

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

In re:)	
)	Chapter 11
)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> ¹)	Case No. 23-90901 (MI)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

EMERGENCY MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I)(A) APPROVING THE BIDDING PROCEDURES FOR SALE OF DEBTORS' ASSETS, (B) APPROVING STALKING HORSE BID PROTECTIONS, (C) SCHEDULING CERTAIN DATES WITH RESPECT THERETO, (D) APPROVING FORM AND MANNER OF NOTICES OF THEREOF AND (E) APPROVING CONTRACT ASSUMPTION AND ASSIGNMENT PROCEDURES, (II)(A) APPROVING SALE OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND (B) AUTHORIZING ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (III) GRANTING RELATED RELIEF

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN ON NOVEMBER 17, 2023.

IF YOU OBJECT TO THE RELIEF REQUESTED OR YOU BELIEVE THAT EMERGENCY CONSIDERATION IS NOT WARRANTED, YOU MUST APPEAR AT THE HEARING IF ONE IS SET, OR FILE A WRITTEN RESPONSE PRIOR TO THE DATE THAT RELIEF IS REQUESTED IN THE PRECEDING PARAGRAPH. OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

Anagram Holdings, LLC and its debtor subsidiaries in the above-captioned chapter 11 cases, as debtors and debtors in possession ("**Anagram Holdings**" together with its debtor

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors' service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors' chapter 11 cases are not proposed to be consolidated with the Party City (as defined below) debtors which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et. al.*, Case No. Case No. 23-90005 (MI). Any reference to the "Debtors" does not include the debtor-entities that are, or were, administered in the Party City chapter 11 cases.



affiliates, collectively, the “**Debtors**,” “**Anagram**,” or the “**Company**”), respectfully represent as follows in support of this motion²:

Preliminary Statement

1. As discussed in the *Declaration of Adrian Frankum in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “**First Day Declaration**”), the Debtors commenced these chapter 11 cases to effectuate a sale (the “**Sale Transaction**”) of all or substantially all of their assets (the “**Assets**”) to maximize value for all stakeholders. To that end, prior to commencing these chapter 11 cases, the Debtors and their advisors began a robust marketing and sale process (the “**Sale Process**”) for the sale of the Assets to be implemented pursuant to section 363 of the Bankruptcy Code.

2. Through those efforts, the Debtors have secured Celebration Bidco, LLC to act as the stalking horse bidder (the “**Stalking Horse Bidder**” and such bid, the “**Stalking Horse Bid**”) with respect to the Sale Transaction, on the terms set forth in the Asset Purchase Agreement (the “**Stalking Horse APA**”) attached to the Bidding Procedures Order (as defined herein) as Exhibit 2. With the Stalking Horse Bid, the company will continue operating in the ordinary course to remain the premier manufacturer of foil balloons. All unpaid trade and vendor claims will be assumed and all employees will be offered their current jobs with substantially similar benefits, ensuring Anagram's seamless transition into a deleveraged, independent company.

3. The Stalking Horse Bidder is a newly formed company established for the purpose of acquiring substantially all of the Assets through a combination of a credit bid and cash, plus the assumption of certain liabilities. Specifically, the Stalking Horse Bid purchase price consists of:

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the First Day Declaration, the Stalking Horse APA, or the Bidding Procedures, each as defined herein.

(i) a credit bid of all amounts outstanding under (including principal, pre- and post-petition interest and prepayment premiums) the DIP Notes Facility and the First Lien Notes, which equals approximately \$168,000,000;³ (ii) a cash payment sufficient to repay the DIP ABL Facility in full in accordance with its terms, unless the DIP ABL Facility is assumed by the Stalking Horse Bidder with the prior written consent of the lender under the DIP ABL Facility; (iii) a minimum cash payment sufficient to fund the wind-down of the Debtors' estates; and (iv) the assumption of Assumed Liabilities (clauses (i) through (iv) together, the "**Stalking Horse Bid Consideration**"). The Stalking Horse Bid will be subject to higher and better offers solicited in accordance with the proposed bidding and auction procedures (the "**Bidding Procedures**"), annexed to the Bidding Procedures Order as Exhibit 1 and discussed further below.

4. In connection with the Sale Process, the Debtors and their advisors developed the Bidding Procedures which are designed to continue a competitive, robust and streamlined bidding process that began prior to the Petition Date. The Bidding Procedures are designed to generate the highest or otherwise best value for the Assets, while allowing the Debtors to implement the proposed Sale Transaction on an expedited basis. The Bidding Procedures are also intended to provide the Debtors with the flexibility to solicit proposals, negotiate transactions, hold an auction (the "**Auction**"), and proceed to consummate the proposed Sale Transaction, all while protecting the due process rights of all interested parties and ensuring that there is a full and fair opportunity to review and consider the proposed Sale Transaction.

³ The exact amount will vary based on the closing date, due to, among other things, the accrual of post-petition interest.

5. The Debtors propose to establish the key dates and deadlines below for the Sale Process (subject to Court approval and availability). These proposed deadlines are consistent with the milestones in the Debtors' DIP Financing and the Stalking Horse APA.⁴

<u>Key Event</u>	<u>Date</u>
Hearing on Bid Procedures Motion (“ Bid Procedures Hearing ”)	November 17, 2023 (subject to Court availability)
Deadline to Serve Cure Notices	November 21, 2023
Deadline to Submit Indications of Interest	November 20, 2023 at 5:00 p.m. (prevailing Central Time)
Final Bid Deadline	November 30, 2023 at 5:00 p.m. (prevailing Central Time)
Cure Objection Deadline	December 4, 2023 at 5:00 p.m. (prevailing Central Time)
Deadline for Debtors to Notify Bidders of Status as Qualified Bidders	One (1) day after the Final Bid Deadline
Auction	December 5, 2023 at 9:00 a.m. (prevailing Central Time)
File Notice of Successful Bidder	One (1) business day after the Auction
Sale Objection Deadline	December 11, 2023 at 5:00 p.m. (prevailing Central Time)
Hearing to Approve Sale Transaction (the “ Sale Hearing ”)	December 18, 2023 (subject to Court availability)

6. It is vital that the Debtors consummate the Sale Transaction as soon as possible. Indeed, the Sale Process is already ongoing and, in addition to the Stalking Horse Bidder, prior to the Petition Date, the Debtors' advisors contacted 107 potential purchasers, 42 of which executed confidentiality agreements and have received access to a confidential electronic data room

⁴ The Debtors reserve all rights to extend or modify the timeline in the exercise of their fiduciary duties.

containing copies of substantially all material documents related to the Debtors' business and assets (the "**Data Room**"). Accordingly, the Debtors request approval of the Bidding Procedures that will facilitate a potential Sale Transaction in an expedited and efficient manner.

Relief Requested

7. By this Motion, pursuant to sections 105(a), 363, 365, and 503 of chapter 11 of the Bankruptcy Code, Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**"), and Rules 2002-1 and 9013-1 of the Bankruptcy Local Rules for the United States Bankruptcy Court for the Southern District of Texas (the "**Local Rules**"), the Debtors request entry of:

a. the "**Bidding Procedures Order**" substantially in the form attached hereto as **Exhibit A**:

- authorizing and approving the Bidding Procedures substantially in the form attached to the proposed Bidding Procedures Order as Exhibit 1;
- establishing dates and deadlines in connection with the Bidding Procedures as set forth the Bidding Procedures Order;
- approving the Stalking Horse Bidder as the stalking horse bidder for the Assets and approving the Stalking Horse Bid Protections (as defined herein) pursuant to the Stalking Horse APA attached as Exhibit 2 to the Bidding Procedures Order;
- authorizing and approving the form and manner of notice of the proposed Sale Transaction and the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the "**Sale Notice**");
- approving the procedures set forth in the Bidding Procedures Order (the "**Assumption and Assignment Procedures**") for the potential assumption and assignment of the Debtors' executory contracts and unexpired leases (the "**Assigned Contracts**") and the determination of the amount necessary to cure any monetary defaults under such Assigned Contracts (the "**Cure Costs**");
- authorizing and approving the form and manner of notice to each counterparty to an Assigned Contract (each, a "**Contract Counterparty**,"

and collectively, the “**Contract Counterparties**”) regarding the Debtors’ potential assumption and assignment of the Assigned Contracts and of the Debtors’ calculation of the Cure Costs under such Assigned Contracts substantially in the form attached to the Bidding Procedures Order as Exhibit 4 (the “**Cure Notice**”);

b. an order (the “**Sale Order**”), the proposed form of which will be filed on the docket of these chapter 11 cases no later than five (5) days prior to the Sale Objection Deadline authorizing and approving the Sale Transaction pursuant to the Stalking Horse APA or to the Successful Bidder or Back-Up Bidder, as applicable, authorizing and approving, among other things:

- the sale of the Assets free and clear of liens, claims, interests, and other encumbrances other than those expressly assumed;
- the assumption and assignment of executory contracts and/or unexpired leases of the Debtors that are to be assumed and assigned as part of the Sale Transaction; and

c. granting related relief.

Jurisdiction, Venue and Authority

8. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

Background

9. On the Petition Date, the Debtors commenced, with this Court, a voluntary case under the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases as of the date of this motion. The Debtors have filed a motion requesting

joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Bankruptcy Rules and Rule 1015-1 of the Local Rules.

A. The Debtors' Business

10. As described in the First Day Declaration, Anagram is a leading manufacturer of foil balloons and inflated décor, distributing and selling its products both domestically and internationally. Anagram's customer channels include party specialty stores, grocers, mass marketers, parks, in-store advertising and value chains, serviced through wholesalers and key domestic and international distributors.

