably likely to harm or disparage Sellers. The Purchaser agrees, without setoff, to indemnify and hold harmless Sellers, their Affiliates and each of their employees, agents and Representatives from and against any and all Liabilities suffered or incurred by them in connection with the arrangement of the Financing and the performance of their respective obligations under this Section 8.17 or any information utilized in connection therewith, except to the extent such Liabilities, losses, damages, claims, costs and expenses resulted from the bad

faith, gross negligence or willful misconduct of Sellers or any of their Affiliates or Representatives.

(b) The Purchaser shall not, without the written consent of Allied (which shall not be unreasonably withheld, conditioned or delayed), agree to or permit any amendment or modification to be made, or any waiver of any provision or remedy under, or any replacement of, the Commitment Letter if such amendment, modification, waiver or replacement (i) results in the early termination of the Commitment Letter, or (ii) (A) reduces (including by changing the amount of fees to be paid or original issue discount) the aggregate amount of the Financing below One Hundred Million Dollars (\$100,000,000) or (B) imposes new or additional conditions or otherwise expands, amends or modifies any of the conditions to the receipt of the Financing set forth in the Commitment Letter, in each case in a manner that is reasonably expected to (1) prohibit or unreasonably delay or in any material respect impair the likelihood or ability of the Purchaser to consummate the transactions contemplated by this Agreement, (2) prohibit or unreasonably delay or in any material respect impair the funding of the Financing at Closing, or (3) otherwise materially adversely impact the ability of the Purchaser to enforce its rights against the counterparties to the Commitment Letter or the definitive agreements with respect thereto; provided, however, notwithstanding the foregoing, the Purchaser may fund the transactions contemplated by this Agreement with any Financing.

(c) Purchaser shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary to consummate the Financing on the terms and conditions described in the Commitment Letter, including using its commercially reasonable efforts to (i) maintain in effect the Commitment Letter until the earlier of the funding of the Financing at the Closing or the Outside Date, (ii) satisfy on a timely basis (or obtain a waiver of) all conditions applicable to Purchaser to obtaining the Financing at Closing set forth in the Commitment Letter that are within Purchaser's control, (iii) pay all such commitment or other fees that become due and payable under or with respect to the Commitment Letter as they become due and payable, and (iv) negotiate, execute and deliver definitive agreements with respect to the Financing on the terms and conditions contemplated by the Commitment Letter. Purchaser shall promptly notify Allied (1) of any material breach by any party to the Commitment Letter or default or event of default of the definitive agreements with respect thereto, and (2) of the receipt by Purchaser or any of its Affiliates of any written notice or other written communication from any Person with respect to any material breach by any party to the Commitment Letter or any definitive agreement related thereto. Sellers acknowledge that the Commitment Letter is intended to be solely for the benefit of the parties thereto and the indemnified parties referred to therein and may not be relied upon or enforced by any other Person.

## **ARTICLE IX.**

### **CONDITIONS TO CLOSING**

9.1 Conditions Precedent to the Obligations of Sellers. The obligations of Sellers to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or

prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by Allied in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any statute, rule, regulation, or order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(b) the U.S. Bankruptcy Court shall have entered the U.S. Sale Order substantially in the form set forth as Exhibit C hereto, and the Canadian Court shall have entered an order recognizing such order substantially in the form attached as Exhibit D hereto, with any changes thereto reasonably satisfactory to Sellers;

(c) the representations and warranties of the Purchaser set forth in Article V hereof shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct in all material respects as of such date as though made on and as of such date), and Sellers shall have received a certificate signed by an authorized officer of the Purchaser, dated the Closing Date, to the foregoing effect;

(d) the Purchaser shall have performed and complied in all material respects with all obligations and agreements required by this Agreement to be performed or complied with by the Purchaser on or prior to the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of the Purchaser, dated the Closing Date, to the foregoing effect;

(e) the Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 3.3;

(f) the Purchaser shall have delivered to Sellers appropriate evidence of all necessary corporate action by the Purchaser in connection with the transactions contemplated hereby, including: (i) certified copies of resolutions duly adopted by the Purchaser's board of directors or similar governing body approving the transactions contemplated by this Agreement and authorizing the execution, delivery, and performance by the Purchaser of this Agreement; and (ii) a certificate as to the incumbency of officers of the Purchaser executing this Agreement and any instrument or other document delivered in connection with the transactions contemplated by this Agreement; and

(g) all terminations or expirations of waiting periods imposed (and any extension thereof) by a Government Body pursuant to the Antitrust Laws and necessary for consummation of the transactions contemplated by this Agreement (including those under the HSR Act or similar foreign statute or rule) shall have occurred.

9.2 Conditions Precedent to the Obligations of the Purchaser. The obligations of the Purchaser to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or prior to the Closing Date, of each of the following conditions (any or all of which may be waived in writing by the Purchaser in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any statute, rule, regulation, or order enacted, issued, entered or promulgated by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the transactions contemplated hereby;

(b) (i) the U.S. Bankruptcy Court shall have entered the U.S. Sale Order substantially in the form set forth as Exhibit C hereto on or before September 18, 2013, and the Canadian Court shall have made the Canadian Sale Order substantially in the form attached as Exhibit D hereto, provided that any changes thereto that adversely affect the Purchaser shall be satisfactory to the Purchaser in its sole discretion, and (ii) as of the Closing Date, such orders shall be in full force and effect, shall not then be stayed, and shall not have been vacated, reversed, modified or amended without Purchaser's prior written consent;

(c) Sellers shall have delivered to the Purchaser (i) copies of the Sale Orders certified by the clerks of the Bankruptcy Courts, and (ii) copies of all affidavits of service of the Sale Motion or notice of such motion filed by or on behalf of Sellers;

(d) (i) the Sellers' Fundamental Representations shall be true and correct in all material respects as of the Execution Date and as of the Closing Date as though made on and as of the Closing Date (except for such representations and warranties made as of a certain date, which shall be true and correct in all material respects as of such date) and (ii) each of the representations and warranties of Sellers set forth in Article IV (other than the Sellers' Fundamental Representations) shall be true and correct in all respects (disregarding for these purposes any exception in such representation and warranties relating to "materiality," Material Adverse Effect or similar materiality qualifications) as of the Execution Date and the Closing Date as if made at and as of the Closing Date (except to the extent such representations and warranties expressly relate to an earlier date, then as of such earlier date), except for such failures to be true and correct as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect; and the Purchaser shall have received a certificate signed by an authorized officer of Allied, dated the Closing Date, to the foregoing effect;

(e) Sellers shall have performed and complied in all material respects with all obligations, covenants, and agreements required by this Agreement to be performed or complied with by Sellers on or prior to the Closing Date, and the Purchaser shall have received a certificate signed by an authorized officer of Sellers, dated the Closing Date, to the foregoing effect;

(f) Sellers shall have delivered, or caused to be delivered, to the Purchaser all of the items set forth in Section 3.2;

(g) all of the Transferable Permits set forth on Section 9.2(g) of the Seller Disclosure Schedule (the "Required Material Permits") shall have been transferred to the Purchaser, and all of the Required Material Permits shall be in full force and effect as necessary for the Purchaser to continue to conduct the Business in the Ordinary Course of Business immediately after the Closing Date;

(h) between the Execution Date and the Closing Date, there shall not have occurred a Material Adverse Effect;



(i) between the Execution Date and the Closing Date, there shall not be in effect any material labor strike or other work stoppage in the United States that has not been resolved on or prior to the Closing;

(j) the Purchaser's title insurance company shall be prepared to issue to the Purchaser and the Purchaser's lenders a marked title binder or proforma title insurance policy insuring Purchaser's fee simple title to the Owned Real Property included in the Purchased Assets and the Purchaser's lenders' first priority lien on the Owned Real Property included in the Purchased Assets, subject only to the Permitted Encumbrances and such other matters as may be otherwise approved by the Purchaser, in connection with the transfer and mortgaging of such Owned Real Property, together with such endorsements requested by the Purchaser and the Purchaser's lenders and that are available in the State or other applicable jurisdiction where such Owned Real Property is located;

(k) if the relief described in Section 8.13 is not obtained, each Canadian Seller shall have obtained at its own expense and shall have delivered to the Purchaser a certificate pursuant to the *Retail Sales Tax Act* (Ontario), and a certificate under any equivalent provision of an applicable provincial Tax legislation, stating that all Taxes required to be paid by such Canadian Seller under the *Retail Sales Tax Act* (Ontario), or such other applicable provincial Tax legislation, have been paid in full;

(l) Sellers shall have caused, and undertaken all actions necessary, for Sellers' Affiliates and subsidiaries to transfer the Purchased Assets to the Purchaser, including AX International Limited transferring and assigning its equity interest in Arrendadora de Equipo para el Transporte de Automóviles, S.de R.L. de C.V. to Axis Group, Inc. in exchange for the fair market value of such equity interest;

(m) all terminations or expirations of waiting periods imposed (and any extension thereof) by a Government Body pursuant to the Antitrust Laws and necessary for consummation of the transactions contemplated by this Agreement (including those under the HSR Act or similar foreign statute or rule) shall have occurred; and

(n) (i) Sellers shall have provided the notices contemplated by Section 6.3(b) no later than two (2) Business Days after the conclusion of the Sale Hearing, and (ii) Sellers shall have complied with all of their notice and other obligations under the WARN Act and other Applicable Employment Legislation to the extent required by Sections 6.3(a) and (b).

