

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

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

**DEBTORS' APPLICATION FOR ENTRY OF AN ORDER
APPOINTING KURTZMAN CARSON CONSULTANTS, LLC DBA VERITA GLOBAL
AS CLAIMS AND NOTICING AGENT,
EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE**

The above-captioned debtors and debtors in possession (the "Debtors" and, together with their non-Debtor affiliates, "Fulcrum") respectfully state the following in support of this application (this "Application"):

BACKGROUND

1. On September 9, 2024 (the "Petition Date"), the Debtors commenced these cases by filing voluntary petitions for relief under chapter 11 of title 11 of the Bankruptcy Code. The Debtors are authorized to continue managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have requested that their cases be consolidated for procedural purposes only and administered jointly. No trustee, examiner, or official committee has been appointed in these chapter 11 cases.

2. The Debtors were formed in 2007 to develop and implement a commercially viable

¹ The debtors and debtors in possession in these chapter 11 cases, along with each debtor's federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors' service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed at: <https://www.veritaglobal.net/Fulcrum>.



“waste to fuel” process whereby trash is converted into usable fuel through the utilization of gasification and other technologies. The Debtors’ Sierra BioFuels Plant (the “Sierra Plant”) located approximately twenty miles east of Reno, Nevada, began successfully producing low carbon synthetic crude oil from landfill waste in December 2022.

3. Despite the Debtors’ successful proof of concept at the Sierra Plant and substantial progress with ongoing research and development, the Debtors have faced significant liquidity issues in the last few years and were forced to cease operations at the Sierra Plant in May 2024. The Debtors have determined that a comprehensive financial restructuring, through chapter 11 bankruptcy is the only path forward to realize value on the Debtors assets for the benefit of its stakeholders.

4. Additional details regarding the Debtors and the circumstances that led to the filing of these chapter 11 cases and the facts and circumstances supporting the relief requested herein is set forth in the *Declaration of Mark Smith, Restructuring Advisor to Fulcrum, BioEnergy, Inc. in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) filed simultaneously herewith and incorporated herein by reference.²

JURISDICTION, VENUE, AND AUTHORITY

5. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* of the United States District Court for the District of Delaware, dated as of February 29, 2012.

6. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and the Debtors consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the First Day Declaration.

the United States Bankruptcy Court for the District of Delaware (the “Local Rules”), to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

7. Venue is proper pursuant to 28 U.S.C. §§ 408 and 1409.

8. The bases for the relief requested herein are sections 105(a) and 366 of the Bankruptcy Code and Rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”).

RELIEF REQUESTED

9. The Debtors request entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Proposed Order”), appointing Kurtzman Carson Consultants, LLC dba Verita Global (“Verita”) as the claims and noticing agent (the “Claims and Noticing Agent”) in these chapter 11 cases, including assuming full responsibility for the distribution of notices and the maintenance, processing, and docketing of proofs of claim filed in these chapter 11 cases, effective *nunc pro tunc* to the Petition Date. In further support of this Application, the Debtors submit the *Declaration of Evan Gershbein in Support of Debtors’ Application for Entry of an Order Appointing Kurtzman Carson Consultants, LLC dba Verita Global as Claims and Noticing Agent, Effective Nunc Pro Tunc to the Petition Date* (the “Gershbein Declaration”), attached hereto as **Exhibit B**

VERITA’S APPOINTMENT

10. The Debtors’ selection of Verita to act as the Claims and Noticing Agent has satisfied the Court’s Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. § 156(c) (the “Claims Agent Protocol”), in that the Debtors have obtained and reviewed

engagement proposals from at least two other court-approved claims and noticing agents to ensure selection through a competitive process. Moreover, the Debtors submit that, based on all engagement proposals obtained and reviewed, Verita's rates are competitive and reasonable given Verita's quality of services and expertise. The terms of Verita's retention are set forth in the Engagement Agreement attached hereto as **Exhibit C** (the "Engagement Agreement"); provided, however, that the Debtors are seeking approval solely of the terms and provisions as set forth in this Application and the Proposed Order attached hereto.

11. Although the Debtors have not yet filed their schedules of assets and liabilities, they anticipate that there will be 700 entities to be noticed. Local Rule 2002-1(f) provides that "[i]n all cases with more than 200 creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file [a] motion on the first day of the case or within seven (7) days thereafter." In view of the number of anticipated claimants and the complexity of the Debtors' businesses, the Debtors submit that the appointment of a claims and noticing agent is required by Local Rule 2002-1(f) and is otherwise in the best interests of both the Debtors' estates and their creditors.

12. By separate application, the Debtors will seek authorization to retain and employ Verita as administrative advisor in these chapter 11 cases pursuant to section 327(a) of the Bankruptcy Code because the administration of these chapter 11 cases will require Verita to perform duties outside the scope of 28 U.S.C. § 156(c).

VERITA'S QUALIFICATION

13. Verita is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Verita's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other

administrative aspects of chapter 11 cases and experience in matters of this size and complexity. Verita's has acted as official claims and noticing agent in many large bankruptcy cases in this District and in other districts nationwide. Verita's active and former cases include: *In re Supply Source Enters., Inc., et al.*, Case No. 24-11054 (BLS) (Bankr. D. Del. Jun. 13, 2024); *In re ProSomnus, Inc., et al.*, Case No. 24-10972 (JTD) (Bankr. D. Del. May 9, 2024); *In re Sticky's Holding LLC, et al.*, Case No. 24-10856 (JKS) (Bankr. D. Del. Apr. 26, 2024); *In re SC Healthcare Holding, LLC, et al.*, Case No. 24-10443 (TMH) (Bankr. D. Del. Mar. 22, 2024); *In re Cano Health, Inc.*, No. 24-10164 (KBO) (Bankr. D. Del. Feb. 6, 2024) [D.I. 79]; *In re InVivo Therapeutics Corp.*, No. 24-10137 (MFW) (Bankr. D. Del. Feb. 6, 2024) [D.I. 29]; *In re AN Glob., LLC*, No. 23-11294 (JKS) (Bankr. D. Del. Aug. 29, 2023) [D.I. 58]; *In re Proterra Inc.*, No. 23-11120 (BLS) (Bankr. D. Del. Aug. 10, 2023) [D.I. 61]; *In re Novan, Inc.*, No. 23-10937 (LSS) (Bankr. D. Del. July 19, 2023) [D.I. 35]; *In re Lordstown Motors Corp.*, No. 23-10831 (MFW) (Bankr. D. Del. June 28, 2023) [D.I. 54]; *In re KDC Agribusiness LLC*, No. 23-10786 (CTG) (Bankr. D. Del. June 21, 2023) [D.I. 54]; *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. June 6, 2023) [D.I. 56]; *In re Plastiq Inc.*, No. 23-10671 (BLS) (Bankr. D. Del. May 25, 2023) [D.I. 35]; *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 9, 2023) [D.I. 76]; *In re Catalina Mktg. Corp.*, No. 23-10620 (KBO) (Bankr. D. Del. Mar. 31, 2023) [D.I. 42]; *CBCRC Liquidating Corp.*, No. 23-10245 (KBO) (Bankr. D. Del. Mar. 3, 2023) [D.I. 171]; *In re Starry Grp. Holdings, Inc.*, No. 23-10219 (KBO) (Bankr. D. Del. Feb. 22, 2023) [D.I. 61]; *In re Stanadyne LLC*, No. 23-10207 (TMH) (Bankr. D. Del. Feb. 22, 2023) [D.I. 54]; *In re Tricida*, No. 23-10024 (JTD) (Bankr. D. Del. Jan. 13, 2023) [D.I. 42]; *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) [D.I. 67]; and *In re First Guar. Mortg. Corp.*, No. 22-10584 (CTG) (Bankr. D. Del. Jul. 1, 2022) [D.I. 58].