11. The Debtors primarily conduct their operations at two (2) facilities: (i) a 110,000 sq. ft. corporate headquarters office and manufacturing and printing facility (the "**Manufacturing Facility**") in Eden Prairie, Minnesota and (ii) a 391,000 sq. ft. distribution facility in Bloomington, Minnesota (the "**Distribution Facility**" and, together with the Manufacturing Facility, the "**Facilities**"). The Debtors employ approximately 350 employees at the Facilities.

12. The Debtors are wholly-owned subsidiaries of Party City Holdings Inc. ("**PCHI**"), which, together with certain of its affiliates (collectively, "**Party City**"), recently emerged from their own chapter 11 cases before the Bankruptcy Court. Although the Debtors operate largely independently of Party City, with their own customers, employees, vendors, and debt facilities, the Debtors' business remains interconnected with Party City by way of three (3) critical Anagram-Party City Contracts entered into in connection with the 2020 Party City Transaction: (i) the Services Agreement, pursuant to which Party City provides an array of business, administrative, tax, insurance, legal, and other services to support the Debtors' day-to-day operations; (ii) the IP Cross-Licensing Agreement, pursuant to which Party City and the Debtors grant each other non-exclusive licenses and rights to use each other's intellectual property; and (iii) the Supply Agreement, pursuant to which Amscan Inc., a subsidiary of PCHI, designated Anagram

International as its primary supplier of balloons and agreed to purchase a minimum volume of balloons on the terms set forth in the Supply Agreement.

B. The Sale Process

13. As discussed in the First Day Declaration, in the weeks leading up to the Petition Date, the Debtors engaged with their key stakeholders over the terms of restructuring alternatives. The Debtors, under the guidance, and with the approval, of the Restructuring Committee, determined that the Sale Process was the optimal path to maximize the value of the Debtors' estates for all stakeholders.

14. Consequently, commencing in October 2023, the Debtors led by their investment banker, Robert W. Baird ("**Baird**"), reached out to 107 parties who Baird believed were mostly likely to be interested in purchasing the Assets. The Debtors have already signed nondisclosure agreements with 42 parties and have granted those parties access to the Data Room containing extensive information and diligence on the Debtors' assets. During this time, the Debtors and their advisors also reached out to the Debtors' stakeholders, including the First Lien Noteholders and the Second Lien Noteholders to assess their interest in submitting bids. These efforts culminated in a stalking horse bid from Celebration Bidco, LLC as the Stalking Horse Bidder and the Debtors' entry into the Stalking Horse APA.

15. Simultaneously with negotiating the Stalking Horse APA, the Debtors have continued their engagement with other prospective bidders and will continue to do so in accordance with the Bidding Procedures Order. The Debtors are also in discussions with other parties known to be interested in purchasing the Assets to seek higher or better terms from new bidders. Entry into the Stalking Horse APA allows the Debtors and their creditors to retain the benefit of the Stalking Horse Bid, which will set a floor price for the Assets. As such, the Debtors have determined that it is in their best interest to (i) continue marketing the Assets postpetition,

(ii) continue the ongoing diligence with all interested parties, and (iii) continue and complete the Sale Process in chapter 11 to maximize value of the Debtors' estates.

C. Need for a Timely Sale Process

16. The Debtors believe that the time periods set forth in the Bidding Procedures are reasonable and will provide all Potential Bidders with sufficient time and information to submit a bid for the Assets and does not prejudice parties in interest. In formulating the procedures and time periods set forth therein, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and Potential Bidders with the need to quickly and efficiently run a sale process.

17. The Debtors' formulation of the Bidding Procedures was also informed by the Sale Process. Potential Bidders have had, and will, in accordance with the Bidding Procedures, continue to have access to comprehensive information prepared by the Debtors and their advisors, which is compiled in the Data Room. After the Petition Date, the Debtors and their advisors will continue soliciting competing offers for the Assets while a hearing to approve the Bidding Procedures is pending, to quickly and efficiently run the Sale Process. In light of the foregoing, the Debtors have determined that pursuing the Bidding Procedures is in the best interests of the Debtors' estates, will establish whether and to what extent a market exists for the Assets, and provides interested parties with sufficient opportunity to participate.

Proposed Sale Transaction⁵

18. The Stalking Horse APA represents a binding bid for the Assets. The Debtors estimate that the Stalking Horse Bid Consideration exceeds \$175 million. The Stalking Horse

⁵ In the event of any inconsistencies between the provisions of the Stalking Horse APA and the general description or summary of the Stalking Horse APA in this motion, the Stalking Horse APA shall control.

APA also provides that the Stalking Horse Bidder will pay Cure Costs and assume trade and vendor claims in full. The Stalking Horse APA includes provisions for certain bid protections in the form of capped expense reimbursements (together, the “**Stalking Horse Bid Protections**”), payable upon the consummation of an alternative transaction for the sale of the Assets or upon the occurrence of certain other termination events.

19. The Stalking Horse APA includes various customary representations, warranties and covenants by and from the Debtors and the Stalking Horse Bidder (the “**Parties**”) as well as certain conditions to closing and rights of termination. The Stalking Horse Bidder will offer employment to the Debtors’ existing employees on terms substantially similar to the terms of their current employment. The Stalking Horse Bid also contemplates a good faith negotiation of an acceptable transition services agreement between the Debtors and the Stalking Horse Bidder to facilitate the smooth transition. In addition, the Stalking Horse APA contains certain other covenants related to other employee and labor-related concerns.

20. The Stalking Horse APA also provides for a termination event by the Stalking Horse Bidder if certain milestones are not met, including if (i) the Court does not enter the Sale Order by December 22, 2023 or (ii) if the Sale Transaction does not close by December 29, 2023.

21. The Sale Transaction contemplated by the Stalking Horse APA remains subject to approval by the Bankruptcy Court and entry of the Bidding Procedures Order and the Sale Order.

22. The following chart sets forth the key terms of the Stalking Horse APA:

MATERIAL TERMS OF THE STALKING HORSE APA	
Parties	<p>Sellers: Anagram Holdings, LLC, Anagram International, Inc. and Anagram International Holdings, Inc.</p> <p>Purchaser: Celebration Bidco, LLC</p>

Assets to be Sold	Substantially all of the assets of the Sellers, including the Sellers' interest in: (i) deposits and prepaid charges and expenses of the Sellers relating to the business (to the extent utilizable by Purchaser); (ii) avoidance actions related to the business; (iii) real property and rents arising from the lease thereof and all leasehold or possessory interest; (iv) UCC accounts, general intangibles, receivables, cash and cash equivalents (except for cash held in escrow for the purposes of payment of professional fees); (v) certain contracts; (vi) certain employee benefit plans; (vii) certain equipment and rights to warranties and licenses with respect to such equipment; (viii) accounts receivable; (ix) open purchase orders with customers; (x) inventory; (xi) transferable permits relating to the operation of the business; (xii) any other tangible or intangible assets of Sellers related to the operation of the Business which are not expressly identified as Excluded Assets (see below), (xiii) causes of action against any landlords, lessors, vendors, service providers, customers, licensors or similar persons to the extent relating to the assets to be sold or liabilities to be assumed; (xiv) intellectual property and rights of action with respect to infringement thereof; (xv) certain documents, books and records; (xvi) all equity interests held by the Sellers of any direct or indirect foreign subsidiary; (xvii) all goodwill and other intangible assets associated with the business; (xviii) rights arising under certain insurance policies; (xix) certain rights under agreements with current or former employees, directors, consultants or independent contractors; and (xx) refunds, credits and rebates of taxes.
Purchase Price	Total consideration equals the sum of (i) a credit bid of all amounts outstanding under (including principal, pre- and post-petition interest and prepayment premiums) the DIP Notes Facility and the First Lien Notes, which equals \$168,419,102.89; (ii) a cash payment sufficient to repay the DIP ABL Facility in full in accordance with its terms, unless the DIP ABL Facility is assumed by the Stalking Horse Bidder with the prior written consent of the lender under the DIP ABL Facility; (iii) a minimum cash payment sufficient to fund the wind-down of the Debtors' estates; and (iv) the assumption of Assumed Liabilities.
Excluded Assets	The expressly excluded assets include: (i) certain books and records of the Sellers or that the Sellers are required to obtain by law; (ii) certain adequate assurance deposits; (iii) rights to assets leased by the Sellers (unless the lease is assigned to Purchaser); (iv) employee benefit plans maintained by Party City; (v) equity interests in any Seller; (vi) D&O insurance policies of the Sellers; (vii) attorney-client confidential information; and (viii) cash held in escrow for the purposes of payment of professional fees.
Assumed Liabilities	Purchaser will assume the following liabilities: (i) all trade payables; (ii) liabilities under purchased contracts arising from and after the closing;