9.3 Frustration of Closing Conditions. Neither Sellers nor the Purchaser may rely on the failure of any condition set forth in Section 9.1 or Section 9.2, as the case may be, if such failure was caused directly by such Party's material breach of any provision of this Agreement.

9.4 Information Officer's Certificate. Provided all the events to be certified therein have occurred, Sellers shall cause the Information Officer to deliver at Closing the Information Officer's Certificate substantially in the form attached to the Canadian Sale Order. Forthwith upon delivery, Sellers shall cause the Information Officer to file the Information Officer's Certificate with the Canadian Court.

## ARTICLE X.

### ADDITIONAL DEFINITIONS

#### 10.1 Certain Definitions. As used herein:

“Accounts Receivable” means: (i) any and all accounts receivable, trade accounts and other amounts receivables (including overdue accounts receivable) owed to any Sellers and any other rights of any Sellers to payment from third parties, including those reflected in the books and records of Sellers, and the full benefit of all security for such accounts or rights to payment, including all trade accounts receivable representing amounts receivable in respect of goods shipped, products sold or services rendered, in each case owing to any Sellers; (ii) all other accounts or notes receivable of any Sellers and the full benefit of all security for such accounts or notes receivable; and (iii) any and all claims, remedies or other rights relating to any of the foregoing, together with any interest or unpaid financing charges accrued thereon, in each case that have not been satisfied or discharged prior to the Closing Date (it being understood that the receipt of a check prior to the Closing Date shall constitute satisfaction or discharge of the applicable account or note receivable to the extent of the payment represented thereby).

“Acquired Customers” means each customer of a Seller that is a party to an Assumed Customer Contract.

“Actions” has the meaning set forth in Section 4.6.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning set forth in the Preamble.

“Allied” has the meaning set forth in the Preamble.

“Allied Borrowers” means Allied and Allied Systems Ltd. (L.P.), a Georgia corporation.

“Allied Canada” means Allied Systems (Canada) Company, a Nova Scotia company.

“Allied Entities” means Sellers and the Foreign Subsidiaries.

“Allocation” has the meaning set forth in Section 11.1(b).

“Alternative Transaction” means (i) a sale or sales of a material portion of the Purchased Assets to one or more third parties other than the Purchaser or any of its Affiliates conducted through the Bankruptcy Cases which is approved by the Bankruptcy Courts or (ii) the filing of a plan of reorganization or liquidation that does not contemplate the sale of the Purchased Assets to the Purchaser in accordance with the terms hereof.



“Antitrust Division” has the meaning set forth in Section 8.15.

“Antitrust Filing” has the meaning set forth in Section 8.15.

“Antitrust Laws” means the HSR Act, the Competition Act and any other applicable Laws that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or significant impediments or lessening of competition or creation or strengthening of a dominant position through merger or acquisition.

“Applicable Employment Legislation” has the meaning set forth in Section 4.15(b).

“Apportioned Obligations” has the meaning set forth in Section 11.3.

“Assigned Contracts” has the meaning set forth in Section 1.1(y).

“Assumed Customer Contracts” has the meaning set forth in Section 1.1(a).

“Assumed Independent Contractor Contracts” has the meaning set forth in Section 1.1(k).

“Assumed Intellectual Property” has the meaning set forth in Section 1.1(s).

“Assumed Intellectual Property Licenses” has the meaning set forth in Section 1.1(s).

“Assumed Liabilities” has the meaning set forth in Section 1.3.

“Assumed Leased Real Property” has the meaning set forth in Section 1.1(j).

“Assumed Personal Property Leases” has the meaning set forth in Section 1.1(h).

“Assumed Plans” has the meaning set forth in Section 1.1(y).

“Assumed Real Property Leases” has the meaning set forth in Section 1.1(j).

“Assumed Vendor Contracts” has the meaning set forth in Section 1.1(e).

“Bankruptcy Cases” has the meaning set forth in the Recitals.

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

“Bankruptcy Courts” has the meaning set forth in the Recitals.

“Bankruptcy Exceptions” has the meaning set forth in Section 4.3.

“Bidding Procedures Order” means the Order (A) Approving Bid Procedures, (B) Approving Cure Procedures, (C) Establishing Date for Auction and Approving Related Procedures, (D) Scheduling Sale Hearing and Related Deadlines, (E) Approving Form and Manner of Notices, and (F) Granting Related Relief, entered by the U.S. Bankruptcy Court on June 21, 2013 [Docket No. 1320].

“Bid Procedures” has the meaning set forth in the Bidding Procedures Order

“Business” means the business of providing vehicle transportation, distribution, logistics, inspections, yard management, tracking, accessorizing, dealer preparation and other support services to the automotive industry.

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

“Canadian Collective Bargaining Agreements” means all collective bargaining agreements, together with all supplements, riders and ancillary documents thereto, to which Allied Canada is a party as of the Execution Date, whether or not such agreement has expired by its terms as of the Execution Date or the Closing Date, as set forth in Section 4.15(d) of the Seller Disclosure Schedule, and all bargaining rights thereunder.

“Canadian Court” has the meaning set forth in the Recitals.

“Canadian MEPP Plans” means the Seller Plans known as the Canadian Auto Carriers & Logistics Pension Plan, the Teamsters Canadian Pension Plan and the Prairie Teamsters Pension Plan.

“Canadian Sale Order” has the meaning set forth in the definition of Sale Orders in this Section 10.1.

“Canadian Sellers” means Allied Systems (Canada) Company and Axis Canada Company.

“Canada Transportation Act” means the Canada Transportation Act, S.C. 1996, c.10 as amended, and the regulations thereunder.

“Cash and Cash Equivalents” means all of Sellers’ cash (including petty cash and checks received prior to the close of business on the Closing Date), checking account balances, marketable securities, certificates of deposits, time deposits, bankers’ acceptances, commercial paper and government securities and other cash equivalents, whether on hand, in transit or in banks or other financial institutions, securities accounts, brokerage accounts, commodity contracts and commodity accounts.

“CCAA” has the meaning set forth in the Recitals.

“CCAA Case” has the meaning set forth in the Recitals.

“Certified Working Capital” has the meaning set forth in Section 2.2(b).

“Chapter 11 Case” has the meaning set forth in the Recitals.

“Closing” has the meaning set forth in Section 3.1.

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

**“COBRA”** means Part 6 of Subtitle B of Title I, Section 4980B of the Code and any similar state Law.

**“COBRA Beneficiaries”** has the meaning set forth in Section 6.7.

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

**“Commitment Letter”** has the meaning set forth in Section 5.7.

**“Competition Act”** means the *Competition Act* R.S.C. 1895 C. C.34 (Canada), as amended, and the regulations thereunder.

**“Contract”** means any written or oral contract, purchase order, service order, sales order, indenture, note, bond, lease, license, commitment or instrument or other agreement, arrangement or commitment that is legally binding upon a Person or its property.

**“Cure Costs”** means the amounts necessary to cure all defaults, if any, and to pay all actual pecuniary losses, if any, that have resulted from such defaults, under the Assigned Contracts, in each case as of the Closing Date and to the extent required by Section 365 of the Bankruptcy Code or Section 11.3 of the CCAA and any order of the Bankruptcy Courts.

**“Current Assets”** means the following Purchased Assets: (a) Accounts Receivable as of the Closing Date, (b) Inventory as of the Closing Date, and (c) credits, prepaid expenses, advance payments, deposits and retainers related to the Assigned Contracts as of the Closing Date, in each case determined in accordance with GAAP.

**“Current Liabilities”** means the following Assumed Liabilities: (a) amounts owed to third parties arising in the Ordinary Course of Business after the Petition Date (and arising on or prior to the Closing Date), which are not past due more than thirty (30) days as of the Closing Date, and which are entitled to priority status under Section 503(b) of the Bankruptcy Code or under the CCAA, (b) all accrued but unpaid base salary or wages due to any Employees (excluding all other types of compensation, health, welfare and pension benefits and bonuses, severance and incentive compensation) and all accrued but unpaid vacation and paid time off due to any Employees as of the Closing Date, (c) all cargo claims arising after the Petition Date under Sellers’ customer Contracts and accrued as of the Closing Date, and (d) amounts owed pursuant to the Retention Incentive Agreements as of the Closing Date, in each case determined in accordance with GAAP.

**“Debtors”** has the meaning given in the DIP Credit Agreement.

**“Designated Purchaser”** has the meaning set forth in Section 12.8(b).

**“DIP Agent”** means Black Diamond Commercial Finance, L.L.C. in its capacity as Administrative Agent under the DIP Credit Agreement, or any successor thereto or replacement thereof.

**“DIP Credit Agreement”** means that certain Super Priority Debtor in Possession Credit and Guaranty Agreement, dated as of June 19, 2013, by and among the Allied Borrowers, as

borrowers, the other Debtors, as guarantors, the DIP Agent named therein and the lenders, from time to time, thereunder, as amended, modified, supplemented, restated or replaced from time to time.

**“Documents”** means all of Sellers’ written files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies and documents, ledgers, journals, title policies, customer lists, regulatory filings, operating data and plans, research material, technical documentation (design specifications, engineering information, test results, maintenance schedules, functional requirements, operating instructions, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar materials, in each case whether or not in electronic form.