14. By appointing Verita as the Claims and Noticing Agent in these chapter 11 cases, the distribution of notices and the processing of claims will be expedited, and the Office of the Clerk of the Bankruptcy Court (the “Clerk”) will be relieved of the administrative burden of processing what may be an overwhelming number of claims.

SERVICES TO BE PROVIDED

15. This Application pertains only to the work to be performed by Verita under the Clerk’s delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002-1(f). Any work to be performed by Verita outside of this scope is not covered by this Application or by any order granting approval hereof. Specifically, Verita will perform the following tasks in its role as Claims and Noticing Agent, as well as all quality control relating thereto (collectively, the “Claims and Noticing Services”):

- (a) Prepare and serve required notices and documents in the chapter 11 cases in accordance with the Bankruptcy Code, the Bankruptcy Rules, and Local Rules in the form and manner directed by the Debtors and/or the Court, including (i) notice of the commencement of the chapter 11 cases and the initial meeting of creditors under section 341(a) of the Bankruptcy Code, (ii) notice of any claims bar date, (iii) notices of transfers of claims, (iv) notices of objections to claims and objections to transfers of claims, (v) notices of any hearings on a disclosure statement and confirmation of the Debtors’ plan or plans of reorganization, including under Bankruptcy Rule 3017(d), (vi) notice of the effective date of any plan, and (vii) all other notices, orders, pleadings, publications, and other documents as the Debtors or Court may deem necessary or appropriate for an orderly administration of the chapter 11 cases;
- (b) Maintain an official copy of, if applicable, the Debtors’ schedules of assets and liabilities and statements of financial affairs (collectively, the “Schedules”), listing the Debtors’ known creditors and the amounts owed thereto;
- (c) Maintain (i) a list of all potential creditors, equity holders, and other parties in interest and (ii) a “core” mailing list consisting of all parties described in Bankruptcy Rules 2002(i), (j), and (k) and those parties that have filed a notice of appearance pursuant to Bankruptcy Rule 9010; update and make said lists available upon request by a party in interest or the Clerk;

- (d) Furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify said potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules, which may be effected by inclusion of such information (or the lack thereof, in cases where the Schedules indicate no debt due to the subject party) on a customized proof of claim form provided to potential creditors;
- (e) Maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received;
- (f) For *all* notices, motions, orders, or other pleadings or documents served, prepare and file (or cause to be filed) with the Clerk an affidavit or certificate of service within seven business days of service, which includes (i) either a copy of the notice served or the docket number(s) and title(s) of the pleading(s) served, (ii) a list of persons to whom it was mailed (in alphabetical order) with their addresses, (iii) the manner of service, and (iv) the date served;
- (g) Process all proofs of claim received, including those received by the Clerk, check said processing for accuracy, and maintain the original proofs of claim in a secure area;
- (h) Maintain the official claims register for each Debtor (collectively, the “Claims Registers”) on behalf of the Clerk; upon the Clerk’s request, provide the Clerk with certified, duplicate unofficial Claims Registers; and specify in the Claims Registers the following information for each claim docketed: (i) the claim number assigned; (ii) the date received; (iii) the name and address of the claimant and agent, if applicable, who filed the claim; (iv) the amount asserted; (v) the asserted classification(s) of the claim (*e.g.*, secured, unsecured, priority, *etc.*); (vi) the applicable Debtor against whom the claim was asserted; and (vii) any disposition of the claim;
- (i) Implement necessary security measures to ensure the completeness and integrity of the Claims Registers and the safekeeping of the original claims;
- (j) Record all transfers of claims and provide any notices of such transfers as required by Bankruptcy Rule 3001(e);
- (k) Relocate, by messenger or overnight delivery, all of the court-filed proofs of claim to the offices of Verita, not less than weekly;
- (l) Upon completion of the docketing process for all claims received to date for each Chapter 11 Case, turn over to the Clerk copies of the Claims Registers for the Clerk’s review (upon the Clerk’s request);
- (m) Monitor the Court’s docket for all notices of appearance, address changes, and claims-related pleadings and orders filed and make necessary notations

on and/or changes to the Claims Register and any service or mailing lists, including to identify and eliminate duplicative names and addresses from such lists;

- (n) Assist in the dissemination of information to the public and respond to requests for administrative information regarding the chapter 11 cases as directed by the Debtors or the Court, including through the use of a case website and/or call center;
- (o) If the chapter 11 cases are converted to cases under chapter 7 of the Bankruptcy Code, contact the Clerk's office within three days of notice to Verita of entry of the order converting the cases;
- (p) 30 days prior to the close of the chapter 11 cases, to the extent practicable, request that the Debtors submit to the Court a proposed order dismissing Verita as Claims and Noticing Agent and terminating its services in such capacity upon completion of its duties and responsibilities and upon the closing of the chapter 11 cases;
- (q) Within seven days of notice to Verita of entry of an order closing the chapter 11 cases, provide to the Court the final version of the Claims Registers as of the date immediately before the close of the chapter 11 cases; and
- (r) At the close of the chapter 11 cases, within twenty-eight days of entry of a final decree, (i) forward to the Clerk an electronic version of all imaged claims; (ii) upload the creditor matrix mailing list to the Court's case management/electronic case filing platform (CM/ECF); and (iii) file a final Claims Register in the chapter 11 cases on the Court's Docket.

16. The Claims Registers shall be open to the public for examination without charge during regular business hours and on a case-specific website maintained by Verita.

PROFESSIONAL COMPENSATION

17. The Debtors respectfully request that the undisputed fees and expenses incurred by Verita in the performance of the above services be treated as administrative expenses of the Debtors' estates pursuant to 28 U.S.C. § 156(c) and section 503(b)(1)(A) of the Bankruptcy Code and be paid in the ordinary course of business without further application to or order of the Court. Verita agrees to maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and to serve monthly invoices on the Debtors, the Office of the U.S. Trustee

for the District of Delaware (the “U.S. Trustee”), proposed counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors, and any party-in-interest who specifically requests service of the monthly invoices. If any dispute arises relating to the Engagement Agreement or monthly invoices, the parties shall meet and confer in an attempt to resolve the dispute; if resolution is not achieved, the parties may seek resolution of the matter from the Court.