	(iii) cure amounts payable with respect to the purchased contracts; (iv) any other liabilities that Purchaser specifically agrees to assume, pay or discharge; (v) amounts payable in accordance with the purchased contracts to effectuate the assumption and assignment of such contracts to Purchaser; (vi) liabilities under employee benefit plans (excluding those maintained by Party City); and (vii) liabilities with respect to transferred employees.
Treatment of Employees	Purchaser must offer employment to all employees designated by the Sellers on terms substantially similar to such employees' current employment terms (with respect to employee benefits, measured in the aggregate). Purchaser will also recognize and assume all liabilities with respect to accrued but unused vacation, sick leave and personal time, and must give each employee full credit for such employee's service prior to closing for the purposes of each benefit plan and other entitlement made available to such employee by Purchaser post-closing.
Stalking Horse Bid Protections	<p>The Sellers must reimburse Purchaser for certain expenses incurred by Purchaser in the aggregate amount of up to:</p> <ul style="list-style-type: none"> (i) \$2,000,000, in the event that the Stalking Horse APA is terminated by (x) the Purchaser, in the event of a breach by a Seller of any representation, warranty or covenant resulting in the failure to satisfy a condition to closing, (y) the Purchaser or the Seller, if the Sellers consummate, enter into a contract for, or the Court approves, a competing transaction or (z) the Sellers, if a Seller's board determines that the consummation of the Sale Transaction would be inconsistent with its fiduciary duties; (ii) \$750,000, in the event that the Stalking Horse APA is terminated for any reason other than (x) by the Sellers, in the event that (A) the Purchaser breaches any representation, warranty or covenant resulting in the failure to satisfy a condition to closing, (B) the Purchaser refuses or is unable to close or (C) the Court or other governmental body enjoins or prohibits the Sale Transaction, or (y) by the Purchaser, in the circumstances set forth in the foregoing clause (i).
Closing Conditions	<p>The closing conditions include, among others, the following:</p> <ul style="list-style-type: none"> (i) Each party performing all covenants and customary bring-down of representations and warranties. (ii) The Sellers must obtain and transfer to Purchaser (if applicable) any required consents, orders or permits used in or relating to the operation of the business and the purchased assets. (iii) No material adverse event shall have occurred. (iv) The Court shall have entered the Bidding Procedures Order and an order approving the sale pursuant to sections 363 and 365 of the Bankruptcy Code.

Termination Events	<p>Each party has a customary termination right for breaches by the other party. In addition, either party may terminate if:</p> <ul style="list-style-type: none"> (i) the Sale Transaction is permanently enjoined or prohibited by the Court or other governmental body; (ii) the Court takes certain actions; or (iii) the Sellers consummate a competing transaction. <p>Purchaser may also terminate if:</p> <ul style="list-style-type: none"> (i) closing does not occur by December 29, 2023; (ii) certain milestones with respect to the chapter 11 cases are not met; (iii) any secured creditor obtains stay relief to foreclose on any non-<i>de minimis</i> portion of the purchased assets; (iv) the Sellers refuse or are unable to close; or (v) the Purchaser is named as a defendant in or is otherwise subject to legal proceedings in which a person is successful in obtaining subordination of the liens relating to the First Lien Notes or the DIP Notes. <p>The Sellers may also terminate prior to conclusion of the auction if, based on the advice of counsel, its board determines in good faith that proceeding with the sale would be inconsistent with its fiduciary duties.</p>
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Bidding Procedures⁶

A. Overview

23. The Bidding Procedures are designed to promote a competitive and robust sale process for the Assets. If approved, the Bidding Procedures will allow the Debtors to solicit and identify bids from Potential Bidders that constitute the highest or otherwise best offers for the Assets. The Debtors believe that the time periods set forth in the Bidding Procedures are reasonable and appropriate under the circumstances.

24. The Bidding Procedures are attached to the Bidding Procedures Order and, therefore, are not restated herein in their entirety. Certain of the key terms of the Bidding

⁶ In the event of any inconsistencies between the provisions of the Bidding Procedures and the description of the Bidding Procedures in the Motion, the Bidding Procedures shall control.

Procedures are highlighted below. The Debtors are requesting authority to amend the Bidding Procedures if the Debtors determine, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, and after consultation with the Consultation Parties, that it is reasonable to do so.

MATERIAL TERMS OF THE BIDDING PROCEDURES	
Final Bid Deadline	A Potential Bidder that desires to make a Bid shall deliver electronic copies of its Qualified Bid so as to be received no later than <u>November 30, 2023 at 5:00 p.m. (prevailing Central Time)</u> (the “ Final Bid Deadline ”); <i>provided, that</i> , the Debtors may, in consultation with the Consultation Parties, extend the Final Bid Deadline without further order of the Court subject to providing notice to all Potential Bidders and the Stalking Horse Bidder.
Proposed Agreement	Each Bid must include an executed agreement (the “ Proposed Agreement ”) for the acquisition of the Assets, marked with a redline to show the specific changes in the Proposed Agreement to the Stalking Horse APA.
Form of Consideration	<p>a. <u>Purchase Price</u>. Each Bid must clearly identify the purchase price to be paid (the “Purchase Price”) and specify the aggregate amount of cash and non-cash consideration being offered.</p> <p>b. <u>Cash Requirements</u>. The Purchase Price must consist of cash consideration (the “Cash Requirement”) that equals at least the sum of:</p> <ul style="list-style-type: none"> (i) all amounts and obligations outstanding under the DIP Indenture (as defined in the DIP Motion) (estimated to be \$22,000,000 as of December 29, 2023); (ii) an amount sufficient to cause all obligations under the DIP ABL Facility (as defined in the DIP Motion) to be paid in full in cash in accordance with its terms, estimated to be \$6,206,692.20 as of December 29, 2023; (iii) all amounts and obligations outstanding under the Prepetition 1L Notes Indenture (as defined in the DIP Motion) (estimated to be \$146,419,102.89 as of December 29, 2023); (iv) the Stalking Horse Bid Protections of \$2,000,000;

	<p>(v) the wind-down amount of \$1,500,000; and</p> <p>(vi) an overbid amount of \$1,000,000.</p> <p>Assuming a closing of December 29, 2023 and no incremental borrowing under the DIP ABL Facility, the Debtors estimate the Cash Requirement will be approximately \$180,000,000. This amount is subject to change depending on the actual closing date and outstanding amounts under the DIP ABL Facility. Prior to submitting a Bid, a Potential Bidder may contact the Debtors' advisors to obtain the then-current amounts for items (i) – (iii) above.</p> <p>c. <u>Assumed Liabilities</u>: Each Bid must clearly identify the particular liabilities, if any, the Bidder seeks to assume.</p> <p>d. <u>Credit Bid</u>: Persons or entities holding a valid and perfected security interest in the Debtors' assets may submit a credit bid (a "Credit Bid") on such assets, to the extent permitted by applicable law or the Bankruptcy Court.</p>
Good Faith Deposit	<p>A deposit equal ten percent (10%) of the Purchase Price (a "Good Faith Deposit") must be deposited, prior to the Final Bid Deadline, with an escrow agent selected by the Debtors (the "Escrow Agent") pursuant to a customary and reasonable escrow agreement to be provided by the Debtors; <i>provided</i>, that, a Potential Bidder submitting a Credit Bid will not be required to accompany its Bid with a Good Faith Deposit for any portion of the Purchase Price that is a Credit Bid. To the extent a Qualified Bid is modified before, during, or after the Auction, the Debtors reserve the right, in consultation with the Consultation Parties, to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent (10%) of the Purchase Price. If a Qualified Bidder is required to increase its Good Faith Deposit, its status as a Qualified Bidder shall be suspended pending satisfaction of such adjustment. No party, including any prepetition lenders, postpetition lenders, the DIP Noteholders, the DIP Notes Trustee or the DIP ABL Agent (as each is defined in the DIP Motion) have or shall have any lien, claim, or right with respect to the Good Faith Deposit, and such funds shall not be available for distribution to the Debtors' creditors, unless and until such funds become property of the Debtors' estates in accordance with the terms of the Bidding Procedures.</p>
Financing Information	<p>Each Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the Sale Transaction including, such financial and other information setting forth adequate assurance of future</p>

	<p>performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party. Without limiting the foregoing, such information must include current financial statements or similar financial information certified to be true and correct as of the date thereof, proof of financing commitments if needed to consummate the transaction (not subject to, in the Debtors' reasonable business judgment, in consultation with the Consultation Parties, any unreasonable conditions), contact information for verification of such information, including any financing sources, and any other information reasonably requested by the Debtors or the Consultation Parties necessary to demonstrate adequate assurance of future performance and to demonstrate that such Potential Bidder has the ability to consummate the Sale Transaction in a timely manner. Each Bid must contain a representation that all information provided to support adequate assurance of future performance is true and correct.</p>
Selection of Qualified Bids	<p>The Debtors shall determine, in their reasonable business judgment, and in consultation with the Consultation Parties, which of the Bids received by the Final Bid Deadline qualifies as a Qualified Bid. The Debtors shall notify each Bidder who submits a Qualified Bid of its status as a Qualified Bidder no later than one (1) day after the Final Bid Deadline.</p> <p>In evaluating the Bids, the Debtors may take into consideration the non-exhaustive factors set forth in the Bidding Procedures.</p>
Auction	<p>If the Debtors receive two or more Qualified Bids for the Assets, the Debtors shall conduct the Auction on <u>December 5, 2023, beginning at 9:00 a.m. (prevailing Central Time)</u> at (i) the offices of Simpson Thacher & Bartlett, LLP, 425 Lexington Avenue, New York, NY 10017, and/or (ii) virtually, pursuant to procedures to be announced to Qualified Bidders, or such other later date as may be determined by the Debtors in consultation with the Consultation Parties upon notice to all parties in interest. Only Qualified Bidders will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in good faith and in consultation with the Consultation Parties. In addition, only the professionals and/or other representatives of the Qualified Bidders, the Debtors, the DIP ABL Agent (as defined in the DIP Motion), the Stalking Horse Bidder, and the Consultation Parties shall be permitted to attend and observe the Auction, <i>provided, that</i>, any other party in interest who wishes to attend the Auction may contact the Debtor Notice Parties and request attendance.</p>
No Collusion	<p>Each Bid must contain a statement that the Potential Bidder has not (i) engaged in any collusion with respect to the submission of any bid or the Auction, (ii) coordinated or joined with any other party on a bid or bids,</p>