**“Employee”** means an individual who, as of the applicable date, is employed by any Seller in connection with the Business (including those who may be on a leave of absence or on layoff as of the Closing Date).

**“Employee Benefit Plan”** means (i) all “employee benefit plans” (as defined in Section 3(3) of ERISA), including all employee benefit plans which are “pension plans” (as defined in Section 3(2) of ERISA, determined without regard to whether such plan is either subject to ERISA or is tax-qualified under the Code) and any other written employee benefit plan, program, policy or arrangements or payroll practices (including severance pay, vacation pay, company awards, salary continuation for disability, sick leave, death benefit, hospitalization, welfare benefit, group or individual health, dental, medical, life, insurance, survivor benefit, deferred compensation, profit sharing, pension, retirement, retiree medical, retiree life, supplemental retirement, bonus, commission or other incentive compensation, stock purchase, stock option, stock appreciation rights, restricted stock and phantom stock arrangements or policies) and (ii) all written employment, termination, bonus, severance, change in control or other similar Contracts.

**“Employment Loss”** means (i) an employment termination, other than a discharge for cause, voluntary departure or retirement, (ii) a layoff exceeding six (6) months, (iii) a reduction in hours of work of more than fifty percent (50%) in each month of any six (6) month period or (iv) or any similar employment action that (when aggregated with any other employment action) could trigger the notice requirements of the WARN Act or Applicable Employment Legislation.

**“Employment Offering Purchaser Entity”** means the Purchaser or a Designated Purchaser, as applicable, who offers employment to an Employee as of and after the Closing Date.

**“Encumbrance”** means any lien (statutory or otherwise), encumbrance, claim (as defined in Section 101(5) of the Bankruptcy Code or Section 2(1) of the CCAA), Indebtedness, obligation, right, demand, charge, right of setoff, mortgage, deed of trust, pledge, security interest, preference, option, lease, license, right of first refusal or similar interests, title defects, hypothecations, easements, rights of way, restrictive covenants, encroachments, judgments, conditional sales or other title retention agreements and other impositions, imperfections or

defects of title or restrictions on transfer or use of any nature whatsoever, or any other interest (as used in any applicable section of the Bankruptcy Code or the CCAA, including Section 363(f)) (including (i) any conditional sale or other title retention agreement and any lease having substantially the same effect as any of the foregoing, (ii) any assignment or deposit arrangement in the nature of a security devise, and (iii) any claim based on any theory that the Purchaser is a successor or continuation of Sellers or the Business), in each case whether secured or unsecured, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, contingent or liquidated, material or non-material, known or unknown.

**“Environmental Laws”** means all Laws relating to pollution or protection of natural resources or the environment, or the generation, use, treatment, storage, handling, transportation or Release of, or exposure to, Hazardous Materials, including the Federal Water Pollution Control Act (33 U.S.C. §1251 *et seq.*), Resource Conservation and Recovery Act (42 U.S.C. §6901 *et seq.*), Safe Drinking Water Act (42 U.S.C. §3000(f) *et seq.*), Toxic Substances Control Act (15 U.S.C. §2601 *et seq.*), Clean Air Act (42 U.S.C. §7401 *et seq.*), Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9601 *et seq.*) and other similar U.S. or Canadian federal, state, provincial and local statutes.

**“Equipment”** means all equipment, machinery, vehicles, trucks, tractors, trailers, lowboys, rigs, rolling stock, storage tanks, furniture, fixtures and other tangible personal property of every kind and description and improvements and tooling, including any such items used, or held for use, in connection with the operation of the Business, and owned by any Sellers, wherever located, including equipment used to haul cargo for customers, communications equipment, the IT Assets, and any attached and associated hardware, routers, devices, panels, cables, manuals, cords, connectors, cards, and vendor documents, and including all warranties of the vendor applicable thereto, but excluding software and any other intangibles associated therewith except to the extent embedded in such Equipment and required to operate it. The Equipment shall include any personal property that is subject to a capital lease or finance lease.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended, and all Laws issued thereunder.

**“ERISA Affiliate”** means any entity (other than a Seller) which is a member of (A) a controlled group of corporations (as defined in Section 414(b) of the Code), (B) a group of trades or businesses under common control (as defined in Section 414(c) of the Code), (C) an affiliated service group (as defined under Section 414(m) of the Code) or (D) any group specified in regulations under Section 414(o) of the Code, any of which includes any Sellers.

**“ERISA Affiliate Plan”** means each Employee Benefit Plan sponsored or maintained or required to be sponsored or maintained by any ERISA Affiliate, or to which such ERISA Affiliate makes, or has an obligation to make, contributions, or with respect to which such ERISA Affiliate has any liability or obligation.

**“Escrow Holder”** means Richards, Layton and Finger, P.A.

**“Excluded Assets”** has the meaning set forth in Section 1.2.

**“Excluded Avoidance Claims”** has the meaning set forth in Section 1.2(e).

“Excluded Intercompany Indebtedness” has the meaning set forth in Section 1.2(r).

“Excluded Liabilities” has the meaning set forth in Section 1.4.

“Excluded Lowboys” means fifty (50) lowboys designated by the Requisite Lenders (as such term is defined in the Bidding Procedures Order), in their sole discretion, at any time after the Execution Date and prior to the Closing Date.

“Excluded Owned Real Property” has the meaning set forth in Section 1.2(n).

“Excluded Plans” has the meaning set forth in Section 1.2(i).

“Execution Date” has the meaning set forth in the Recitals.

“Exempt Trust” has the meaning set forth in Section 4.16(c).

“Final Working Capital” has the meaning set forth in Section 2.2(a).

“Final Working Capital Statement” has the meaning set forth in Section 2.2(a).

“Financing” has the meaning set forth in Section 8.17.

“FMLA” means the United States Family and Medical Leave Act, as amended.

“Ford” has the meaning set forth in Section 8.2(c).

“Foreign Subsidiaries” means the Persons set forth on Section 10.1(i) of the Seller Disclosure Schedule.

“Foreign Subsidiary Financial Statements” means, with respect to each Foreign Subsidiary, (a) the unaudited financial statements of such Foreign Subsidiary for the 12-month periods ended December 31, 2010, December 31, 2011 and December 31, 2012, including the balance sheet as of such date and the related statements of income for such periods and (b) the unaudited balance sheets of such Foreign Subsidiary, on a consolidated basis, as of May 31, 2013 and the related statements of income for the five-month period then ended.

“Foreign Subsidiary Stock” has the meaning set forth in Section 1.1(u).

“FTC” has the meaning set forth in Section 8.15.

“GAAP” means United States generally accepted accounting principles as in effect from time to time, consistently applied.

“Good Faith Deposit” has the meaning set forth in Section 2.3(a).

“Good Faith Deposit Escrow Account” has the meaning set forth in Section 2.3(a).

“Governmental Body” means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether

foreign, federal, state, provincial or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator (public or private) of applicable jurisdiction.

**"Hazardous Materials"** means petroleum and all derivatives thereof or synthetic substitutes therefore, asbestos and asbestos containing materials, and any and all materials defined, listed, designated or classified as, or otherwise determined to be, "hazardous wastes," "hazardous substances," "radioactive," "solid wastes," or "toxic" (or words of similar meaning) under or pursuant to or otherwise listed or regulated pursuant to any Environmental Law, including hazardous substances under Health Canada's Workplace Materials Information System (WHMIS) and any equivalent legislation of other applicable jurisdictions.

**"HSR Act"** means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

**"HSR Filing"** has the meaning set forth in Section 8.15.

**"Income Taxes"** shall mean all Taxes based upon, measured by, or calculated with respect to gross or net income or gross or net receipts or profits.

**"Income Tax Returns"** shall mean Tax Returns with respect to Income Taxes.

**"Indebtedness"** of any Person means, without duplication: (i) the interest in respect of, principal of and premium (if any) in respect of (x) indebtedness of such Person for money borrowed and (y) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person for the deferred purchase price of property or services; (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker's acceptance or similar credit transaction; (v) all obligations of the type referred to in clauses (i) through (iv) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; or (vi) all obligations of the type referred to in clauses (i) through (v) of other Persons secured by any Encumbrance (other than Permitted Encumbrances), on any property, asset, interest or right of such Person (whether or not such obligation is assumed by such Person).

**"Independent Accounting Firm"** means any of the nationally recognized "big four" accounting firms, as mutually agreed by the Purchaser and Allied.

**"Information Officer"** means Duff & Phelps Canada Restructuring Inc., in its capacity as information officer.

**"Information Officer's Certificate"** means a certificate of the Information Officer certifying the closing of the transactions among the Canadian Sellers and the Purchaser contemplated pursuant to this Agreement and substantially in the form attached to the Canadian Sale Order.