18. Prior to the Petition Date, the Debtors provided Verita a retainer in the amount of \$50,000, which was received by Verita on December 31, 2023. Verita seeks to hold the retainer under the Services Agreement during the cases as security for the payment of fees and expenses incurred under the Services Agreement. Additionally, Verita received a prepayment of \$30,000 on December 31, 2023. This payment is first being applied to all prepetition invoices and then to the first post-petition invoice. Verita has not received any payments from the Debtors in the 90 days prior to the Petition Date.

19. Additionally, under the terms of the Engagement Agreement, the Debtors have agreed to indemnify, defend, and hold harmless Verita and its members, officers, employees, representatives, and agents under certain circumstances specified in the Engagement Agreement, except in circumstances resulting solely from Verita’s gross negligence or willful misconduct or as otherwise provided in the Engagement Agreement or Proposed Order. The Debtors believe that such an indemnification obligation is customary, reasonable and necessary to retain the services of a Claims and Noticing Agent in these chapter 11 cases.

INDEMNIFICATION

20. As part of the overall compensation payable to Verita under the terms of the Services Agreement, the Debtors have agreed, to the extent permitted by applicable law, to

indemnify, defend, and hold harmless Verita and its members, officers, employees, representatives, and agents under certain circumstances specified in the Services Agreement, except in circumstances resulting solely from Verita's gross negligence or willful misconduct or as otherwise provided in the Services Agreement or the Proposed Order. The terms of the Services Agreement and indemnification provisions included therein were negotiated at arms' length between the Debtors and Verita, and the Debtors believe that such indemnification obligations are customary, reasonable, and consistent with recent orders entered in this jurisdiction and, therefore, should be approved. *See, e.g., In re Starry Grp. Holdings Inc.*, No. 23-10219 (KBO) (Bankr. D. Del. Feb. 20, 2023) [D.I. 61] (approving Verita retention application with indemnification provisions); *In re Stanadyne LLC*, No. 23-10207 (TMH) (Bankr. D. Del. Feb. 16, 2023) [D.I. 54] (same); *In re Secure Home Holdings LLC*, No. 21-10745 (JKS) (Bankr. D. Del. Apr. 27, 2021) [D.I. 55] (same).

DISINTERESTEDNESS

21. Although the Debtors do not propose to employ Verita under section 327 of the Bankruptcy Code pursuant to this Application (such retention will be sought by separate application), Verita has nonetheless reviewed its electronic database to determine whether it has any relationships with the creditors and parties in interest provided by the Debtors, and, to the best of the Debtors' knowledge, information, and belief, and except as disclosed in the Gershbein Declaration, Verita has represented that it neither holds nor represents any interest materially adverse to the Debtors' estates in connection with any matter on which it would be employed.

22. Moreover, in connection with its retention as Claims and Noticing Agent, Verita represents in the Gershbein Declaration, among other things, that:

- (a) Verita is not a creditor of the Debtors;

- (b) Verita will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in these chapter 11 cases;
- (c) by accepting employment in these chapter 11 cases, Verita waives any rights to receive compensation from the United States government in connection with these chapter 11 cases;
- (d) in its capacity as the Claims and Noticing Agent in these chapter 11 cases, Verita will not be an agent of the United States and will not act on behalf of the United States;
- (e) Verita will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in these chapter 11 cases;
- (f) Verita is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
- (g) in its capacity as Claims and Noticing Agent in these chapter 11 cases, Verita will not intentionally misrepresent any fact to any person;
- (h) Verita shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- (i) Verita will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- (j) none of the services provided by Verita as Claims and Noticing Agent in these chapter 11 cases shall be at the expense of the Clerk’s office.

Verita will supplement its disclosure to the Court if any facts or circumstances are discovered that would require such additional disclosure.

BASIS FOR RELIEF

Employment and Retention of Verita as Claims and Noticing Agent is Permitted

23. Although the Debtors have not yet filed the Schedules, they anticipate that there will be potentially numerous entities that will need to be noticed. In view of the number of anticipated claimants and the complexity of the Debtors’ business, the Debtors submit that the appointment of a Claims and Noticing Agent is both necessary and in the best interests of the

Debtors' estates and creditors because the Debtors would be relieved of the burdens associated with the notice and claims processing services to be provided by Verita. Relieved of such burdens, the Debtors would be able to devote their full attention and resources to maximizing value for their stakeholders and facilitating the orderly administration of the chapter 11 cases.

24. Bankruptcy Rule 2002 generally regulates what notices must be given to creditors and other parties in interest in bankruptcy cases. Under Bankruptcy Rule 2002(f), the Court may direct that some person other than the Clerk give notice of the various matters described below. Moreover, 28 U.S.C. § 156(c), which governs the staffing and expenses of a bankruptcy court, authorizes the Court to use "facilities" or "services" other than the office of the Clerk for administration of bankruptcy cases. It, in relevant part, provides as follows:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States. The utilization of such facilities or services shall be subject to such conditions and limitations as the pertinent circuit council may prescribe.

28 U.S.C. § 156(c).

25. In addition, Local Rule 2002-1(f) provides as follows:

Upon motion of the debtor or trustee, at any time without notice or hearing, the Court may authorize the retention of a notice and/or claims clerk under 28 U.S.C. § 156(c). In all cases with more than two hundred (200) creditors or parties in interest listed on the creditor matrix, unless the Court orders otherwise, the debtor shall file such motion on the first day of the case or within seven (7) days thereafter. The notice and/or claims clerk shall comply with the Protocol for the Employment of Claims and Noticing Agents under 28 U.S.C. 156(c) (which can be found on the Court's website) and shall perform the [Claims and Noticing Services].

Local Rule 2002-1(f). Accordingly, Bankruptcy Rule 2002, Local Rule 2002-1(f), and 28 U.S.C. § 156(c) empower the Court to utilize outside agents and facilities for notice and claims purposes, provided that the Debtors' estates pay the cost of such services.

26. In light of the foregoing, the Debtors believe that the retention of Verita as the Claims and Noticing Agent in the chapter 11 cases is necessary and in the best interests of the Debtors, their estates and creditors, and all parties in interest. Furthermore, the Debtors respectfully submit that the fees and expenses that would be incurred by Verita under the proposed engagement would be administrative in nature and, therefore, should not be subject to standard fee application procedures of professionals.

27. By separate application, the Debtors will seek authorization to retain and employ Verita as administrative agent in the chapter 11 cases, pursuant to section 327(a) of the Bankruptcy Code, because the administration of the chapter 11 cases will require Verita to perform duties outside the scope of 28 U.S.C. § 156(c).

Nunc Pro Tunc Relief is Appropriate

28. Verita has agreed to serve as Claims and Noticing Agent on and after the Petition Date with assurances that the Debtors would seek approval of its employment and retention *nunc pro tunc* to the Petition Date, so that Verita may be compensated for its pre-Application services. The Debtors believe that no party in interest would be prejudiced by the granting of the *nunc pro tunc* employment, as provided in this Application, because Verita has provided and continues to provide valuable services to the Debtors' estates during the interim period. The Local Rules empower courts in this district to approve *nunc pro tunc* employment, and the Debtors submit that such approval is justified here. *See* Local Rule 2014-1(b) ("If the retention motion is granted, the retention shall be effective as of the date the motion was filed, unless the Court orders otherwise.").