	or (iii) taken any other action to prevent a transparent and competitive auction process.
Auction Not Necessary	If no Qualified Bid (other than the Stalking Horse Bid) is received by the Final Bid Deadline, the Debtors will not conduct the Auction. The Debtors shall file a notice with the Bankruptcy Court indicating that no Auction will be held with respect to the Assets and that the Stalking Horse Bidder has been named the Successful Bidder for the Assets. The Debtors shall also publish such notice on the website of their proposed claims and noticing agent Kurtzman Carson Consultants LLC (the “ Case Website ”).
Plan Toggle Right	The Debtors, with the consent of the Successful Bidder, may elect to implement a sale under section 363 of the Bankruptcy Code or an alternative transaction accomplished through a chapter 11 plan (the “ Plan Toggle Right ”).
Reservation of Rights	Except as otherwise set forth herein, the Debtors reserve the right, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, after consultation with the Consultation Parties, to: (i) modify these Bidding Procedures; (ii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iii) extend the deadlines set forth herein; (iv) announce at the Auction modified or additional procedures for conducting the Auction; or (v) alter the assumptions set forth herein; <i>provided</i> , that, any modifications shall not be inconsistent with the Stalking Horse APA, the Bidding Procedures Order, or any other order of the Bankruptcy Court and shall not modify the consent or consultation rights of any party. Subject to the foregoing, the Debtors may, in consultation with the Consultation Parties, provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures and the Bidding Procedures Order. Nothing in the Bidding Procedures or the Bidding Procedures Order shall amend, modify, waive, or impair, or be deemed to amend, modify, waive, or impair, any provision of the Stalking Horse APA or any rights or remedies of the Stalking Horse Bidder, all of which are hereby preserved.
Fiduciary Out	Nothing in the Bidding Procedures will require the board of directors, board of managers, or such similar governing body of any Debtor to take any action, or to refrain from taking any action, with respect to the Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to

	comply with applicable law or its fiduciary obligations under applicable law; <i>provided</i> that this provision shall not permit the Debtors to take any action to frustrate, delay, or otherwise avoid paying Stalking Horse Bid Protections when such Stalking Horse Bid Protections may become due in accordance with the Stalking Horse APA, which obligation shall survive any amendments or modifications to the Bidding Procedures.
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Assumption and Assignment Procedures

25. The Assumption and Assignment Procedures set forth in the Bidding Procedures Order will, among other things, govern the Debtors' provision of notice to all Contract Counterparties of Cure Costs in the event the Debtors decide to transfer the Assigned Contracts in connection with the Sale Transaction. On or before November 21, 2023, the Debtors will file the Cure Notice with the Court and serve the Cure Notice on the Contract Counterparties, which will be specified in the Cure Notice.

26. Objections, if any, to any proposed Cure Costs set forth on the Cure Notice (each, a "**Cure Objection**") and to the provision of adequate assurance of future performance (each, an "**Adequate Assurance Objection**") must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; and (v) be filed with the Court **no later than 5:00 p.m. (prevailing Central Time) on December 4, 2023.**

27. If (a) the Debtors identify (i) additional contracts or leases to be assumed and assigned to the Successful Bidder or (ii) modifications that need to be made to a proposed Cure Cost previously stated in the Cure Notice, or (b) the Successful Bidder designates any additional contracts or leases not previously included on the Cure Notice for assumption and assignment, the Debtors will promptly file with the Court and serve by first class mail on the applicable Contract

Counterparty a supplemental Cure Notice (each, a “**Supplemental Cure Notice**”). As soon as reasonably practicable after filing a Supplemental Cure Notice, the Debtors will post a copy of the Supplemental Cure Notice on the Case Website. Any Cure Objection with respect to Cure Costs set forth in a Supplemental Cure Notice or any Adequate Assurance Objection with respect to the provision of adequate assurance of future performance must be filed within **seven (7) days of service of the Supplemental Cure Notice on the applicable Contract Counterparty.**

28. The Debtors request that any party failing to file a timely Cure Objection or an Adequate Assurance Objection be deemed to consent to the treatment of its executory contract and/or unexpired lease under section 365 of the Bankruptcy Code and be forever barred from asserting any objection with respect to the treatment of such executory contract and/or unexpired lease.

Relief Requested Should Be Granted

A. Bidding Procedures are Fair and Reasonable

29. The proposed Bidding Procedures are reasonable and appropriate and should be approved. Section 363 of the Bankruptcy Code permits the sale of all or some of a debtor’s assets. Moreover, under section 105(a) of the Bankruptcy Code, “[t]he court may issue any order . . . that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a). In essence, the Court may enter an order that safeguards the value of the debtor’s estate if doing so is consistent with the Bankruptcy Code. *See, e.g., Chinichian v. Campolongo (In re Chinichian)*, 784 F.2d 1440, 1443 (9th Cir. 1986) (“Section 105 sets out the power of the bankruptcy court to fashion orders as necessary pursuant to the purposes of the Bankruptcy Code.”); *In re Cooper Props. Liquidating Tr., Inc.*, 61 B.R. 531, 537 (Bankr. W.D. Tenn. 1986) (acknowledging that “the [b]ankruptcy [c]ourt is one of equity and as such it has a duty to protect whatever equities a debtor may have in

property for the benefit of its creditors as long as that protection is implemented in a manner consistent with the bankruptcy laws”).

30. To that end, courts recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate, and, therefore, are appropriate in the context of bankruptcy sales. *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *see also Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures and their constructs may serve to “encourage bidding and [] maximize the value of the debtor’s assets”).

31. The Bidding Procedures provide for an orderly, uniform, and competitive process through which interested parties may submit offers to purchase the Assets. The Debtors, with the assistance of their advisors, have structured the Bidding Procedures to promote active bidding by interested parties and to reach the highest or otherwise best offers reasonably available for the Assets. Additionally, the Bidding Procedures will allow the Debtors to conduct the Auction, if necessary, in a fair and transparent manner that will encourage participation by financially capable bidders with demonstrated ability to timely consummate the Sale Transaction. The Bidding Procedures provide the Debtors with an adequate opportunity to consider competing bids and to select the highest or otherwise best offers for the potential completion of the Sale Transaction.

32. Moreover, an orderly and expeditious Sale Process is critical to preserve and realize the Debtors’ value and maximize recoveries for the Debtors’ stakeholders. In formulating the Bidding Procedures, the Debtors balanced the need to provide adequate and appropriate notice to parties in interest and Potential Bidders with the need to quickly and efficiently run a sale process

in parallel with a solicitation process. The Bidding Procedures provide for the marketing of the Assets to pursue higher or better value than the Stalking Horse Bid. Accordingly, the Bidding Procedures should be approved.

B. Stalking Horse Bid Protections are Reasonable and Appropriate

33. The Debtors have agreed to provide reasonable and appropriate Stalking Horse Bid Protections. Critically, given that the Stalking Horse Bid is a credit bid, the Debtors are not seeking approval of a break-up fee in favor of the Stalking Horse Bidder. The Debtors have only agreed to a capped expense reimbursement, payable upon the consummation of an alternative transaction, which is a standard protection provided to a stalking horse bidder.

34. To warrant court approval of such expense reimbursement, the Fifth Circuit in *ASARCO* required a showing that the requested fees and expenses must be supported by a sound business justification. *See ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO, L.L.C)*, 650 F.3d 593, 602-603 (5th Cir. 2011) (favoring business judgment standard governing use of assets outside of the ordinary course of business, rather than the standard for administrative expenses, in assessing propriety of fees and expenses incurred by bidders). Here, the Stalking Horse Bid Protections are plainly a sound exercise of the Debtors' business judgment. The Stalking Horse Bid Protections promote more competitive bidding for the Assets by inducing the Stalking Horse Bidder to hold their offer open as minimum bids on which other bidders and the Debtors can rely. In doing so, the Stalking Horse Bidder are laying the foundation for the Debtors' sale process and serving as a catalyst for other Qualified Bids.

35. Further, the Stalking Horse Bid Protections are reasonable in view of the substantial benefits the Debtors will receive from having the Stalking Horse Bid serve as the floor for Potential Bidders, which would confirm that the Debtors receive the highest and best offer for the Assets. Moreover, the Stalking Horse Bid provides the Debtors with an opportunity to move forward with

the Sale Transaction that have a high likelihood of consummation with a contractually committed party at a fair and reasonable purchase price. It is unlikely that the Stalking Horse Bidder would agree to act as stalking horse bidder without being granted the Stalking Horse Bid Protections. Without the Stalking Horse Bid Protections, the Debtors might lose the opportunity to obtain the highest and best offer for the Assets or assets and would certainly lose the downside protection that are afforded by the existence of the Stalking Horse Bidder.

36. For all of the foregoing reasons, the Debtors believe that granting the Stalking Horse Bid Protections maximize the value realized for the benefit of the Debtors' estates, their creditors, and other parties in interest.

C. Assumption and Assignment of Assigned Contracts Should be Approved

37. Section 365(a) of the Bankruptcy Code provides that a debtor in possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The Debtors' decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. *See, e.g., Richmond Leasing Co. v. Cap. Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (applying a business judgment standard to debtor's determination to assume an unexpired lease); *COR Route 5 Co. v. Penn Traffic Co. (In re Penn Traffic Co.)*, 524 F.3d 373, 383 (2d Cir. 2008) (explaining that the business judgment test "rather obviously presupposes that the estate will assume a contract only where doing so will be to its economic advantage"); *In re Del Grosso*, 115 B.R. 136, 138 (Bankr. N.D. Ill. 1990) ("[T]he standard to be applied for approval of the assumption [of an executory contract] is the business judgment standard. . . ."). Accordingly, any assumption of the Assigned Contracts is an exercise of the Debtors' sound business judgment because the transfer of such contracts or leases is necessary to the Debtors' ability to obtain the best value for their Assets. Moreover, the

Assigned Contracts will be assumed and assigned in accordance with the Assumption and Assignment Procedures approved by the Court pursuant to the Bidding Procedures Order, which will be reviewed by the Debtors' key stakeholders. Accordingly, the Debtors' assumption of the Assigned Contracts is an exercise of sound business judgment and should be approved.