**“Intellectual Property”** means all intellectual property and proprietary rights of any kind, including the following: (i) trademarks, service marks, trade names, slogans, logos, trade dress, internet domain names, uniform resource identifiers, rights in design, brand names, and other similar designations of source or origin, together with all goodwill, registrations and applications related to the foregoing; (ii) patents, utility models and industrial design registrations (and all continuations, divisionals, continuations in part, provisionals, renewals, reissues, re-examinations and applications for any of the foregoing); (iii) copyrights and copyrightable subject matter (including any registration and applications for any of the foregoing); (iv) trade secrets and other confidential or proprietary business information (including manufacturing and production processes and techniques, research and development information, technology, drawings, specifications, designs, plans, proposals, technical data, financial, marketing and business data, pricing and cost information, business and marketing plans, customer and supplier lists and information), know how, proprietary processes, formulae, algorithms, models, and methodologies; (v) computer software, computer programs, and databases (whether in source code, object code or other form); and (vi) all rights to sue for past, present and future infringement, misappropriation, dilution or other violation of any of the foregoing and all remedies at law or equity associated therewith.

**“Insurance Policies”** has the meaning set forth in Section 4.18.

**“Inventory”** means all of Sellers’ inventories of raw materials, supplies (including office supplies), works in process, goods (including finished goods), spare parts and replacement and component parts and fuel that are used, or held for use, in connection with the operation of the Business.

**“Investment Canada Act”** means the *Investment Canada Act* (Canada), as amended, and the regulations thereunder.

**“IT Assets”** means all of Sellers’ computers, computer software and databases (including source code, object code and all related documentation), firmware, middleware, servers, workstations, routers, hubs, switches, data communications lines, and all other information technology equipment and elements, and all associated documentation that are used, or held for use, in connection with the operation of the Business, in each case to the extent in the physical possession of any Seller.

**“KEIP”** means any “Key Employee Incentive Plan” authorized or approved by the U.S. Bankruptcy Court, including in connection with the Sellers’ Motion for an Order Pursuant to Sections 105(a), 363(b)(1) and 503(c)(3) of the Bankruptcy Code Authorizing (I) Implementation of Key Employee Incentive Plan for Certain Insiders and (II) Payment of any Obligations Arising Thereunder as Administrative Expenses, filed with the U.S. Bankruptcy Court on July 1, 2013 [Docket No. 1369].

**“Knowledge”** An individual shall be deemed to have “Knowledge” of a particular fact or other matter if such individual is, or with reasonable diligence within the scope of reasonable fulfillment of such individual’s duties, would be, aware of such fact or other matter. Sellers shall be deemed to have “Knowledge” of a particular fact or other matter if any of the following



individuals has Knowledge of such fact or other matter: Mark Gendregske, John Jansen, Robert Ferrell, John Blount, Devora Mitchell, Scott Macaulay or Julie Sieja.

**"Laws"** means all federal, state, provincial, local or foreign laws, statutes, common law, rules, codes, regulations, restrictions, ordinances, orders, decrees, approvals, directives, judgments, rulings, injunctions, writs and awards of, or issued, promulgated, enforced or entered by, any and all Governmental Bodies, or court of competent jurisdiction, or other requirement or rule of law.

**"Leased Real Property"** means all of the real property leased, subleased, licensed, used or occupied by any Sellers (other than the Owned Real Property), together with (i) all buildings, structures, fixtures, streets, roads, and improvements located, placed, constructed, installed or erected on or under such real property, and (ii) any and all rights of way, privileges, servitudes, tenements, easements, licenses, hereditaments, appurtenances, and other rights and interests appurtenant thereto, and used, or held for use, in connection with the operation of the Business.

**"Liability"** means, as to any Person, any claim (as defined in Section 101(5) of the Bankruptcy Code or Section 2(1) of the CCAA), debt, adverse claim, liability, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution or premium of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed, including all costs and expenses relating thereto.

**"Licensed Intellectual Property"** means any Intellectual Property that is licensed to any Sellers and used, or held for use, in connection with the operation of the Business.

**"Management Retention Incentive Agreements"** means those certain Retention Incentive Agreements, by and between Allied Systems, Yucaipa American Alliance Fund I, L.P. and Yucaipa American Alliance (Parallel) Fund I, L.P., and each of John Bates (dated January 5, 2012), John Blount (dated December 31, 2011), Dane Campbell (dated January 5, 2012), Jorge Lopez Colome (dated January 5, 2012), Cade Daniel (dated December 31, 2011), Jonathan Davis (dated December 31, 2011), Robert Ferrell (dated December 31, 2011), Mark J. Gendregske (dated December 31, 2011), Robert Hutchison (dated December 31, 2011), John Jensen (dated December 31, 2011), Scott Macaulay (dated December 31, 2011), Dan Marx (dated December 31, 2011), Roger Panella (dated December 31, 2011), Keith Rentzel (dated December 31, 2011), and Julie Sieja (dated December 31, 2011).

**"Material Adverse Effect"** means any event, circumstance, change, occurrence or state of facts that has had, or could reasonably be expected to have, a material adverse effect on the (i) assets, Liabilities, Business, operations, properties, condition (financial or otherwise) or results of operations of the Business, taken as a whole, or (ii) the ability of Sellers to consummate the transactions contemplated by this Agreement or perform their obligations under this Agreement, except, in each case, for any such effect resulting from any of the following: (A) changes in conditions in the U.S., Canadian, Mexican or global economy or capital or financial markets generally, including changes in interest or exchange rates, except to the extent that such changes

disproportionately affect Sellers relative to other Persons in the industry in which Sellers are engaged, (B) changes in the industry in which Sellers are engaged, except to the extent such changes disproportionately affect Sellers relative to other Persons in such industry, (C) changes since the Execution Date in any applicable Law, (D) the announcement or pendency of this Agreement or the transactions contemplated hereby, including effects on relationships, contractual or otherwise, with customers, suppliers, vendors or employees, (E) any action taken by the Purchaser or any of its Affiliates or the omission of an action that was required to be taken by the Purchaser or any of its Affiliates pursuant to this Agreement or the transactions contemplated hereby, (F) any actions taken or omitted by any Seller or any of its Affiliates that was required to be so taken or omitted, respectively, by any Seller or any of its Affiliates pursuant to this Agreement or at the request or with the prior written consent of the Purchaser, (G) any changes after the Execution Date and caused by or resulting from the Purchaser's discussions with the Sellers' customers (including Ford), vendors or suppliers (including any such discussions relating to the terms of Contracts between the Sellers and any such customers, vendors or suppliers), or (H) the provisions of the Sellers' existing Contract(s) with Ford and/or any decision by the Purchaser not to purchase and acquire such Ford Contract(s). Notwithstanding any other provision of this Agreement, it shall constitute a Material Adverse Effect if, at the Closing, Sellers shall cease to own tractors, trailers, rigs, lowboys, and other titled motor vehicles representing an aggregate net orderly liquidation value equal to or greater than ninety percent (90%) of such value as determined by (1) the appraisal performed by Accuval and dated April 11, 2012, plus (2) the purchase price of any such vehicle currently owned by Sellers and acquired by Sellers after the date of such appraisal and prior to the Execution Date and minus (3) the value as set forth in such appraisal of any such vehicle owned by Sellers as of the date of such appraisal and disposed of prior to the Execution Date; provided, that, for the purposes of determining if a Material Adverse Effect has occurred, (a) the value of any vehicle owned by Sellers on the date of such appraisal and still owned by Sellers on the Closing Date shall equal the value identified for such vehicle in such appraisal and the value of any vehicle acquired by Sellers after the date of such appraisal shall equal the purchase price paid for such vehicle, and (b) the Excluded Lowboys shall be disregarded.

"Material Contracts" has the meaning set forth in Section 4.8.

"Mutual Release" means a mutual (general) release of claims between the Purchaser and its Affiliates, officers, directors and shareholders, on the one hand, and Sellers and their respective Affiliates, officers, directors and shareholders, on the other hand, including a mutual dismissal with prejudice with respect to the Pending Litigation, but excluding any post-Closing obligations of the Parties set forth in this Agreement, in form and substance reasonably satisfactory to the Parties.

"Net Working Capital" means Current Assets minus Current Liabilities, in each case determined in accordance with GAAP.

"Non-Assumed Contracts" means all Contracts with respect to which any Seller is a party and that do not constitute Assigned Contracts.

"Non-Transferable Permits" has the meaning set forth in Section 1.1(I).

“Ordinary Course of Business” means the ordinary and usual course of normal day to day operations of the Business consistent with past practice.

“Outside Date” has the meaning set forth in Section 3.4(b).

“Owned Intellectual Property” means all Intellectual Property owned by any Sellers, including any such Intellectual Property used, or held for use, in connection with the operation of the Business.

“Owned Real Property” means the parcels of real property which a Seller owns, together with (i) all fixtures, buildings, improvements, structures, streets, and roads located, placed, constructed or installed on or under such real property, including all fixtures therein and thereon, and (ii) all easements, rights of way, servitudes, tenements, hereditaments, appurtenances, privileges, and other rights and interests appurtenant thereto owned by or granted to any Seller.

“Owner Operators” means drivers employed by any Seller (other than in Western Canada, where such drivers are independent contractors) who use their own tractor and/or trailer and are paid a percentage of their generated revenue by Sellers.

“Party” and “Parties” has the meaning set forth in the Preamble.

“Pending Litigation” means the lawsuit filed by Allied on or about October 26, 2009 in the Superior Court of Cobb County, Georgia, Civil Action Number CV-09-1-10536-48, naming the Purchaser and certain of the Purchaser’s Affiliates as defendants, as amended, and including all claims and counterclaims asserted therein.