Moreover, courts in this district routinely approve *nunc pro tunc* employment similar to that requested herein in comparable matters. *See, e.g., In re Arkansas Co.*, 798 F.2d 645, 650 (3d. Cir. 1986); *In re Indian River Homes, Inc.*, 108 B.R. 46, 52 (D. Del. 1989).

COMPLIANCE WITH CLAIMS AND NOTICING AGENT PROTOCOL

29. This Application complies with the Claims Agent Protocol and substantially conforms to the standard application pursuant to 28 U.S.C. § 156(c) in use in this Court. To the extent that there is any inconsistency between this Application, the Proposed Order, and the Engagement Agreement, the Proposed Order shall govern.

NOTICE

30. Notice of this Motion is being provided to: (a) the Office of the United States Trustee (Attn: Rosa Sierra-Fox (rosa.sierra-fox@usdoj.gov)); (b) the Utility Providers identified on the Utility Providers List; (c) the Debtors' prepetition secured lender[s]; (d) the Internal Revenue Service; (e) [the bank]; (f) the parties included on the Debtors' consolidated list of their 30 largest unsecured creditors; (g) the United States Attorney's Office for the District of Delaware; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. As this Motion is seeking first-day relief, the Debtors will serve copies of this Motion and any order entered in respect of this Motion as required by Local Rule 9013-1(m). The Debtors respectfully submit that no further notice of this Motion is required under the circumstances.

WHEREFORE, the Debtors respectfully request entry of the Proposed Order, substantially in the form attached hereto, and grant such other relief as this Court deems appropriate under the circumstances.

Dated: September 10, 2024
Wilmington, Delaware

Fulcrum BioEnergy Inc., on behalf of itself
and each of its affiliated Debtors and Debtors
in Possession

/s/ Mark J. Smith
Mark J. Smith
Chief Restructuring Officer

Exhibit A

Proposed Order

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

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

**ORDER APPOINTING KURTZMAN CARSON CONSULTANTS, LLC
DBA VERITA GLOBAL AS CLAIMS AND NOTICING AGENT,
EFFECTIVE NUNC PRO TUNC TO THE PETITION DATE**

Upon the application (the “Application”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order appointing Kurtzman Carson Consultants, LLC dba Verita Global (“Verita”) as the claims and noticing agent (the “Claims and Noticing Agent”) in these chapter 11 cases, including assuming full responsibility for the distribution of notices and the maintenance, processing and docketing of proofs of claim filed in these chapter 11 cases, effective *nunc pro tunc* to the Petition Date; and upon the Gershbein Declaration submitted in support of the Application; and the Debtors having estimated that there are 700 creditors in these chapter 11 cases, many of which are expected to file proofs of claim; and it appearing that the receiving, docketing and maintaining of proofs of claim would be unduly time consuming and burdensome for the Clerk; and the Court being authorized under 28 U.S.C. § 156(c) to utilize, at the Debtors’ expense, outside agents and facilities to provide notices to parties in title 11 cases and to receive, docket, maintain, photocopy and transmit proofs of claim; and the Court being satisfied that Verita has the capability and experience to provide such services and that Verita

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

does not hold an interest adverse to the Debtors or the estates respecting the matters upon which it is to be engaged; and good and sufficient notice of the Section 156(c) Application having been given and no other or further notice being required; and it appearing that the employment of Verita is in the best interests of the Debtors, their estates and creditors; and after due deliberation and sufficient cause appearing therefor, it is **HEREBY ORDERED THAT**:

1. Notwithstanding the terms of the Engagement Agreement attached to the Application, the Application is approved solely as set forth herein (this “Order”).

2. The Debtors are authorized to retain Verita as the Claims and Noticing Agent, effective *nunc pro tunc* to the Petition Date, under the terms of the Engagement Agreement, and Verita is authorized and directed to perform noticing services and to receive, maintain, record, and otherwise administer the proofs of claim filed in these chapter 11 cases, and all related tasks, all as described in the Application.

3. Verita shall serve as the custodian of court records and shall be designated as the authorized repository for all proofs of claim filed in these chapter 11 cases and is authorized and directed to maintain official claims registers for each of the Debtors, to provide public access to every proof of claim unless otherwise ordered by the Court and to provide the Clerk with a certified duplicate thereof upon the request of the Clerk.

4. Verita is authorized and directed to provide an electronic interface for filing proofs of claim and to obtain a post office box or address for the receipt of proofs of claim.

5. Verita is authorized to take such other action to comply with all duties set forth in the Application.

6. The Debtors are authorized to compensate Verita in accordance with the terms of the Engagement Agreement upon the receipt of reasonably detailed invoices setting forth the services provided by Verita and the rates charged for each, and to reimburse Verita for all

reasonable and necessary expenses it may incur, upon the presentation of appropriate documentation, without the need for Verita to file fee applications or otherwise seek Court approval for the compensation of its services and reimbursement of its expenses.

7. Verita shall maintain records of all services showing dates, categories of services, fees charged and expenses incurred, and shall serve monthly invoices on the Debtors, the office of the U.S. Trustee, counsel for the Debtors, counsel for any official committee monitoring the expenses of the Debtors and any party-in-interest who specifically requests service of the monthly invoices.

8. The parties shall meet and confer in an attempt to resolve any dispute which may arise relating to the Engagement Agreement or monthly invoices; *provided that* the parties may seek resolution of the matter from the Court if resolution is not achieved.

9. Pursuant to section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of Verita under this Order shall be an administrative expense of the Debtors' estates.

10. Verita may apply the Advance to all prepetition invoices. The Advance shall be replenished to the originally advanced amount, and thereafter, Verita may hold the Advance during the chapter 11 cases as security for the payment of fees and expenses incurred under the Engagement Agreement.

11. The Debtors shall indemnify Verita under the terms of the Engagement Agreement, as modified pursuant to this Order.

12. Verita shall not be entitled to indemnification, contribution, or reimbursement pursuant to the Engagement Agreement for services other than the services provided under the Engagement Agreement, unless such services and the indemnification, contribution or reimbursement therefor are approved by the Court.

13. Notwithstanding anything to the contrary in the Engagement Agreement, the Debtors shall have no obligation to indemnify Verita or provide contribution or reimbursement to Verita for any claim or expense that is either: (i) judicially determined (the determination having become final) to have arisen from Verita's gross negligence, willful misconduct or fraud; (ii) for a contractual dispute in which the Debtors allege the breach of Verita's contractual obligations if the Court determines that indemnification, contribution or reimbursement would not be permissible pursuant to *In re United Artists Theatre Co.*, 315 F.3d 217 (3d Cir. 2003); or (iii) settled prior to a judicial determination under (i) or (ii), but determined by this Court, after notice and a hearing, to be a claim or expense for which Verita should not receive indemnity, contribution, or reimbursement under the terms of the Engagement Agreement as modified by this Order.