38. Further, the consummation of the Sale Transaction, which will involve the assignment of the Assigned Contracts, will be contingent upon the Debtors' compliance with the applicable requirements of section 365 of the Bankruptcy Code. Section 365(b)(1) of the Bankruptcy Code requires that any outstanding defaults under the Assigned Contracts must be cured or that adequate assurance be provided that such defaults will be promptly cured. As set forth above, the Debtors propose to file with the Court and serve on each Contract Counterparty, the Cure Notice indicating the Debtors' calculation of the Cure Cost for each such contract. The Contract Counterparties will have the opportunity to file objections to the proposed assumption and assignment of the Assigned Contracts to the Successful Bidder, including the proposed Cure Costs.

39. Pursuant to section 365(f)(2) of the Bankruptcy Code, a debtor may assign an executory contract or unexpired lease of nonresidential real property if "adequate assurance of future performance by the assignee of such contract or lease is provided." 11 U.S.C. § 365(f)(2)(B). The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given "practical, pragmatic construction." *See Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988); *see also In re Natco Indus., Inc.*, 54 B.R. 436, 440 (Bankr. S.D.N.Y. 1985) (finding that adequate assurance of future performance does not mean absolute assurance that debtor will thrive and pay rent); *In re Bon Ton Rest. & Pastry Shop, Inc.*, 53 B.R. 789, 803 (Bankr. N.D. Ill. 1985) ("Although

no single solution will satisfy every case, the required assurance will fall considerably short of an absolute guarantee of performance”). Among other things, adequate assurance may be given by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (noting that adequate assurance of future performance is present when the prospective assignee of a lease has financial resources and expressed a willingness to devote sufficient funding to the business to give it a strong likelihood of succeeding).

40. As set forth in the Bidding Procedures, for a bid to qualify as a Qualified Bid, a Potential Bidder must include with its bid Adequate Assurance Information regarding its ability (and the ability of its designated assignee, if applicable) to perform under the Assigned Contracts. At a Contract Counterparty’s request, the Debtors will provide Adequate Assurance Information to such Contract Counterparty. Upon receipt, such Contract Counterparty will have an opportunity to file an Adequate Assurance Objection in advance of the Sale Hearing. Based on the foregoing, the Debtors’ assumption and assignment of the Assigned Contracts satisfy the requirements under section 365 of the Bankruptcy Code and should be approved.

41. In addition, to facilitate the assumption and assignment of the Assigned Contracts, the Debtors further request that the Court find that all anti-assignment provisions in the Assigned Contracts, whether such provisions expressly prohibit or have the effect of restricting or limiting assignment of such contract or lease, to be unenforceable under section 365(f) of the Bankruptcy Code.⁷

⁷ Section 365(f)(1) provides in part that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease[.]” 11 U.S.C. § 365(f)(1). Section 365(f)(3) further provides that, “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an

42. The Debtors believe that the Assumption and Assignment Procedures are fair and reasonable, provide sufficient notice, and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request that the Court approve the Assumption and Assignment Procedures.

D. Sale of the Assets

I. The Sale Transaction Should be Approved as an Exercise of the Debtors' Sound Business Judgment

43. Section 363(b) of the Bankruptcy Code provides that a debtor may sell property of the estate outside the ordinary course of business after notice and a hearing. Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale, or lease of property of the estate, courts have found that a debtor's sale or use of assets outside the ordinary course of business should be approved if the debtor can demonstrate "some articulated business justification," as established by the Second Circuit in *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983), which decision has been adopted in this circuit. See *Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) ("[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business."); see also *ASARCO*, 650 F.3d at 601; *In re Cowin*, No. 13-30984, 2014 WL 1168714, at *38 (Bankr. S.D. Tex. Mar. 21, 2014); *West v. Flores (In re St. Marie Clinic PA)*, No. 10-70802, 2013 WL 5221055, at *9 (Bankr. S.D. Tex. Sept. 17, 2013).

assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee." 11 U.S.C. § 365(f)(3).

44. Once the Debtors articulate a valid business justification, “the business judgment rule . . . ‘is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.’” *In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill. 1995); *see also Integrated Res.*, 147 B.R. at 656; *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) (“[A] presumption of reasonableness attaches to a debtor’s management decisions.”).

45. The Debtors have a sound business justification for selling the Assets pursuant to a competitive-bidding process consistent with the Bidding Procedures. As discussed in the First Day Declaration, given the unavailability of other deleveraging or restructuring transactions, and based upon an analysis of the Debtors’ ongoing business, the Debtors’ concluded that a sale of the Assets pursuant to a competitive-bidding process, and subject to receiving bids in excess of the Stalking Horse Bid, as applicable, would likely be the best way to maximize recoveries for creditors in connection with the Debtors’ chapter 11 cases.

46. The Debtors submit that a Successful Bid resulting from the Bidding Procedures will constitute the highest or best offer for a sale of the Assets, and will provide a greater recovery for the Debtors’ estates than would be provided by any other available alternative. As such, the Debtors’ determination to sell the Assets pursuant to a competitive-bidding process as provided for in the Bidding Procedures is a valid and sound exercise of the Debtors’ business judgment. The Debtors believe that they have proposed a fair process for obtaining the highest and best offer and sale of the Assets for the benefit of the Debtors’ estates and their creditors. The fairness and reasonableness of the consideration to be received by the Debtors will be demonstrated by a “market check” through the process outlined in the Bidding Procedures.

II. Adequate and Reasonable Notice of the Sale Transaction Will Be Provided

47. As set forth above, the Sale Notice (a) informs interested parties of the deadlines for objecting to the Sale Transaction, and (b) otherwise includes all information relevant to parties interested in, or affected by, the Sale Transaction. Significantly, the form and manner of the Sale Notice will have been approved by this Court pursuant to the Bidding Procedures Order, after notice and a hearing, before it is served and, as such, the Debtors are confident that the Sale Notice will be properly vetted by the time of service thereof.

III. The Sale Transaction Should Be Approved “Free and Clear” Under Section 363(f) of the Bankruptcy Code

48. Section 363(f) of the Bankruptcy Code permits the Debtors to sell assets free and clear of all liens, claims, interests, charges, and encumbrances (with any such liens, claims, interests, charges, and encumbrances attaching to the net proceeds of the sale with the same rights and priorities therein as in the sold assets). As section 363(f) is stated in the disjunctive, when proceeding pursuant to section 363(f), it is only necessary to meet one of the five conditions of section 363(f). *In re Nature Leisure Times, LLC*, No. 06-41357, 2007 WL 4554276, at *3 (Bankr. E.D. Tex. Dec. 19, 2007) (“The language of § 363(f) is in the disjunctive such that a sale free and clear of an interest can be approved if any one of the aforementioned conditions contained in § 363(f) are satisfied.”). The Debtors believe that they will be able to demonstrate at the Sale Hearing that they have satisfied one or more of these conditions.

49. Additionally, the Court also may authorize the sale of a debtor’s assets free and clear of any liens pursuant to section 105 of the Bankruptcy Code, even if section 363(f) did not apply. *See In re Ditech Holding Corp.*, 606 B.R. 544, 591 (Bankr. S.D.N.Y. 2019) (“[P]lan sales can be free and clear of claims without invoking section 363(f).”); *In re Trans World Airlines, Inc.*, No. 01–0056 (PJW), 2001 WL 1820325, at *3 (Bankr. D. Del. Mar. 27, 2001) (“[B]ankruptcy

courts have long had the authority to authorize the sale of estate assets free and clear even in the absence of § 363(f).”); *see also Volvo White Truck Corp. v. Chambersburg Beverage, Inc. (In re White Motor Credit Corp.)*, 75 B.R. 944, 948 (Bankr. N.D. Ohio 1987) (“Authority to conduct such sales [free and clear of liens] is within the court’s equitable powers when necessary to carry out the provisions of Title 11.”).

50. The Debtors believe that one or more of the tests of section 363(f) will be satisfied with respect to the transfer of the Assets pursuant to the Sale Transaction. For example, certain of the Debtors’ creditors may consent to the sale free and clear under section 363(f)(2). However, in the event such creditors do not consent, a sale free and clear may proceed pursuant to section 363(f)(5) of the Bankruptcy Code because such creditors may be paid from the proceeds of the sale and the Debtors will establish at the Sale Hearing that such creditors can be compelled to accept a monetary satisfaction of its claims.

IV. The Sale Transaction Has Been Proposed in Good Faith and Without Collusion, and the Successful Bidder Will Be a “Good Faith Buyer”

51. Pursuant to section 363(m) of the Bankruptcy Code, a good-faith purchaser is one who purchases assets for value, in good faith, and without notice of adverse claims. *See O’Dwyer v. O’Dwyer (In re O’Dwyer)*, 611 F. App’x 195, 200 (5th Cir. 2015); *Mark Bell Furniture Warehouse, Inc. v. D.M. Reid Assocs., Ltd. (In re Mark Bell Furniture Warehouse), Inc.*, 992 F.2d 7, 9 (1st Cir. 1993); *In re Willemain v. Kivitz*, 764 F.2d 1019, 1023 (4th Cir. 1985); *In re Congoleum Corp.*, No. 03-51524, 2007 WL 1428477, at *2 (Bankr. D.N.J. May 11, 2007); *see also In re Abbotts Dairies of Pa., Inc.*, 788 F.2d 143, 147 (3d Cir. 1986) (to constitute lack of good faith, a party’s conduct in connection with the sale must usually amount to fraud, collusion between the buyer and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders).