“Pending Yucaipa Litigation” means the adversary proceeding filed by the Official Committee of Unsecured Creditors on or about March 14, 2013 in the U.S. Bankruptcy Court (Adv. Proc. No. 13-50530), naming Yucaipa and certain individuals as defendants, as amended, and including all claims asserted therein.

“Permits” means all notifications, licenses, permits (including environmental, construction and operation permits), franchises, certificates, approvals, consents, waivers, clearances, exemptions, classifications, registrations, variances, orders, tariffs, rate schedules and other similar documents and authorizations issued by any Governmental Body to any Seller and used, or held for use, in connection with the operation of the Business or applicable to ownership of the Purchased Assets or assumption of the Assumed Liabilities.

“Permitted Encumbrances” means (i) current real property taxes not yet due and payable, (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary encumbrances or non-monetary impediments against any of the Purchased Assets which do not, individually or in the aggregate, adversely affect in any material respect the operation of the Business as currently conducted and, in the case of the Owned Real Property and the Assumed Leased Real Property, which do not, individually or in the aggregate, adversely affect in any material respect the use or occupancy of such Owned Real Property or Assumed Leased Real Property as it relates to the operation of the Business as currently conducted or materially detract from the value of the Owned Real Property or the Assumed Leased Real Property, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions

imposed by Law, and (iv) such other Encumbrances or title exceptions as the Purchaser may approve in writing in its sole discretion.

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

“Personal Property Leases” means each lease and sublease of personal property to which any Seller is a party.

“Petition Date” means the dates on which Sellers commenced the Chapter 11 Case and the CCAA Case.

“Post-Closing Tax Period” has the meaning set forth in Section 11.3.

“Pre-Closing Tax Period” means: (i) any Tax Period ending on or before the Closing Date, and (ii) with respect to a Tax Period that commences before but ends after the Closing Date, the portion of such period up to and including the Closing Date.

“Property Taxes” means all real property Taxes (relating solely to the Owned Real Property) with respect to the Purchased Assets for any Tax Period.

“Purchase Price” has the meaning set forth in Section 2.1(a).

“Purchased Assets” has the meaning set forth in Section 1.1.

“Purchased Cash” means Cash and Cash Equivalents in the aggregate amount of Two Million Dollars (\$2,000,000) held by the U.S. Sellers.

“Purchased Cash Deficiency” has the meaning set forth in Section 2.2(b)(i).

“Purchased Names” has the meaning set forth in Section 1.1(i).

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Benefit Plan” means any Employee Benefit Plan to which the Purchaser, the applicable Designated Purchaser or any of the foregoing’s ERISA Affiliates is a party, with respect to which the Purchaser, the applicable Designated Purchaser or any of the foregoing’s ERISA Affiliates has any Liability or obligation or which are maintained by the Purchaser, the applicable Designated Purchaser or any of the foregoing’s ERISA Affiliates and/or to which the Purchaser, the applicable Designated Purchaser or any of the foregoing’s ERISA Affiliates contributes or is obligated to contribute with respect to current or former directors, officers, consultants, and employees or independent contractors of the Purchaser or the applicable Designated Purchaser.

“Purchaser Disclosure Schedule” has the meaning set forth in Article V.

“Purchaser Group Health Plan” has the meaning set forth in Section 6.7.

**“Purchaser Notes”** means Ten Million Dollars (\$10,000,000) in principal amount of senior secured notes issued by the Purchaser to Sellers which are substantially identical in all material respects to (and pari passu with) those issued under that certain Indenture governing the Purchaser’s 9.25% Senior Secured Notes Due 2020.

**“Purchaser’s Documents”** has the meaning set forth in Section 5.2.

**“Qualified Plan”** has the meaning set forth in Section 4.16(c).

**“Real Property”** means the Owned Real Property and the Leased Real Property.

**“Registered IP”** has the meaning set forth in Section 4.7(a).

**“Regulatory Approvals”** means any consents, waivers, approvals, orders, Permits or authorizations of any Governmental Body required in connection with the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereunder, including any required consents, waivers, approvals, orders, Permits or authorizations under the Antitrust Laws, the Investment Canada Act or the Canada Transportation Act.

**“Release”** means, with respect to any Hazardous Material, any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing or migrating into or through any surface or ground water, drinking water supply, soil, surface or subsurface strata or medium, or the ambient air.

**“Representatives”** means a Person’s officers, employees, counsel, accountants, investment bankers, lenders (and such lenders’ counsel), potential lenders (and such potential lenders’ counsel) and other authorized representatives, agents and contractors.

**“Required Information”** has the meaning set forth in Section 8.17.

**“Required Material Permits”** has the meaning set forth in Section 9.2(g).

**“Retention Incentive Agreements”** means that certain Retention Plan set forth as Exhibit A to the U.S. Bankruptcy Court’s Order Granting Debtors’ Motion Pursuant to 11 U.S.C. §§ 363(b)(1) and 503(c)(3) Seeking an Order Authorizing the Debtors to Implement Key Employee Retention Plan, entered on September 28, 2012 [Docket No. 482], the Notices of Participation described therein, and any agreements and rights related thereto.

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

**“Sale Orders”** means the orders of the U.S. Bankruptcy Court (the **“U.S. Sale Order”**) and the Canadian Court (the **“Canadian Sale Order”**), in the forms attached hereto as Exhibit C and Exhibit D, respectively, with such changes as are reasonably acceptable to Sellers, and with such changes that adversely affect the Purchaser as are acceptable to the Purchaser in its sole discretion.

**“Seller”** and **“Sellers”** has the meaning set forth in the Preamble.

“Seller Disclosure Schedule” has the meaning set forth in Article IV.

“Seller Intellectual Property” means any Intellectual Property that is owned by or licensed to any Allied Entity, and used, or held for use, in connection with the operation of the Business.

“Seller Plan” means any Employee Benefit Plan to which any Allied Entity is a party, with respect to which any Seller has any material Liability or obligation or which is maintained by any Seller and/or to which any Allied Entity contributes or is obligated to contribute with respect to current or former directors, officers, consultants, employees or independent contractors of any Allied Entity.

“Sellers’ Documents” has the meaning set forth in Section 4.3.

“Sellers’ Fundamental Representations” means Sections 4.2(c), 4.11, 4.19, and 4.22.

“Sellers Group Health Plan” has the meaning set forth in Section 6.7.

“Target Working Capital Amount” means an amount equal to negative One Million Dollars ((\$1,000,000)).

“Tax” and “Taxes” mean any and all taxes, charges, fees, tariffs, duties, impositions, levies or other assessments, imposed by any Governmental Body, and include any interest, penalties or additional amounts attributable to, or imposed upon, or with respect to, Taxes.

“Tax Period” means any period prescribed by any Governmental Body for which a Tax Return is required to be filed or a Tax is required to be paid.

“Tax Records” means any Tax Returns, workpapers, or other Documents relating to Taxes.

“Tax Return” means any return, report, information return, declaration, claim for refund or other document (including any schedule or related or supporting information) supplied or required to be supplied to any Governmental Body with respect to Taxes, including amendments thereto.

“Top Customers” has the meaning set forth in Section 4.20.

“Top Suppliers” has the meaning set forth in Section 4.20.

“Transferable Insurance Rights” has the meaning set forth in Section 1.1(p).

“Transferable Permits” has the meaning set forth in Section 1.1(l).

“Transferred Employee” has the meaning set forth in Section 6.1.

“Transfer Taxes” has the meaning set forth in Section 11.1(a).

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

**“U.S. Sale Order”** has the meaning set forth in the definition of Sale Orders in this **Section 10.1**.

**“U.S. Sellers”** means any Seller that is organized under the Laws of a state or territory located in the United States.

**“WARN Act”** means the United States Worker Adjustment and Retraining Notification Act, as amended, and the rules and regulations promulgated thereunder.

**“Wholly-Owned Subsidiaries”** means any Person all of the equity interests in which are held as of the Closing directly or indirectly by the Purchaser.

**“Working Capital Shortfall Amount”** has the meaning set forth in **Section 2.2(b)**.

**“Yucaipa”** means Yucaipa American Alliance Fund I, L.P., Yucaipa American Alliance (Parallel) Fund I, L.P., Yucaipa American Alliance Fund II, L.P., Yucaipa American Alliance (Parallel) Fund II, L.P., and each of their respective Affiliates and partners.

## **ARTICLE XI.**

### **TAXES**

#### **11.1 Additional Tax Matters.**

(a) Any sales, use, excise, consumption, purchase, transfer, franchise, deed, fixed asset, stamp, documentary, or other similar Taxes (**“Transfer Taxes”**) which may be payable by reason of the sale of the Purchased Assets or the assumption of the Assumed Liabilities under this Agreement or the transactions contemplated herein shall be borne and timely paid by the Purchaser; provided, however, notwithstanding any other provision of this Agreement, the Purchaser shall not assume or have any obligation to pay any income, capital gains or other Taxes of Sellers (other than Transfer Taxes) arising as a result of the consummation of the transactions contemplated by this Agreement (and any such income, capital gains or other Taxes (other than Transfer Taxes) shall remain the sole obligation of Sellers). The Purchaser shall indemnify, defend (with counsel reasonably satisfactory to the other Party), protect, and save Sellers from and against any and all claims, charges, interest or penalties assessed, imposed or asserted in relation to any such Transfer Taxes that the Purchaser is obligated to bear and pay pursuant to the preceding sentence of this **Section 11.1(a)**. The Purchaser shall prepare or cause to be prepared and timely file or cause to be timely filed all Tax Returns required to be filed in respect of the Transfer Taxes required to be borne and paid pursuant to this **Section 11.1(a)**.