14. If, before the earlier of (i) the entry of an order confirming a chapter 11 plan in these chapter 11 cases (that order having become a final order no longer subject to appeal), or (ii) the entry of an order closing these chapter 11 cases, Verita believes that it is entitled to the payment of any amounts by the Debtors on account of the Debtors' indemnification, contribution and/or reimbursement obligations under the Engagement Agreement (as modified by this Order), including the advancement of defense costs, Verita must file an application therefor in this Court, and the Debtors may not pay any such amounts to Verita before the entry of an order by this Court approving the payment. This paragraph is intended only to specify the period of time under which the Court shall have jurisdiction over any request for fees and expenses by Verita for indemnification, contribution or reimbursement, and not a provision limiting the duration of the Debtors' obligation to indemnify Verita. All parties in interest shall retain the right to object to any demand by Verita for indemnification, contribution or reimbursement.

15. The limitation of liability section in paragraph 10 of the Engagement Agreement is deemed to be of no force or effect with respect to the services to be provided pursuant to this Order.

16. In the event Verita is unable to provide the services set out in this order, Verita will immediately notify the Clerk and the Debtors' attorney and, upon approval of the Court, cause to have all original proofs of claim and computer information turned over to another claims and noticing agent with the advice and consent of the Clerk and the Debtors' attorney.

17. The Debtors may submit a separate retention application, pursuant to 11 U.S.C. § 327 and/or any applicable law, for work that is to be performed by Verita but is not specifically authorized by this Order.

18. The Debtors and Verita are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Application.

19. Notwithstanding any term in the Engagement Agreement to the contrary, the Court retains jurisdiction with respect to all matters arising from or related to the implementation of this Order.

20. Verita shall not cease providing claims processing services during these Chapter 11 Case for any reason, including nonpayment, without an order of the Court.

21. In the event of any inconsistency between the Engagement Agreement, the Application, and this Order, this Order shall govern.

22. Notwithstanding anything to the contrary contained in the Application or this Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors*

to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief filed substantially contemporaneously with the Application (the “DIP Orders”), including compliance with any budget or cash flow forecast in connection therewith (and any permitted variances thereto) and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

23. Notice of the Application as described therein is deemed good and sufficient notice the Motion and the relief requested therein.

24. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon its entry.

25. The Debtors are authorized to take all actions that are necessary and appropriate to effectuate the relief granted in this Order.

26. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Exhibit B

Gershbein Declaration

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

In re:

FULCRUM BIOENERGY, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 24-12008 (TMH)

(Joint Administration Requested)

**DECLARATION OF EVAN GERSHBEIN IN SUPPORT OF THE APPLICATION
OF DEBTORS FOR AUTHORITY TO EMPLOY AND RETAIN KURTZMAN
CARSON CONSULTANTS, LLC DBA VERITA GLOBAL AS CLAIMS AND
NOTICING AGENT *NUNC PRO TUNC* TO THE PETITION DATE**

I, Evan Gershbein, under penalty of perjury, declare as follows:

1. I am an Executive Vice President of Kurtzman Carson Consultants, LLC dba Verita Global (“Verita”), a chapter 11 administrative services firm, whose offices are located at 222 N. Pacific Coast Highway, 3rd Floor, El Segundo, California 90245. Except as otherwise noted, I have personal knowledge of the matters set forth herein, and if called and sworn as a witness, I could and would testify competently thereto.

2. I submit this declaration (this “Declaration”) in support of the *Application of Debtors for Authority to Employ and Retain Kurtzman Carson Consultants, LLC dba Verita Global as Claims and Noticing Agent Nunc Pro Tunc to the Petition Date* (the “Application”).²

¹ The debtors and debtors in possession in these chapter 11 cases, along with each debtor’s federal tax identification numbers are: Fulcrum BioEnergy, Inc. (3733); Fulcrum Sierra BioFuels, LLC (1833); Fulcrum Sierra Finance Company, LLC (4287); Fulcrum Sierra Holdings, LLC (8498). The location of the Debtors’ service address is: Fulcrum BioEnergy Inc., P.O. Box 220 Pleasanton, CA 94566. All Court filings can be accessed: <https://www.veritaglobal.net/Fulcrum>.

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

3. I am not being specifically compensated for this testimony other than through payments received by Verita as a professional retained by the Debtors. I am over the age of 18 years and authorized to submit this Declaration on behalf of Verita.

Verita's Qualifications as Noticing and Claims Agent

4. Verita is comprised of leading industry professionals with significant experience in both the legal and administrative aspects of large, complex chapter 11 cases. Verita's professionals have experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of chapter 11 cases, as well as experience in matters of this size and complexity. Verita's professionals have acted as official claims and noticing agent in many large bankruptcy cases in this district and in other districts nationwide. Verita's active and former cases include the following: *In re Fisker Inc. et al.*, Case No. 24-11390 (TMH) (Bankr. D. Del. Jun 19, 2024); *In re Supply Source Enters., Inc., et al.*, Case No. 24-11054 (BLS) (Bankr. D. Del. Jun. 13, 2024); *In re ProSomnus, Inc., et al.*, Case No. 24-10972 (JTD) (Bankr. D. Del. May 9, 2024); *In re Sticky's Holding LLC, et al.*, Case No. 24-10856 (JKS) (Bankr. D. Del. Apr. 26, 2024); *In re SC Healthcare Holding, LLC, et al.*, Case No. 24-10443 (TMH) (Bankr. D. Del. Mar. 22, 2024); *In re Cano Health, Inc.*, No. 24-10164 (KBO) (Bankr. D. Del. Feb. 6, 2024) [D.I. 79]; *In re InVivo Therapeutics Corp.*, No. 24-10137 (MFW) (Bankr. D. Del. Feb. 6, 2024) [D.I. 29]; *In re AN Glob., LLC*, No. 23-11294 (JKS) (Bankr. D. Del. Aug. 29, 2023) [D.I. 58]; *In re Proterra Inc.*, No. 23-11120 (BLS) (Bankr. D. Del. Aug. 10, 2023) [D.I. 61]; *In re Novan, Inc.*, No. 23-10937 (LSS) (Bankr. D. Del. July 19, 2023) [D.I. 35]; *In re Lordstown Motors Corp.*, No. 23-10831 (MFW) (Bankr. D. Del. June 28, 2023) [D.I. 54]; *In re KDC Agribusiness LLC*, No. 23-10786 (CTG) (Bankr. D. Del. June 21, 2023) [D.I. 54]; *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. June 6, 2023) [D.I. 56]; *In re PlastiQ Inc.*, No. 23-10671 (BLS) (Bankr. D. Del. May 25,

2023) [D.I. 35]; *In re Christmas Tree Shops, LLC*, No. 23-10576 (TMH) (Bankr. D. Del. May 9, 2023) [D.I. 76]; *In re Catalina Mktg. Corp.*, No. 23-10620 (KBO) (Bankr. D. Del. Mar. 31, 2023) [D.I. 42]; *CBCRC Liquidating Corp.*, No. 23-10245 (KBO) (Bankr. D. Del. Mar. 3, 2023) [D.I. 171]; *In re Starry Grp. Holdings, Inc.*, No. 23-10219 (KBO) (Bankr. D. Del. Feb. 22, 2023) [D.I. 61]; *In re Stanadyne LLC*, No. 23-10207 (TMH) (Bankr. D. Del. Feb. 22, 2023) [D.I. 54]; *In re Tricida*, No. 23-10024 (JTD) (Bankr. D. Del. Jan. 13, 2023) [D.I. 42]; *In re Carestream Health, Inc.*, No. 22-10778 (JKS) (Bankr. D. Del. Aug. 24, 2022) [D.I. 67]; and *In re First Guar. Mortg. Corp.*, No. 22-10584 (CTG) (Bankr. D. Del. Jul. 1, 2022) [D.I. 58].