52. In other words, a party would have to show fraud or collusion between the Successful Bidder and the debtor-in-possession or trustee or other bidders in order to demonstrate a lack of good faith. An appropriate characterization of good faith in a bankruptcy sale is a lack of “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” *Bleaufontaine, Inc. v. Roland International (In re Bleaufontaine, Inc.)*, 634 F.2d 1383, 1388 n.7 (5th Cir. 1981) (quoting *In re Rock Indus. Mach. Corp.*, 572 F.2d 1195, 1198 (7th Cir. 1978)).

53. The Debtors submit that the Successful Bidder(s) arising from the Auction, if any, will be a “good faith” purchaser within the meaning of section 363(m) and the terms of a purchase agreement with any Successful Bidder will be negotiated at arms’-length and in good faith without any collusion or fraud.⁸ The Bidding Procedures are designed to produce a fair, transparent, and competitive Sale Process. All parties in interest will have an opportunity to evaluate and object, if necessary, to any particular party’s conduct or the satisfaction of the requirements of section 363(m) of the Bankruptcy Code. Accordingly, the Debtors will be prepared to show, at the Sale Hearing, that the Successful Bidder is entitled to the full protections of section 363(m) and will seek a finding that any Successful Bidder is a good faith purchaser and is entitled to the full protections of the Bankruptcy Code.

⁸ Section 363(m) provides that:

The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal.

11 U.S.C. § 363(m).

Emergency Consideration

54. The Debtors respectfully request emergency consideration of this motion in accordance with Local Rule 9013-1(i). As discussed herein and in the First Day Declaration, the Debtors' ability to implement the Sale Transaction on an expedited timeline is critical to preserving the Debtors' ability to receive the highest or otherwise best value for the Assets, thereby enhancing the value of the Assets. Accordingly, the Debtors respectfully request that the Court approve the relief requested in this motion on an emergency basis.

Notice

55. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the ABL Agent and to the agent under the DIP ABL Facility; (d) counsel to the Ad Hoc Group; (e) counsel to the First Lien Notes Trustee; (f) counsel to the Second Lien Notes Trustee; (g) counsel to the PC Noteholder Group; (h) counsel to the trustee under the DIP Notes Facility; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the state attorneys general for states in which the Debtors conduct business; (m) other regulatory agencies having a regulatory or statutory interest in these cases; (n) counsel to Party City; (o) the Insurance Carriers; (p) the Sureties; (q) counsel to Barings, LLC, Arnold & Porter Kaye Scholer LLP, 70 West Madison Street Suite 4200, Chicago, IL 60602-4231, Attn: Tyler Nurnberg (Tyler.Nurnberg@arnoldporter.com) and Alex Hevia (alexander.hevia@arnoldporter.com); and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

WHEREFORE the Debtors respectfully request entry of the Bidding Procedures Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: November 8, 2023
Houston, Texas

Respectfully submitted,

By: /s/ Tom A. Howley

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*Proposed Counsel to the Debtors and the Debtors
in Possession*

Certificate of Accuracy

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Tom A. Howley

Tom A. Howley

Certificate of Service

I certify that on November 8, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Tom A. Howley

Tom A. Howley

EXHIBIT A

BIDDING PROCEDURES ORDER

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

In re:

Chapter 11

ANAGRAM HOLDINGS, LLC, *et al.*¹

Case No. 23-90901 (MI)

Debtors.

(Jointly Administered)

ORDER (I) APPROVING (A) THE BIDDING PROCEDURES, (B) THE BID PROTECTIONS GRANTED TO THE STALKING HORSE BIDDER, (C) ASSUMPTION AND ASSIGNMENT PROCEDURES, (II) GRANTING RELATED RELIEF

Upon the emergency motion, dated November 8, 2023 (the “**Motion**”) ² of Anagram Holdings, LLC and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Bankruptcy Rules, and Rules 2002-1 and 9013-1 of the Local Rules, for an entry of an order (i) approving the Bidding Procedures substantially in the form attached hereto as Exhibit 1 to facilitate a sale (the “**Sale Transaction**”) of all or substantially all of the Debtors’ business and assets (the “**Assets**”); (ii) approving the Stalking Horse Bid Protections in accordance with the asset purchase agreement substantially in the form attached hereto as Exhibit 2 (the “**Stalking Horse APA**”); (iii) setting the deadline for potential bidders to submit a bid to purchase the Assets (the “**Final Bid Deadline**”);

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344.

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

(iv) authorizing and scheduling an auction (the “**Auction**”), to the extent necessary; (v) authorizing and scheduling a hearing with respect to the approval of the Sale Transaction (the “**Sale Hearing**”); (vi) authorizing and approving the form and manner of the Sale Notice substantially in the form attached hereto as Exhibit 3; (vii) authorizing and approving the form and manner of the Cure Notice to Contract Counterparties substantially in the form attached hereto as Exhibit 4 regarding the Debtors’ potential assumption and assignment of the Assigned Contracts and of the Debtors’ proposed amount necessary to cure any defaults thereunder (the “**Cure Costs**”); (viii) authorizing and approving procedures for the assumption and assignment of the Assigned Contracts and the determination of Cure Costs with respect thereto (collectively, the “**Assumption and Assignment Procedures**”); (ix) authorizing the sale of the Assets, free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code following the Sale Process and completion of the Auction; and (x) granting related relief, all as more fully set forth in the Motion; and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. § 1334; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and this Court having reviewed the Motion, and the First Day Declaration contemporaneously therewith; and this Court having held a hearing (the “**Bidding Procedures Hearing**”) to consider the relief requested in the Motion; and all objections, if any, to the Motion having been withdrawn, resolved, or overruled; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best

interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before this Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. Statutory and Legal Predicates. The predicates for relief granted herein are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Bankruptcy Rules, and Rules 2002-1 and 9013-1 of the Local Rules.

B. Bidding Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the Bidding Procedures. The Bidding Procedures are fair, reasonable, and appropriate. The Bidding Procedures are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Assets resulting in the highest or otherwise best offers.

C. Stalking Horse Bidder. The proposed bid reflected in the Stalking Horse APA represents the highest or best offer the Debtors have received as of the date hereof to purchase the Assets. Accordingly, Celebration Bidco, LLC shall act as the “**Stalking Horse Bidder**” and be subject to higher or better offers in accordance with the Bidding Procedures. Pursuit of the Stalking Horse APA is in the best interests of the Debtors, their estates, and creditors, and it reflects a sound exercise of the Debtors’ business judgment. The Stalking Horse APA provides the Debtors with the opportunity to sell the Assets and to preserve and realize their maximum value. The Stalking

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent 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.

Horse APA will enable the Debtors to continue their operations, minimize disruption to the Debtors' businesses, and secure a fair and adequate baseline price for the Assets at the Auction, if necessary, for the Assets and, accordingly, will provide a clear benefit to the Debtors, their estates, their creditors, and all other parties in interest.

D. The Stalking Horse Bid Protections, which grants the Stalking Horse Bidder the right to reimbursement for up to \$2,000,000 in certain circumstances, of reasonable and documented expenses (the "**Stalking Horse Bid Protections**"), (i) have been negotiated by the Stalking Horse Bidder and the Debtors and their respective advisors at arms' length and in good faith and (ii) are necessary to ensure that the Stalking Horse Bidder will continue to pursue the terms offered under Stalking Horse APA and the Sale Transaction. The Stalking Horse Bid Protections, to the extent payable under the Stalking Horse APA, (x) pursuant to sections 105(a), 364, and 503 of the Bankruptcy Code, are a superpriority administrative expense claim in each of Debtors' bankruptcy estates with priority over any and all administrative expense claims (subject to the Carve-Out (as defined in the Interim DIP Order⁴)), which shall be payable upon consummation of an alternative transaction, (y) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder, and (z) are fair, reasonable and appropriate, including in light of the size and nature of the Sale Transaction, the necessity to announce a sale transaction for the Assets and the efforts that have been and will be expended by

⁴ "**Interim DIP Order**" means the *Interim Order (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens and Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief.*

the Stalking Horse Bidder. The Stalking Horse Bid Protections are a material inducement for, and a condition of, the Stalking Horse Bidder's execution of the Stalking Horse APA.

E. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the Assumption and Assignment Procedures, including the form and manner of the Sale Notice and the Cure Notice, and (iii) the Stalking Horse Bid Protections (to the extent payable under the Stalking Horse APA).

F. Good Faith Negotiations. The Bidding Procedures were negotiated in good faith and at arms' length and are reasonably designed to promote participation and active bidding and ensure that the highest or best value is generated for the Assets.

G. Non-Insider Status. The Stalking Horse Bidder is not an "insider" or "affiliate" of any of the Debtors, as those terms are defined in section 101 of the Bankruptcy Code, and no common identity of incorporators, directors, or controlling stockholders exist between the Stalking Horse Bidder and the Debtors. The Stalking Horse Bidder and its respective counsel and advisors have acted in "good faith" within the meaning of section 363(m) of the Bankruptcy Code in connection with the Stalking Horse Bidder's negotiation of the Stalking Horse Bid Protections, the Bidding Procedures, and the Stalking Horse APA.