(b) The Purchaser shall, within the later of (i) ninety (90) days after the Closing Date, or (ii) forty-five (45) days prior to the date by which Allied’s federal Income Tax Returns for the year in which the transactions contemplated hereunder are consummated must be filed, prepare and deliver to Allied for its consent (which consent shall not be unreasonably withheld, delayed or conditioned) a schedule allocating the Purchase Price (and any other items that are required for federal Income Tax to be treated as Purchase Price) among the Purchased Assets and the applicable jurisdictions (such schedule, the **“Allocation”**). If Allied raises any



objection to the Allocation within twenty (20) days of the receipt thereof, the Purchaser and Allied will negotiate in good faith to resolve such objection(s). The Purchaser and Sellers shall report and file all Tax Returns (including amended Tax Returns and claims for refund) consistent with the Allocation as finally agreed upon, and shall take no position contrary thereto or inconsistent therewith (including in any audits or examinations by any Governmental Body or any other proceeding). In the event that any part of the Allocation is disputed by any Governmental Body, the Party receiving notice of such dispute shall use reasonable efforts to notify the other Party, and the Purchaser and Sellers shall cooperate in good faith in responding to such challenge to preserve the effectiveness of such Allocation, each at its own cost and expense. The Purchaser and Sellers shall cooperate in the filing of any forms (including Form 8594 under Section 1060 of the Code) with respect to such Allocation, including any amendments to such forms required pursuant to this Agreement with respect to any adjustment to the Purchase Price. If and to the extent the Parties are unable to agree on such Allocation, the Parties shall retain an Independent Accounting Firm to resolve such dispute (the cost of which to be borne equally by the Purchaser and Allied). Notwithstanding any other provision of this Agreement, the terms and provisions of this Section 11.1(b) shall survive the Closing without limitation.

#### 11.2 Canadian Tax Elections.

(a) To the extent applicable, each Canadian Seller will jointly execute with the Purchaser or the applicable designated Affiliate of Purchaser acquiring Purchased Assets from such Canadian Seller in the prescribed form, and Purchaser or such Affiliate will duly file within the required time, an election under Section 167(1) of the *Excise Tax Act* (Canada) to the effect that no Tax will be payable pursuant to the *Excise Tax Act* (Canada) with respect to the purchase and sale of the Purchased Assets hereunder.

(b) To the extent applicable, each Canadian Seller will jointly execute with Purchaser or such Affiliate in the prescribed form and the Canadian Sellers will duly file within the required time, an election to have the rules in Section 22 of the *Income Tax Act* (Canada), and any equivalent or corresponding provision under applicable provincial or territorial Tax legislation, apply in respect of Accounts Receivable transferred hereunder.

11.3 Owned Real Property Tax Proration. All Property Taxes for a Tax Period which includes (but does not end on) the Closing Date (collectively, the "Apportioned Obligations") shall be apportioned between Sellers, on one hand, and the Purchaser, on the other hand, based on the number of days of such Tax Period including in the Pre-Closing Tax Period and the number of such days of such Tax Period after the Closing Date (with respect to any such Tax Period, the "Post-Closing Tax Period"). Sellers shall be liable for the proportionate amount of such Property Taxes that is attributable to the Pre-Closing Tax Period, and the Purchaser shall be liable for the proportionate amount of such Property Taxes that is attributable to the Post-Closing Tax Period. If the Closing Date occurs before the tax rate is fixed for the then-current fiscal or calendar year, whichever is applicable, the proportionate amount attributable to the Pre-Closing Tax Period and the Post-Closing Tax Period shall be determined on the basis of the tax rate for the last preceding year applied to the latest assessed valuation. Each Seller's estimated accrued liability (to the Closing) for its proportionate amount of such Property Taxes that is attributable to the Pre-Closing Tax Period that are due and payable after the Closing, to the extent



practicable, shall be made as a credit against the amount payable at the Closing by the Purchaser, and all prepayment by any Seller in respect of the Purchaser's proportionate amount of such Property Taxes that is attributable to the Post-Closing Tax Period shall be made as debit to (and shall therefore increase) the amount payable at the Closing by the Purchaser.

## ARTICLE XII.

### MISCELLANEOUS

12.1 Payment of Expenses. Except as otherwise provided in Section 8.15, Sellers and the Purchaser shall bear their own expenses incurred or to be incurred in connection with the negotiation and execution of this Agreement and each other agreement, document and instrument contemplated by this Agreement and the consummation of the transactions contemplated hereby and thereby.

12.2 Survival of Representations and Warranties; Survival of Confidentiality. The Parties hereto agree that the representations and warranties contained in this Agreement shall expire upon the Closing Date. The Parties hereto agree that the covenants contained in this Agreement to be performed after the Closing shall survive in accordance with the terms of the particular covenant.

12.3 Entire Agreement; Amendments and Waivers. This Agreement (including the schedules and Exhibits hereto), the Sellers' Documents, the Purchaser's Documents, the Seller Disclosure Schedule and the Purchaser Disclosure Schedule represent the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement may be amended, supplemented or changed, and any provision hereof may be waived, only by written instrument making specific reference to this Agreement signed by the Party against whom enforcement of any such amendment, supplement, modification or waiver is sought. No action taken pursuant to this Agreement, including any investigation by or on behalf of any Party shall be deemed to constitute a waiver by the Party taking such action of compliance with any representation, warranty, covenant or agreement contained herein. The waiver by any Party hereto of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. Except as expressly provided in this Agreement, all remedies hereunder are cumulative and are not exclusive of any other remedies provided by applicable Law. Notwithstanding the foregoing or anything else to the contrary in this Agreement (including Section 12.10), the Parties hereby acknowledge and agree that: (i) in the event the Sellers breach this Agreement, then (whether or not the Purchaser terminates this Agreement pursuant to Section 3.4(j)) the Purchaser's sole and exclusive remedy (in addition to Purchaser's right to terminate this Agreement under Section 3.4(j)), whether at law or in equity, shall be the assertion of claims for damages by the Purchaser in an aggregate amount not to exceed Nine Million Five Hundred Thousand Dollars (\$9,500,000); and (ii) in the event the

Purchaser breaches this Agreement, (A) if this Agreement is terminated by Sellers pursuant to Sections 3.4(i) or (l), then Sellers' sole and exclusive remedy, whether at law or in equity, shall be (a) the retention of the Good Faith Deposit (with any accrued interest actually earned thereon) and (b) at the Purchaser's option, delivery to Sellers of either (1) the Purchaser Notes or (2) Ten Million Dollars (\$10,000,000) in cash in lieu of issuing the Purchaser Notes, and (B) if Sellers do not terminate this Agreement pursuant to Sections 3.4(i) or (l), then Sellers' sole and exclusive remedy, whether at law or in equity, shall be the assertion of claims for damages by Sellers in an aggregate amount not to exceed the amount of the Good Faith Deposit and such claims shall only be paid out of the funds constituting the Good Faith Deposit. In the event that the Purchaser issues and delivers the Purchaser Notes pursuant to the preceding sentence, Sellers shall enter into an agreement granting the Purchaser the right to purchase or have a third party purchase the Purchaser Notes at any time following their issuance for an amount in cash equal to the Purchaser Notes' face value plus accrued but unpaid interest.

12.4 Counterparts. For the convenience of the parties hereto, this Agreement may be executed (by facsimile or PDF signature) in any number of counterparts, each such counterpart being deemed to be an original instrument, and all such counterparts shall together constitute the same agreement.

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

12.6 Jurisdiction, Waiver of Jury Trial.

(a) THE BANKRUPTCY COURT WILL HAVE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY; PROVIDED, HOWEVER, THAT IF THE BANKRUPTCY COURT IS UNWILLING OR UNABLE TO HEAR ANY SUCH DISPUTE, THE COURTS OF THE STATE OF DELAWARE AND THE FEDERAL COURTS OF THE UNITED STATES OF AMERICA LOCATED IN THE DISTRICT OF DELAWARE WILL HAVE SOLE JURISDICTION OVER ANY AND ALL DISPUTES BETWEEN OR AMONG THE PARTIES, WHETHER IN LAW OR EQUITY, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY AGREEMENT CONTEMPLATED HEREBY. NOTWITHSTANDING THE FOREGOING, EACH OF THE PARTIES HERETO AGREES THAT IT WILL NOT BRING OR SUPPORT ANY ACTION, CAUSE OF ACTION, CLAIM, CROSS-CLAIM OR THIRD-PARTY CLAIM OF ANY KIND OR DESCRIPTION, WHETHER IN LAW OR IN EQUITY, WHETHER IN CONTRACT OR IN TORT OR OTHERWISE, AGAINST ANY FINANCING SOURCE IN ANY WAY RELATING TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY DISPUTE ARISING OUT OF OR RELATING IN ANY WAY TO ANY FINANCIAL COMMITMENT OBTAINED BY THE PURCHASER IN CONNECTION WITH THE FINANCING OR THE PERFORMANCE THEREOF, IN ANY

FORUM OTHER THAN THE SUPREME COURT OF THE STATE OF NEW YORK, COUNTY OF NEW YORK, OR, IF UNDER APPLICABLE LAW EXCLUSIVE JURISDICTION IS VESTED IN THE FEDERAL COURTS, THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF NEW YORK (AND APPELLATE COURTS THEREOF).