5. As agent and custodian of Court records pursuant to 28 U.S.C. § 156(c), Verita will perform, at the request of the Office of the Clerk of the Bankruptcy Court (the “Clerk”), the services (including administrative, technical, and support services) specified in the Application and the Services Agreement. In performing such services, Verita will charge the Debtors the rates set forth in the Services Agreement, which is attached as Exhibit C to the Application.

6. Prior to the Petition Date, the Debtors provided Verita a retainer in the amount of \$50,000, which was received by Verita on December 31, 2023. Verita seeks to hold the retainer under the Services Agreement during the cases as security for the payment of fees and expenses incurred under the Services Agreement. Additionally, Verita received a prepayment of \$30,000 on December 31, 2023. This payment is first being applied to all prepetition invoices and then to the first post-petition invoice. Verita has not received any payments from the Debtors in the 90 days prior to the Petition Date.

7. Verita represents the following:

- a) Verita is not a creditor of the Debtors;
- b) Verita will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as the Claims and Noticing Agent in the chapter 11 cases;

- c) By accepting employment in the chapter 11 cases, Verita waives any rights to receive compensation from the United States government in connection with the chapter 11 cases;
- d) In its capacity as the Claims and Noticing Agent in the chapter 11 cases, Verita will not be an agent of the United States and will not act on behalf of the United States;
- e) Verita will not employ any past or present employees of the Debtors in connection with its work as the Claims and Noticing Agent in the chapter 11 cases;
- f) Verita is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged;
- g) In its capacity as Claims and Noticing Agent in the chapter 11 cases, Verita will not intentionally misrepresent any fact to any person;
- h) Verita shall be under the supervision and control of the Clerk’s office with respect to the receipt and recordation of claims and claim transfers;
- i) Verita will comply with all requests of the Clerk’s office and the guidelines promulgated by the Judicial Conference of the United States for the implementation of 28 U.S.C. § 156(c); and
- j) None of the services provided by Verita as Claims and Noticing Agent in the chapter 11 cases shall be at the expense of the Clerk’s office.

8. Although the Debtors do not propose to retain Verita under section 327 of the Bankruptcy Code pursuant to the Application, I caused to be submitted for review by our conflicts system the names of all known potential parties in interest (the “Potential Parties in Interest”) in the chapter 11 cases, which is attached as **Exhibit 1** to the Declaration. The list of Potential Parties in Interest was provided by the Debtors and included, among other things, the Debtors, non-Debtor affiliates, significant equity holders, the Debtors’ current directors and officers, secured creditors, the creditors holding the 30 largest unsecured claims against the Debtors’ estates (on a consolidated basis), vendors, and other parties. The results of the conflict check were compiled and reviewed by Verita professionals under my supervision. At this time, and as set forth in further detail herein, Verita is not aware of any relationship that would present a disqualifying conflict of interest. Should Verita discover any new relevant facts or relationships bearing on the matters described herein during the period of its retention, Verita will use reasonable efforts to promptly file a supplemental declaration.

9. To the best of my knowledge, and based solely upon information provided to me by the Debtors, and except as provided herein, neither Verita nor any of its professionals has any materially adverse connection to the Debtors, their creditors, or other relevant parties. Verita may have relationships with certain of the Debtors' creditors as vendors or in connection with cases in which Verita serves or has served in a neutral capacity as claims and noticing agent or administrative advisor for another chapter 11 debtor.

10. On May 1, 2023, funds affiliated with GCP Capital Partners LLC ("GCP") indirectly acquired a controlling equity interest in Verita (the "Acquisition"). Pursuant to the Acquisition, an indirect, non-controlling, beneficial minority interest in Verita was acquired by funds affiliated with J.P. Morgan Investment Management Inc. ("JPMIM"). GCP is a middle-market private equity investment firm based in New York. GCP has made investments in a number of industries, including tech-enabled business services, payments, and select financials. JPMIM is a U.S. registered investment adviser. Designees of GCP are members of the Board of Managers (the "Board") of Verita's ultimate parent company, KCC Parent LLC ("Parent"). Parent wholly owns Verita Intermediate, LLC, which in turn wholly owns Verita Global, LLC, which in turn wholly owns KCC Topco LLC, which in turn wholly owns Verita. One representative of JPMIM is entitled to attend and observe (but not vote) at all meetings of the Board, but no designee of JPMIM is a member of the Board.

11. Verita searched all entities listed in the list of Potential Parties in Interest against an internal database that includes (a) Verita's parent entities, affiliates, and subsidiaries and (b) GCP, GCP's funds, and each such fund's respective portfolio companies and investments as set forth in the list most recently provided to Verita by GCP. Based solely on the foregoing search, Verita has determined, to the best of its knowledge, that there are no material connections.

JPMorgan Chase is listed on the Potential Parties in Interest List. There are information barriers between JPMIM and the line of business where JPMorgan Chase may be associated with the Debtors.

12. To the extent that Verita learns of any other material connections between the funds or investments included in the above-described conflicts search and the Debtors, Verita will promptly file a supplemental disclosure. In addition, Verita may have had, may currently have, or may in the future have business relationships unrelated to the Debtors with one or more GCP or JPMIM entities, including portfolio companies of GCP.

13. Verita has no contract or relationship with XClaim Inc. or with any other party under which Verita provides or will provide exclusive access to claims data and/or under which Verita will be compensated for claims data that is made available by Verita.

14. Verita has and will continue to represent clients in matters unrelated to the chapter 11 cases. In addition, Verita and its personnel have and will continue to have relationships in the ordinary course of its business with certain vendors, professionals, and other parties in interest that may be involved in the chapter 11 cases. Verita may also provide professional services to entities or persons that may be creditors or parties in interest in the chapter 11 cases, which services do not directly relate to, or have any direct connection with, the chapter 11 cases or the Debtors.