H. Assumption and Assignment Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the Assumption and Assignment Procedures. The Assumption and Assignment Procedures, including the form of Sale Notice attached hereto as Exhibit 3 and the form of Cure Notice attached hereto as Exhibit 4, are fair, reasonable, and appropriate. The Assumption and Assignment Procedures provide an adequate opportunity for all Contract Counterparties to raise any objections to the proposed assumption and assignment or to

the proposed Cure Costs. The Assumption and Assignment Procedures comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

I. Cure Notice. The Cure Notice, the form of which is attached hereto as Exhibit 4, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Assumption and Assignment Procedures, as well as any and all objection deadlines related thereto, and no other or further notice shall be required for the Motion and the procedures described therein, except as expressly required herein.

J. Notice. All other notices to be provided pursuant to the procedures set forth in the Motion are good and sufficient notice to all parties in interest of all matters pertinent hereto. No further notice is or shall be required.

K. Relief is Warranted. The legal and factual bases set forth in the Motion, in the First Day Declaration, and at the Bidding Procedures Hearing establish just and sufficient cause to grant the relief requested therein.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights included in such objections, are hereby overruled and denied on the merits with prejudice.

2. The Debtors are authorized to implement the Bidding Procedures in accordance with the following timeline:

<u>Key Event</u>	<u>Date</u>
Hearing on Bid Procedures Motion (“ Bid Procedures Hearing ”)	November 17, 2023 (subject to Court availability)
Deadline to Serve Cure Notices	November 21, 2023

Deadline to Submit Indications of Interest	November 20, 2023 at 5:00 p.m. (prevailing Central Time)
Final Bid Deadline	November 30, 2023 at 5:00 p.m. (prevailing Central Time)
Cure Objection Deadline	December 4, 2023 at 5:00 p.m. (prevailing Central Time)
Deadline for Debtors to Notify Bidders of Status as Qualified Bidders	One (1) day after the Final Bid Deadline
Auction	December 5, 2023 at 9:00 a.m. (prevailing Central Time)
File Notice of Successful Bidder	One (1) business day after the Auction
Sale Objection Deadline	December 11, 2023 at 5:00 p.m. (prevailing Central Time)
Hearing to Approve Sale Transaction (the “ Sale Hearing ”)	December 18, 2023 (subject to Court availability)

3. Subject to the terms of this Order, the Bidding Procedures, and the Stalking Horse APA, the dates and deadlines set forth in this Order are subject to modification by the Debtors, in consultation with the Consultation Parties, and upon proper notice to parties in interest, without further order of this Court.

STALKING HORSE BID PROTECTIONS

4. The Stalking Horse Bid Protections are approved in their entirety and shall be payable in accordance with, and subject to the terms of, the Stalking Horse APA, and without further order of the Court.

5. The Stalking Horse Bid Protections, to the extent earned and payable under the Stalking Horse APA, shall constitute an allowed superpriority administrative expense claim against the Debtors’ estates pursuant to sections 105(a), 364, and 503 of the Bankruptcy Code with

priority over all other administrative expenses of the kind specified in section 503(b) of the Bankruptcy Code (subject to the Carve-Out), which shall be payable upon consummation of an alternative transaction.

BIDDING PROCEDURES

6. The Bidding Procedures, attached hereto as Exhibit 1, are hereby approved.

7. The Bidding Procedures are incorporated herein by reference, and shall govern the bids and proceedings related to the sale of the Assets, including, but not limited to, the Stalking Horse APA, and the Auction. The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being the Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. If there is any conflict between the terms of this Order and the Bidding Procedures, the terms of the Bidding Procedures shall govern.

8. The procedures and requirements set forth in the Bidding Procedures, including those associated with submitting a Qualified Bid, are fair, reasonable and appropriate, and are designed to maximize recoveries for the benefit of the Debtors' estates, creditors, and all parties in interest. For the avoidance of doubt, the Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid for purposes of the Bidding Procedures, which status cannot be abrogated by subsequent amendment or modification to the Bidding Procedures.

9. All parties are prohibited from (i) engaging in any collusion with respect to the submission of any bid or the Auction, (ii) coordinating or joining with any other party on a bid or bids (except as permitted by the Debtors), or (iii) taking any other action intended to prevent a transparent and competitive auction process. Each Qualified Bidder participating in the Auction

shall confirm in writing and on the record at the Auction that (i) it has not engaged in any of the foregoing prohibited actions and (ii) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder.

10. The Debtors are authorized to take all reasonable actions necessary or appropriate to implement the Bidding Procedures in accordance with the terms of this Order and the Bidding Procedures.

OBJECTIONS TO THE SALE TRANSACTION

11. As set forth in the Motion and provided for in the Bidding Procedures, the Debtors shall seek entry of an order, and the proposed form of order (which may be included as part of a proposed order to confirm a chapter 11 plan) shall be filed on the docket of these chapter 11 cases no later than five (5) days prior to the Sale Objection Deadline (as defined herein), which: (i) authorizes (a) the sale of the Assets free and clear of all liens, claims, interests, and encumbrances, other than those expressly assumed, and (b) the assumption and assignment of certain executory contracts and unexpired leases, and (ii) grants related relief.

12. The objection deadline for the Sale Transaction will be at 5:00 p.m. (prevailing Central Time) on the date that is seven (7) days before the Sale Hearing (the “**Sale Objection Deadline**”).

13. Objections to the Sale Transaction (each, a “**Sale Objection**”), must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and, to the extent applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; and (iv) conform to the Bankruptcy Rules and the Local Rules. In addition, subject to the terms of this Order and the Bidding Procedures, the Debtors may,

in consultation with the Consultation Parties, extend any objection date specified in the applicable notice, as the Debtors deem appropriate in the exercise of their reasonable business judgment, as applicable. If a timely Sale Objection cannot otherwise be resolved by the parties, such Sale Objection shall be heard by the Court at the Sale Hearing.

14. An appropriate representative of the Successful Bidder shall appear at the Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder's ability to close in a timely manner and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction.

15. Any party who fails to timely file with the Court a Sale Objection will be forever barred from asserting any Sale Objection to the such sale, or to the consummation and performance of a sale transaction contemplated by a purchase agreement between the Debtors and the Successful Bidder, including the transfer of the Assets to the Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code.

SALE NOTICE

16. The Sale Notice, substantially in the form attached hereto as Exhibit 3, is approved, and no other or further notice of the Sale Transaction, the Auction, the Sale Hearing, or the Sale Objection Deadline shall be required if the Debtors serve and publish such notice, in the manner provided in the Bidding Procedures and this Order. The Sale Notice contains the type of information required under Bankruptcy Rule 2002, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules. Service of the Sale Notice

as described above shall be good and sufficient notice of the Sale Transaction and the Assumption and Assignment Procedures with respect to known interested parties.

ASSIGNMENT AND ASSUMPTION PROCEDURES

17. The following Assumption and Assignment Procedures are reasonable and appropriate under the circumstances, fair to all Contract Counterparties, comply in all respects with the Bankruptcy Code, and are approved.

18. The Cure Notice, substantially in the form attached hereto as Exhibit 4, is reasonable, fair, and appropriate, contains the type of information required under Bankruptcy Rule 2002, and complies in all respects with applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and Local Rules, and is hereby approved.

19. The Cure Notice, including any Supplemental Cure Notice (as defined below), is reasonably calculated to provide sufficient notice to the Contract Counterparties of the Debtors' proposed assumption and assignment of the Assigned Contracts in connection with the Sale Transaction and constitutes adequate notice thereof, and no other or further notice of the Debtors' proposed Cure Costs or the proposed assumption and assignment of the Assigned Contracts shall be required if the Debtors file and serve such notice in accordance with the Assumption and Assignment Procedures and this Order.

20. On or before November 21, 2023, the Debtors shall file the Cure Notice with the Court and serve the Cure Notices on the Contract Counterparties. Service of the Cure Notice in accordance with this Order on all Contract Counterparties is hereby deemed to be good and sufficient notice of the proposed Cure Costs for, and the proposed assumption and assignment of, the Assigned Contracts. As soon as reasonably practicable after filing the Cure Notice, the Debtors

shall post a copy of the Cure Notice on the website for the chapter 11 cases maintained by Kurtzman Carson Consultants LLC, the Debtors' claims and noticing agent (the "**Case Website**").

21. In accordance with the Bidding Procedures, each Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the Sale Transaction including, without limitation, ability to post replacement letters of credit, as applicable, and such financial and other information setting forth adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party (such information, "**Adequate Assurance Information**").

22. The Debtors shall provide, or cause to be provided, at the applicable Contract Counterparty's request, Adequate Assurance Information on a strictly confidential basis once a Potential Bidder is deemed a Qualified Bidder. Contract Counterparties shall not use any Adequate Assurance Information for any purpose other than to (i) evaluate whether the adequate assurance requirements under Bankruptcy Code section 365(f)(2)(B) and, if applicable, Bankruptcy Code section 365(b)(3), have been satisfied, and (ii) to support any Adequate Assurance Objection (as defined herein) filed by the Contract Counterparty; *provided, that*, if a Contract Counterparty seeks to disclose confidential, non-public information included in the Adequate Assurance Information, it shall request Court authority to redact such information, unless disclosure of such confidential, non-public information is authorized by the Debtors, the Successful Bidder, and any known proposed assignee(s) of the relevant Assigned Contracts (if different from the Successful Bidder), or ordered by the Court.