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

12.7 Notices. Unless otherwise set forth herein, any notice, request, instruction or other document to be given hereunder by any Party to the other Parties shall be in writing and shall be deemed duly given (i) upon delivery, when delivered personally, (ii) one (1) Business Day after being sent by overnight courier or when sent by facsimile transmission (with a confirming copy sent by overnight courier), and (iii) three (3) Business Days after being sent by registered or certified mail, postage prepaid, as follows:

If to Sellers:

Allied Systems Holdings, Inc.  
2302 Parklake Drive  
Building 15, Suite 600  
Atlanta GA 30345  
Attention: General Counsel  
Email: john.blount@alliedholdings.com

With a mandatory copy to (which copy shall not constitute notice):

Troutman Sanders LLP  
600 Peachtree Street, N.E., Suite 5200  
Atlanta, GA 30308  
Attention: Stephen E. Lewis and Jeffrey W. Kelley  
Email: stephen.lewis@troutmansanders.com;  
jeffrey.kelley@troutmansanders.com

If to the Purchaser:

Jack Cooper Holdings Corp.  
1100 Walnut Street, Suite 2400  
Kansas City, MO 64106  
Attention: Chief Executive Officer  
Email: bgriffin@jackcooper.com

and

Jack Cooper Holdings Corp.  
630 Kennesaw Due West Rd

Kennesaw, GA 30152  
Attention: Theo A. Ciupitu  
Email: tciupitu@jackcooper.com

With a mandatory copy to (which copy shall not constitute notice):

King & Spalding LLP  
1180 Peachtree Street  
Atlanta, GA 30309  
Attention: Jesse H. Austin, III and Paul Ferdinands  
Email: jaustin@kslaw.com; pferdinands@kslaw.com

or to such other Persons or addresses as may be designated in writing by the Party to receive such notice.

**12.8 Binding Effect; Assignment.**

(a) This Agreement shall inure to the benefit of the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Chapter 11 Case or any successor Chapter 7 case. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement; provided that the provisions of Section 2.3(b)(iii)(2), Section 12.6, and Section 12.10 shall be enforceable by each Financing source and its successors and assigns. No assignment of this Agreement or of any rights or obligations hereunder may be made by Sellers or the Purchaser (by operation of law or otherwise) without the prior written consent of the other Parties hereto and any attempted assignment without the required consents shall be void, except for designations by the Purchaser to a Designated Purchaser in accordance with Section 12.8(b); provided, however, that Purchaser may collaterally assign its rights under the Agreement to any of its current or future lenders or financing sources or any of their agents. The obligation of Sellers to transfer the Purchased Assets located in the United States and the Purchaser's obligation to purchase the Purchased Assets and assume the Assumed Liabilities located in the United States shall not be binding upon the Parties unless and until the U.S. Sale Order is entered. The obligation of Sellers to transfer the Purchased Assets located in Canada and the Purchaser's obligation to purchase the Purchased Assets and assume the Assumed Liabilities located in Canada shall not be binding upon the Parties unless and until the Canadian Sale Order is entered.

(b) In connection with the Closing, notwithstanding anything to the contrary contained in this Agreement, the Purchaser shall be entitled to designate, in accordance with the terms of this paragraph, one or more Wholly-Owned Subsidiaries or Affiliates to (i) purchase and acquire specified Purchased Assets (including specified Assigned Contracts), (ii) assume specified Assumed Liabilities and/or (iii) employ specified Transferred Employees on and after the Closing Date (any such Wholly-Owned Subsidiary or Affiliate of the Purchaser that shall be properly designated in accordance with this clause, a "Designated Purchaser"). Upon any such designation of a Designated Purchaser, such Designated Purchaser shall be solely responsible with respect to the payment of the specified Assumed Liabilities and employment of the specified Transferred Employees; provided, however, it being understood and agreed that any

such designation shall relieve the Purchaser of its responsibility for payment of such specified Assumed Liabilities and employment of such specified Transferred Employees. Any reference to the Purchaser made in this Agreement in respect of any purchase, assumption or employment referred to in this paragraph and in any representation, warranty or covenant contained in this Agreement, as applicable, shall be deemed a reference to the appropriate Designated Purchaser, if any, with respect to the given obligation, representation, warranty or covenant. All obligations of each Designated Purchaser with respect to the Assumed Liabilities assumed by such Designated Purchaser shall be several and not joint and, notwithstanding anything to the contrary contained in this Agreement, no Designated Purchaser shall have any obligation for any Assumed Liabilities assumed by any other Designated Purchaser in accordance with this paragraph. The above designations shall be made by the Purchaser by way of a written notice to be delivered to the Sellers in no event later than the Business Day prior to Closing and include a signed counterpart to this Agreement in a form reasonably acceptable to the Sellers, agreeing to be bound by the terms of this Agreement as it relates to such Designated Purchaser and authorizing the Purchaser to act as such Designated Purchaser(s)' agent for all purposes hereunder. In addition, the Parties agree to modify any Closing deliverables in accordance with the foregoing assignment(s). Notwithstanding any designation by Purchaser of one or more Designated Purchasers, Purchaser shall be responsible for payment of the Purchase Price.

12.9 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of Law or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in a manner adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in an acceptable manner to the end that the transactions contemplated hereby are fulfilled to the fullest extent possible.

12.10 Injunctive Relief. The Parties agree that, except as otherwise expressly provided in this Agreement, damages at law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement by the other Parties and, accordingly, except as otherwise expressly provided in this Agreement, each Party shall be entitled to injunctive relief with respect to any breach by any other Party, including specific performance of such covenants, promises or agreements or an order enjoining such Party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement by such Party. Except as provided in Section 2.3(b)(iii)(2) and the last sentence of Section 12.3, the rights set forth in this Section 12.10 shall be in addition to any other rights which the Parties may have at law or in equity pursuant to this Agreement. For the avoidance of doubt, in the event that Section 2.3(b)(iii)(2) becomes operative, such liquidated damages paid in accordance with such provision shall be the sole and exclusive remedy of the Sellers to the extent set forth therein.

12.11 Non-Recourse. Except as expressly contemplated by this Agreement, no past, present or future director, officer, employee, incorporator, member, partner or equity holder of Sellers or the Purchaser shall have any liability for any obligations or liabilities of Sellers or the Purchaser under this Agreement or the Sellers' Documents or the Purchaser's Documents of or

for any claim based on, in respect of, or by reason of, the transactions contemplated hereby and thereby.

12.12 Time of the Essence. Time is of the essence in the performance of each of the obligations of the Parties and with respect to all covenants and conditions to be satisfied by the Parties in this Agreement and all documents, acknowledgments and instruments delivered in connection herewith.

12.13 Allied as Representative of Sellers. By executing this Agreement, each Seller agrees that Allied shall serve as its representative and duly authorized agent for all purposes relating to this Agreement, including: (i) providing any consents or acknowledgements required under this Agreement; (ii) receiving and delivering any notices provided for under this Agreement; and (iii) taking any other actions required by Sellers under this Agreement. Each Seller agrees that any action taken by Allied in accordance with clauses (i) through (iii) shall be valid, binding and enforceable against such Seller.

12.14 Certain Interpretations.

(a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation shall apply:

(i) All references in this Agreement to Articles, Sections, Schedules and Exhibits shall be deemed to refer to Articles, Sections, Schedules and Exhibits to this Agreement.

(ii) All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(iii) The Article, Section and paragraph captions herein are for convenience of reference only, do not constitute part of this Agreement and shall not be deemed to limit or otherwise affect any of the provisions hereof.

(iv) The words "include," "includes" and "including," when used herein shall be deemed in each case to be followed by the words "without limitation" (regardless of whether such words or similar words actually appear).

(v) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is not a Business Day, the period in question shall end on the next succeeding Business Day.

(vi) Any reference in this Agreement to \$ shall mean U.S. dollars.

(vii) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(viii) The words such as “herein,” “hereinafter,” “hereof,” and “hereunder” refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(b) The Parties hereto agree that they have been represented by legal counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any Law, regulation, holding or rule of construction providing that ambiguities in an agreement or other document shall be construed against the Party drafting such agreement or document.

(c) The Purchaser acknowledges and agrees hereby that Sellers shall not be required to comply with the provisions of any bulk transfer laws of any jurisdiction in connection with the transactions contemplated by this Agreement.