15. Based on the foregoing, I believe that Verita is a “disinterested person” as that term is defined in section 101(14) of the Bankruptcy Code with respect to the matters upon which it is to be engaged. Moreover, to the best of my knowledge and belief, neither Verita nor any of its partners or employees hold or represent any interest materially adverse to the Debtors’ estates with respect to any matter upon which Verita is to be engaged.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Dated: September 10, 2024



Evan Gershbein
Executive Vice President
Kurtzman Carson Consultants LLC dba Verita
Global
222 N. Pacific Coast Highway, 3rd Floor
El Segundo, California 90245

Exhibit C

Service Agreement



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 31st day of October 2023, between Fulcrum BioEnergy, Inc. (together with its affiliates and subsidiaries, the “Company”),¹ and Kurtzman Carson Consultants LLC (together with its affiliates and subcontractors, “KCC”). In consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

Terms and Conditions

I. SERVICES

A. KCC agrees to provide the Company with consulting services regarding noticing, claims management and reconciliation, plan solicitation, balloting, disbursements and any other services agreed upon by the parties or otherwise required by applicable law, government regulations or court rules or orders.

B. KCC further agrees to provide (i) computer software support and training in the use of the support software, (ii) KCC’s standard reports as well as consulting and programming support for the Company requested reports, (iii) program modifications, (iv) data base modifications, and/or (v) other features and services in accordance with the fees outlined in a pricing schedule provided to the Company (the “KCC Fee Structure”).

C. Without limiting the generality of the foregoing, KCC may, upon request by the Company, (i) provide a communications plan including, but not limited to, preparation of communications materials, dissemination of information and a call center staffed by KCC and/or (ii) provide confidential on-line workspaces or virtual data rooms and publish documents to such workspaces or data rooms (which publication shall not be deemed to violate the confidentiality provisions of this Agreement).

D. The price listed for each service in the KCC Fee Structure represents a bona fide proposal for such services, which may be accepted in whole or in part. Services will be provided when requested by the Company or required by applicable law, government regulations or court rules or orders. Services are mutually exclusive and are deemed delivered and accepted by the Company when provided by KCC.

E. The Company acknowledges and agrees that KCC will often take direction from the Company’s representatives, employees, agents and/or professionals (collectively, the “Company Parties”) with respect to the services being provided under this Agreement. The parties agree that KCC may rely upon, and the Company agrees to be bound by, any requests, advice or information provided by the Company Parties to the same extent as if such requests, advice or information were provided by the Company. The Company agrees and understands that KCC shall not provide the Company or any other party with any legal advice.

¹ The term Company shall include, to the extent applicable, the Company, as debtor and debtor in possession in its chapter 11 case, together with any affiliated debtors and debtors in possession whose chapter 11 cases are jointly administered with the Company’s chapter 11 case.



KCC AGREEMENT FOR SERVICES

II. PRICES, CHARGES AND PAYMENT

A. KCC agrees to charge and the Company agrees to pay KCC for its services at the rates and prices set by KCC that are in effect as of the date of this Agreement and in accordance with the KCC Fee Structure. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment and are inclusive of all charges. KCC reserves the right to reasonably increase its prices, charges and rates; provided, however, that if any such increase exceeds 15%, KCC will give thirty (30) days written notice to the Company.

B. In addition to fees and charges for services, the Company agrees to pay KCC's reasonable and documented transportation, lodging, and meal expenses incurred in connection with services provided under this Agreement; provided that any expenses under this section exceeding \$10,000 in the aggregate require pre-approval by the Company, not to be unreasonably withheld or delayed.

C. In addition to all fees for services and expenses hereunder, the Company shall pay to KCC (i) any fees and charges related to, arising out of, or as a result of any error or omission made by the Company or the Company Parties, as mutually determined by KCC and the Company, except to the extent caused by KCC's breach of this Agreement, gross negligence, or wrongful conduct, and (ii) all taxes that are applicable to this Agreement or that are measured by payments made under this Agreement and are required to be collected by KCC or paid by KCC to a taxing authority.

D. Where the Company requires services that are unusual or beyond the normal business practices of KCC, or are otherwise not provided for in the KCC Fee Structure, the cost of such services shall be charged to the Company at a competitive rate.

E. KCC agrees to submit its invoices to the Company monthly and the Company agrees that the amount invoiced is due and payable upon the Company's receipt of the invoice. KCC's invoices will contain reasonably detailed descriptions of charges for both hourly (fees) and non-hourly (expenses) case specific charges. Where total invoice amounts are expected to exceed \$10,000 in any single month and KCC reasonably believes it will not be paid, KCC may require advance payment from the Company due and payable upon demand and prior to the performance of services hereunder. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, the Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the total amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, the Company shall give written notice to KCC within ten (10) days of receipt of the invoice by the Company. The undisputed portion of the invoice will remain due and payable immediately upon receipt of the invoice. Late charges shall not accrue on any amounts in dispute or any amounts unable to be paid due to Court order or applicable law. Unless otherwise agreed to in writing, the fees for print notice and media publication (including commissions) must be paid at least three (3) days in advance of those fees and expenses being incurred. Certain fees and charges may need to be adjusted due to availability related to the COVID-19 (novel coronavirus) global health issue.

F. In the event that the Company files for protection pursuant to chapter 11 of the United States Bankruptcy Code (a "Chapter 11 Filing"), the parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156(c) to the extent possible and otherwise in accordance with applicable



KCC

KCC AGREEMENT FOR SERVICES

Bankruptcy law and that all amounts due under this Agreement shall, to the extent possible, be paid as administrative expenses of the Company's chapter 11 estate. As soon as practicable following a Chapter 11 Filing (and otherwise in accordance with applicable law and rules and orders of the Bankruptcy Court), the Company shall cause pleadings to be filed with the Bankruptcy Court seeking entry of an order or orders approving this Agreement (the "Retention Order"). The form and substance of the pleadings and the Retention Order shall be reasonably acceptable to KCC. If any Company chapter 11 case converts to a case under chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services in accordance with the terms of this Agreement. The parties recognize and agree that if there is a conflict between the terms of this Agreement and the terms of the Retention Order, the terms of the Retention Order shall govern during the chapter 11 or other proceeding.

G. To the extent permitted by applicable law, KCC shall receive a retainer in the amount of \$50,000 (the "Retainer") that may be held by KCC as security for the Company's payment obligations under the Agreement. The Retainer is due upon execution of this Agreement. In the event of a Chapter 11 Filing, KCC will first apply the Retainer to all pre-petition invoices, and thereafter, will have the Retainer replenished to the original amount. KCC shall be entitled to hold the Retainer until the termination of the Agreement. Following termination of the Agreement, KCC shall return to the Company any amount of the Retainer that remains following application of the Retainer to the payment of unpaid invoices.

III. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. The Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. The Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed or utilized during the term of this Agreement by KCC shall be the exclusive property of KCC. Fees and expenses paid by the Company do not vest in the Company any rights in such property, it being understood that such property is only being made available for the Company's use during and in connection with the services provided by KCC under this Agreement. KCC agrees that all Company data submitted to KCC by or on behalf of the Company shall remain the exclusive property of the Company.

IV. NON-SOLICITATION

The Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain employees of KCC during the term of this Agreement and for a period of twelve (12) months after termination of this Agreement unless KCC provides prior written consent to such solicitation or retention.