*[Remainder of page intentionally left blank]*

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

**PURCHASER:**

**JACK COOPER HOLDINGS CORP.**

By: \_\_\_\_\_

Name: T. Michael Riggs

Title: Chairman



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

**SELLERS:**

**ALLIED SYSTEMS HOLDINGS, INC.**

By: 

Name: John Blount

Title: Chief Administrative Officer, General Counsel,  
Senior Vice President and Secretary

**ALLIED SYSTEMS, LTD. (L.P.)**

By: Allied Automotive Group, Inc.,  
its Managing General Partner

By: 

Name: John Blount

Title: Senior Vice President and Secretary

**ALLIED AUTOMOTIVE GROUP, INC.**

**ALLIED FREIGHT BROKER LLC**

**AXIS GROUP, INC.**

**COMMERCIAL CARRIERS, INC.**

**CORDIN TRANSPORT LLC**

**CT SERVICES, INC.**

**F.J. BOUTELL DRIVEAWAY LLC**

**GACS INCORPORATED**

**QAT, INC.**

**RMX LLC**

**TERMINAL SERVICES LLC**

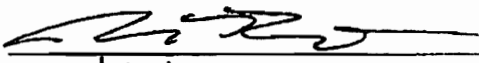
**TRANSPORT SUPPORT LLC**

By: 

Name: John Blount


Title: Senior Vice President and Secretary

**ALLIED SYSTEMS (CANADA) COMPANY  
AXIS CANADA COMPANY**

By:   
Name: John Blount  
Title: Vice President and Secretary

**AXIS ARETA, LLC  
LOGISTIC SYSTEMS, LLC  
LOGISTIC TECHNOLOGY, LLC**

By: AX International Limited,  
its Sole Member and Manager

By:   
Name: John Blount  
Title: Director and Vice President

## EXHIBIT A

### FORM OF BILL OF SALE

**THIS BILL OF SALE** dated as of \_\_\_\_\_, 2013 by Allied Systems Holdings, Inc., a Delaware corporation ("Allied"), and the subsidiaries of Allied set forth on the signature pages hereto (collectively with Allied, the "Sellers" and each, a "Seller"), in favor of Jack Cooper Holdings Corp., a Delaware corporation (the "Purchaser").

**WHEREAS**, the parties hereto have entered into an Asset Purchase Agreement dated as of [\_\_\_\_], 2013 (the "Purchase Agreement") providing for, among other things, the purchase by, and transfer to, the Purchaser of certain assets of Sellers, and the parties now desire to carry out such purchase and transfer by Sellers' execution and delivery to the Purchaser of this instrument evidencing the vesting in the Purchaser of all of the assets and rights of Sellers hereinafter described. Capitalized terms used but not defined herein have the meanings given them in the Purchase Agreement.

**NOW, THEREFORE**, in consideration of the premises and of other valuable consideration to Sellers in hand paid by the Purchaser, at or before the execution and delivery hereof, the receipt and sufficiency of which by Sellers are hereby acknowledged, subject to the terms and conditions set forth in the Purchase Agreement, Sellers hereby convey, grant, bargain, sell, transfer, set over, assign, remise, release, deliver and confirm unto the Purchaser, its successors and assigns forever, effective as of 12:01 a.m. EDT on the date hereof (the "Effective Time"), all of Sellers' right, title and interest in and to the Purchased Assets, free and clear of all Encumbrances and Liabilities (other than Permitted Encumbrances and Assumed Liabilities).

Sellers hereby covenant that, from time to time after the delivery of this instrument, at the Purchaser's request and without further consideration, Sellers will do, execute, acknowledge, and deliver, or will cause to be done, executed, acknowledged and delivered, all and every such further acts, deeds, conveyances, transfers, assignments, powers of attorney and assurances as reasonably may be required to more effectively convey, transfer to and vest in the Purchaser, and to put the Purchaser in possession of, any of the Purchased Assets.

The Purchaser acknowledges that Sellers make no representation or warranty with respect to the Purchased Assets being conveyed hereby except as specifically set forth in the Purchase Agreement.

Nothing in this instrument, express or implied, is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than the Purchaser and its successors and assigns, any remedy or claim under or by reason of this instrument or any terms, covenants or condition hereof, and all of the terms, covenants and conditions, promises and agreements in this instrument contained shall be for the sole and exclusive benefit of the Purchaser and its successors and assigns.

This instrument is executed by, and shall be binding upon, each Seller and its successors and assigns for the uses and purposes referred to and set forth above, effective as of the Effective Time.

This instrument shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Delaware, without regard to its conflict of law principle provisions.

This instrument is executed and delivered under and pursuant to the Purchase Agreement. Notwithstanding any other provision of this Agreement, nothing contained herein shall in any way supersede, modify, replace, amend, change, rescind, waive or otherwise affect any of the provisions of the Purchase Agreement, including, without limitation, the representations, warranties, covenants and agreements of any of the parties thereto. To the extent this Bill of Sale is inconsistent with any terms or conditions of the Purchase Agreement, the terms and conditions of the Purchase Agreement shall control.

This instrument may be executed in counterpart signature pages, all of which when so executed and attached hereto shall constitute one and the same original.

**IN WITNESS WHEREOF**, Sellers have executed this Bill of Sale or caused this Bill of Sale to be executed on their behalf by a duly authorized officer of each Seller as of \_\_\_\_\_, 2013.

**SELLERS:**

ALLIED SYSTEMS HOLDINGS, INC.

By: \_\_\_\_\_

Name:

Title:

ALLIED SYSTEMS, LTD. (L.P.)

By: Allied Automotive Group, Inc.,  
its Managing General Partner

By: \_\_\_\_\_

Name:

Title:

ALLIED AUTOMOTIVE GROUP, INC.  
ALLIED FREIGHT BROKER LLC  
AXIS GROUP, INC.  
COMMERCIAL CARRIERS, INC.  
CORDIN TRANSPORT LLC  
CT SERVICES, INC.  
F.J. BOUTELL DRIVEAWAY LLC  
GACS INCORPORATED  
QAT, INC.  
RMX LLC  
TERMINAL SERVICES LLC  
TRANSPORT SUPPORT LLC

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

ALLIED SYSTEMS (CANADA) COMPANY  
AXIS CANADA COMPANY

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

AXIS ARETA, LLC  
LOGISTIC SYSTEMS, LLC  
LOGISTIC TECHNOLOGY, LLC

By: AX International Limited,  
its Sole Member and Manager

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

## **EXHIBIT B**

### **FORM OF ASSIGNMENT AND ASSUMPTION AGREEMENT**

This ASSIGNMENT AND ASSUMPTION AGREEMENT (the "Agreement") is entered into as of \_\_\_\_\_, 2013 by and among Allied Systems Holdings, Inc., a Delaware corporation ("Allied"), and the subsidiaries of Allied set forth on the signature pages hereto (collectively with Allied, the "Assignors") and Jack Cooper Holdings Corp., a Delaware corporation (the "Assignee").

#### **WITNESSETH:**

WHEREAS, Assignors and Assignee entered into that certain Asset Purchase Agreement dated as of [\_\_\_\_], 2013 (the "Purchase Agreement" capitalized terms used but not otherwise defined herein have the meanings given them in the Purchase Agreement); and

WHEREAS, pursuant to the Purchase Agreement, Assignors have agreed to assign certain rights and agreements to Assignee, and Assignee has agreed to assume certain obligations of Assignors, as set forth herein and therein.

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

1. Effective as of 12:01 a.m. EDT on the date hereof (the "Effective Time"), subject to the terms of the Purchase Agreement, Assignors hereby sell, transfer and assign (collectively, the "Assignment") to Assignee, and Assignee hereby assumes and agrees to pay, perform and discharge, as and when due, the Assigned Contracts and all obligations constituting the Assumed Liabilities, as defined in and in accordance with Section 1.3 of the Purchase Agreement.

2. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

3. This Agreement shall be governed by, interpreted under, and construed and enforceable in accordance with, the laws of the State of Delaware, without regard to its conflict of law principle provisions.

4. This Agreement is executed and delivered under and pursuant to the Purchase Agreement. Notwithstanding any other provision of this Agreement, nothing contained herein shall in any way supersede, modify, replace, amend, change, rescind, waive or otherwise affect any of the provisions of the Purchase Agreement, including, without limitation, the representations, warranties, covenants and agreements of any of the parties thereto. To the extent this Agreement is inconsistent with any terms or conditions in the Purchase Agreement, the Purchase Agreement shall control.

5. This Agreement may be executed in counterpart signature pages, all of which when so executed and attached hereto shall constitute one and the same original.

IN WITNESS WHEREOF, the parties hereto have executed this Assignment and Assumption Agreement as of the date first set forth above.

**ASSIGNORS:**

ALLIED SYSTEMS HOLDINGS, INC.

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

ALLIED SYSTEMS, LTD. (L.P.)

By: Allied Automotive Group, Inc.,  
its Managing General Partner

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

ALLIED AUTOMOTIVE GROUP, INC.  
ALLIED FREIGHT BROKER LLC  
AXIS GROUP, INC.  
COMMERCIAL CARRIERS, INC.  
CORDIN TRANSPORT LLC  
CT SERVICES, INC.  
F.J. BOUTELL DRIVEAWAY LLC  
GACS INCORPORATED  
QAT, INC.  
RMX LLC  
TERMINAL SERVICES LLC  
TRANSPORT SUPPORT LLC

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

ALLIED SYSTEMS (CANADA) COMPANY  
AXIS CANADA COMPANY

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

AXIS ARETA, LLC  
LOGISTIC SYSTEMS, LLC  
LOGISTIC TECHNOLOGY, LLC

By: AX International Limited,  
its Sole Member and Manager

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

**ASSIGNEE:**

JACK COOPER HOLDINGS CORP.

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