V. CONFIDENTIALITY



KCC

KCC AGREEMENT FOR SERVICES

Each of KCC and the Company, on behalf of themselves and their respective employees, agents, professionals and representatives, agrees to keep confidential all non-public records, systems, procedures, software and other information received from the other party in connection with the services provided under this Agreement; provided, however, that if either party reasonably believes that it is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

VI. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party (i) upon thirty (30) days' written notice to the other party or (ii) immediately upon written notice for Cause (defined herein). As used herein, the term "Cause" means (i) material breach of contract by, or gross negligence or willful misconduct of KCC that causes serious and material harm to the Company's reorganization under chapter 11 of the Bankruptcy Code, (ii) the failure of the Company to pay KCC undisputed invoices for more than sixty (60) days from the date of receipt of invoice, or (iii) the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC reasonably believes it will not be paid.

B. In the event that this Agreement is terminated, regardless of the reason for such termination, KCC shall coordinate with the Company and, to the extent applicable, the clerk of the Bankruptcy Court, to maintain an orderly transfer of record keeping functions and KCC shall provide all necessary staff, services and assistance required for an orderly transfer. The Company agrees to pay for such services in accordance with KCC's then existing prices for such services. If such termination occurs following entry of the Retention Order, the Company shall immediately seek entry of an order (in form and substance reasonably acceptable to KCC) that discharges KCC from service and responsibility in the Company's bankruptcy case.

C. Any data, programs, storage media or other materials furnished by the Company to KCC or received by KCC in connection with the services provided under the terms of this Agreement may be retained by KCC until the services provided are paid for, or until this Agreement is terminated with the services paid in full. The Company shall remain liable for all fees and expenses imposed under this Agreement as a result of data or physical media maintained or stored by KCC. KCC shall dispose of the data and media in the manner requested by the Company. The Company agrees to pay KCC for reasonable and documented expenses incurred as a result of the disposition of data or media. If the Company has not utilized KCC's services under this Agreement for a period of at least ninety (90) days, KCC may dispose of the data or media, and be reimbursed by the Company for the expense of such disposition, after giving the Company thirty (30) days' written notice. Notwithstanding any term herein to the contrary, following entry of the Retention Order, the disposition of any data or media by KCC shall be in accordance with any applicable instructions from the clerk of the Bankruptcy Court, local Bankruptcy Court rules and orders of the Bankruptcy Court.

VII. SYSTEM IMPROVEMENTS

KCC strives to provide continuous improvements in the quality of service to its clients. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of



KCC

KCC AGREEMENT FOR SERVICES

accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's chapter 11 case.

VIII. BANK ACCOUNTS

At the Company's request and subject to Court approval following any chapter 11 filing, KCC may be authorized to establish accounts with financial institutions in the name of and as agent for the Company. To the extent that certain financial products are provided to the Company pursuant to KCC's agreement with financial institutions, KCC may receive compensation from such financial institutions for the services KCC provides pursuant to such agreement.

IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. The Company shall indemnify and hold KCC, its affiliates, members, directors, officers, employees, consultants, subcontractors and agents (collectively, the "Indemnified Parties") harmless, to the fullest extent permitted by applicable law, from and against any and all losses, claims, damages, judgments, liabilities and expenses (including reasonable and documented counsel fees and expenses) (collectively, "Losses") resulting from, arising out of or related to KCC's performance under this Agreement. Such indemnification shall exclude Losses resulting from KCC's breach of contract, gross negligence, or willful misconduct arising out of or related to KCC's performance under this Agreement. Without limiting the generality of the foregoing, Losses include any liabilities resulting from claims by any third parties against any Indemnified Party. The Company shall notify KCC in writing promptly upon the assertion, threat or commencement of any claim, action, investigation or proceeding that the Company becomes aware of with respect to the services provided by KCC under this Agreement. The Company's indemnification obligations hereunder shall survive the termination of this Agreement.

B. Except as provided herein, KCC's liability to the Company or any person making a claim through or under the Company for any Losses of any kind, even if KCC has been advised of the possibility of such Losses, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC, shall be limited to the total amount billed or billable to the Company for the portion of the particular work which gave rise to the alleged Loss. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement. In no event shall KCC's liability to the Company for any Losses, whether direct or indirect, arising out of this Agreement exceed the total amount billed to the Company and actually paid to KCC for the services contemplated under the Agreement; provided, however, that this limitation shall not apply to the Company during any chapter 11 case in which the Company is a debtor.

C. The Company is responsible for the accuracy of the programs, data and information it or any Company Party submits for processing to KCC and for the output of such information. KCC does not verify information provided by the Company and, with respect to the preparation of schedules and statements, all decisions are at the sole discretion and direction of the Company. The Company reviews and approves all schedules and statements filed on behalf of, or by, the Company; KCC bears no responsibility for the accuracy or contents therein. The Company agrees to initiate and maintain backup files that would allow the Company to regenerate or



KCC AGREEMENT FOR SERVICES

duplicate all programs and data submitted by the Company to KCC. Pursuant to Section V of this Agreement, KCC and its employees, agents, professionals, and representatives shall safeguard and protect the confidentiality of the Company’s non-public records, systems, procedures, software, and other information received in connection with the services provided under this Agreement with no less care than KCC would take to safeguard and protect the confidentiality of its own confidential information.

D. The Company agrees that except as expressly set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

X. FORCE MAJEURE

KCC will not be liable for any delay or failure in performance when such delay or failure arises from circumstances beyond its reasonable control, including without limitation acts of God, acts of government in its sovereign or contractual capacity, acts of public enemy or terrorists, acts of civil or military authority, war, riots, civil strife, terrorism, blockades, sabotage, rationing, embargoes, epidemics, pandemics, outbreaks of infectious diseases or any other public health crises, earthquakes, fire, flood, other natural disaster, quarantine or any other employee restrictions, power shortages or failures, utility or communication failure or delays, labor disputes, strikes, or shortages, supply shortages, equipment failures, or software malfunctions.

XI. INDEPENDENT CONTRACTORS

The Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this Agreement.

XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by facsimile or electronic mail or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC
222 N. Pacific Coast Highway, 3rd Floor
El Segundo, CA 90245
Attn: Drake D. Foster
Tel: (310) 823-9000
Fax: (310) 823-9133
E-Mail: dfoster@kcellc.com

Fulcrum BioEnergy, Inc.
4900 Hopyard Rd.
Pleasanton, CA 94588
Attn: Eric N. Pryor
Tel: (925) 730-0150

Or to such other address as the party to receive the notice or request so designates by written notice to the other.



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XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings, other agreements, and communications oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of the Company and an officer of KCC.

XV. COUNTERPARTS; EFFECTIVENESS

This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. This Agreement will become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, which delivery may be made by exchange of copies of the signature page by facsimile or electronic mail.

XVI. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned without written consent by KCC to a wholly-owned subsidiary or affiliate of KCC.

XVII. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, court costs, and all other related expenses, which may be set by the court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.

[SIGNATURE PAGE FOLLOWS]