23. Objections, if any, to any proposed Cure Costs (each, a “**Cure Objection**”) and to the provision of adequate assurance of future performance (each, an “**Adequate Assurance Objection**”) must: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and, to the extent applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; and (v) be filed with the Court **no later than 5:00 p.m. (prevailing Central Time) on December 4, 2023.**

24. If a timely Cure Objection or Adequate Assurance Objection is received and such objection cannot otherwise be resolved by the parties, such objection shall be heard at the Sale Hearing or such other hearing scheduled prior to the scheduled closing of the Sale Transaction.

25. If a Cure Objection or Adequate Assurance Objection cannot otherwise be resolved by the parties, the Debtors, in consultation with the Consultation Parties and applicable Successful Bidder, may assume and assign the Contract(s) or Lease(s) pending resolution of the Cure Objection.

26. If (a) the Debtors identify (i) additional contracts or leases to be assumed and assigned to the Successful Bidder or (ii) modifications that need to be made to a proposed Cure Cost previously stated in the Cure Notice, or (b) the Successful Bidder designates any additional contracts or leases not previously included on the Cure Notice for assumption and assignment, the Debtors shall promptly file with the Court and serve by first class mail on the applicable Contract Counterparty a supplemental Cure Notice (each, a “**Supplemental Cure Notice**,” the form of which shall be substantially similar to the form of Cure Notice attached hereto as Exhibit 4). As soon as reasonably practicable after filing a Supplemental Cure Notice, the Debtors shall post a

copy of the Supplemental Cure Notice on the Case Website. Any Cure Objection with respect to Cure Costs set forth in a Supplemental Cure Notice or any Adequate Assurance Objection with respect to the provision of adequate assurance of future performance must be filed within seven (7) days of filing of that Supplemental Cure Notice. Notwithstanding anything herein to the contrary, the Debtors shall assume and assign contracts and leases to the Successful Bidder in accordance with the deadline provided in the Stalking Horse APA.

27. If no timely Cure Objection is filed in respect of an Assigned Contract, the Cure Cost identified on the Cure Notice or a Supplemental Cure Notice, as applicable, will be the only amount necessary under section 365(b) of the Bankruptcy Code to cure all defaults under such Assigned Contract. Any party failing to timely file a Cure Objection shall be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts against the Debtors, their estates, and the Successful Bidder.

28. If no timely Adequate Assurance Objection is filed with respect to an Assigned Contract or the Successful Bidder, the Debtors will be deemed to have provided adequate assurance of future performance for such Assigned Contract in accordance with section 365(f)(2)(B) of the Bankruptcy Code and the Contract Counterparty shall forever be barred from asserting against the Debtors, their estates, and the Successful Bidder, any additional obligation to provide adequate assurance of future performance and the relevant Contract Counterparty shall be deemed to have consented to the assumption and assignment of the Assigned Contract to the Successful Bidder.

29. If no objection is timely received with respect to an Assigned Contract (the “**Contract Objection**”): (i) the Contract Counterparty to such Assigned Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder of

the Assigned Contract, and be forever barred from asserting any objection with regard to such assumption and assignment (including, without limitation, with respect to adequate assurance of future performance by the Successful Bidder); (ii) any and all defaults under the Assigned Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to Bankruptcy Code section 365(b)(1)(A) and upon payment of the Cure Costs set forth in the Cure Notice for such Assigned Contract; and (iii) the Contract Counterparty shall be forever barred from asserting any other claims related to such Assigned Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the order resolving such Contract Objection and any sale order.

30. Absent entry of an order approving the Sale Transaction, the Assigned Contracts shall not be deemed assumed or assigned, and shall in all respects be subject to further administration under the Bankruptcy Code.

31. The inclusion of a contract, lease, or other agreement on the Cure Notice or any Supplemental Cure Notice shall not constitute or be deemed a determination or admission by the Debtors or any other party in interest that such contract or other document is an executory contract or unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Cost is due (all rights with respect thereto being expressly reserved). The Debtors reserve all of their rights, claims, defenses, and causes of action with respect to each contract or other document listed on the Cure Notice or any Supplemental Cure Notice.

RESERVATION OF RIGHTS

32. Except as otherwise set forth in the Bidding Procedures, the Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, after consultation with the Consultation Parties, to: (i) modify the Bidding

Procedures; (ii) waive terms and conditions set forth in the Bidding Procedures with respect to all Potential Bidders; (iii) extend the deadlines set forth in the Bidding Procedures; (iv) announce at the Auction modified or additional procedures for conducting the Auction; or (v) alter the assumptions set forth in the Bidding Procedures; *provided, that*, any modifications shall not be inconsistent with the Stalking Horse APA, the Bidding Procedures Order, or any other order of the Bankruptcy Court and shall not modify the consent or consultation rights of any party. Subject to the foregoing, the Debtors may, in consultation with the Consultation Parties, provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures and this Order. All parties reserve their rights to seek Bankruptcy Court relief, including on an expedited basis, with regard to the Auction, the Bidding Procedures, and any related items. Nothing in these Bidding Procedures or the Bidding Procedures Order shall amend, modify, waive, or impair, or be deemed to amend, modify, waive, or impair, any provision of the Stalking Horse APA or any rights or remedies of the Stalking Horse Bidder, all of which are hereby preserved.

FIDUCIARY OUT

33. Nothing in the Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor to take any action, or to refrain from taking any action, with respect to the Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law; *provided* that this paragraph shall not permit the Debtors to take any action to frustrate, delay, or

otherwise avoid paying Stalking Horse Bid Protections when such Stalking Horse Bid Protections may become due in accordance with the Stalking Horse APA, which obligation shall survive any amendments or modifications to the Bidding Procedures.

GENERAL PROVISIONS

34. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process shall be deemed to have knowingly and voluntarily (i) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Sale Process, the Auction and/or the Sale Transaction) to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution and (ii) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

35. The Debtors are authorized to make non-substantive changes to the Bidding Procedures, the Assumption and Assignment Procedures, and any related documents without further order of the Court, including, without limitation, changes to correct typographical and grammatical errors.

36. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, and 9014, or any applicable provisions of the Local Rules or otherwise, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry, and no automatic stay of execution shall apply to this Order.

37. The Debtors are authorized to take all reasonable steps necessary or appropriate to carry out the relief granted in this Order.

38. This Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2023

Houston, Texas

UNITED STATES BANKRUPTCY JUDGE

EXHIBIT 1

BIDDING PROCEDURES

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

In re:)	
)	Chapter 11
)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> ¹)	Case No. 23-90901 (MI)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

BIDDING PROCEDURES

Overview

On November 8, 2023 (the “**Debtors**” or “**Anagram**”) and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**” or the “**Court**”). These chapter 11 cases have been consolidated for procedural purposes under the lead case: *Anagram Holdings, LLC*, Case No. 23-90901 (MI).

On [●], 2023, the Bankruptcy Court entered an order (ECF No. [●]) (the “**Bidding Procedures Order**”), which, among other things, authorized the Debtors to solicit bids (each, a “**Bid**”) and approved these procedures (the “**Bidding Procedures**”) for the consideration of the highest or otherwise best Bids for all or substantially all of the Debtors’ assets on the terms and conditions set forth herein.²

A stalking horse bid (the “**Stalking Horse Bid**”) has been submitted by Celebration Bidco, LLC (the “**Stalking Horse Bidder**”). The Debtors have entered into an asset purchase agreement (the “**Stalking Horse APA**”) with the Stalking Horse Bidder. The Debtors have provided the Stalking Horse Bidder with certain protections in the form of expense reimbursement, in accordance with the Stalking Horse APA (the “**Bid Protections**”). The Stalking Horse Bid provides for total consideration equal to the sum of (i) a credit bid of all amounts outstanding under (including

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Bidding Procedures Order and the *Emergency Motion of Debtors for Entry of Orders (I) Authorizing Debtors to Obtain Senior Secured Superpriority Postpetition Financing, (II) Authorizing Debtors’ Use of Cash Collateral, (III) Granting Adequate Protection to the Prepetition Secured Parties for the Use Thereof, (IV) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001(b), and (V) Granting Related Relief* filed contemporaneously herewith (the “**DIP Motion**”), as applicable.

principal, pre- and post-petition interest and prepayment premiums) the DIP Notes Facility and the First Lien Notes, which is equal approximately to \$168,000,000³; (ii) a cash payment sufficient to repay the DIP ABL Facility in accordance with its terms, unless the DIP ABL Facility is assumed by the Stalking Horse Bidder with the prior written consent of the lender under the DIP ABL Facility; (iii) a minimum cash payment sufficient to fund the wind-down of the Debtors' estates; and (iv) the assumption of Assumed Liabilities (clauses (i) through (iv) together, the **"Stalking Horse Bid Consideration"**). The Stalking Horse Bid is subject to higher or better offers submitted in accordance with the terms and conditions of these Bidding Procedures.

For all purposes under these Bidding Procedures, the Stalking Horse Bidder approved as such pursuant to the Bidding Procedures Order shall be considered a Qualified Bidder, and the Stalking Horse Bid shall be considered a Qualified Bid. Subject to the other provisions of these Bidding Procedures, in the event that the Stalking Horse Bid is the only Qualified Bid received by the Debtors by the Final Bid Deadline, the Stalking Horse Bidder shall be deemed the Successful Bidder and the Debtors shall not hold the Auction.

The Bidding Procedures describe, among other things: (i) the procedures for bidders to submit bids for an acquisition of the Assets (as defined herein), subject to an order of the Bankruptcy Court approving the Sale Transaction; (ii) the manner in which bidders and bids become Qualified Bidders and Qualified Bids; (iii) the process for negotiating the bids received; (iv) the conduct of the Auction if the Debtors receive more than one Qualified Bid; (v) the procedure for the ultimate selection of a Successful Bidder and any Back-Up Bidder; and (vi) the process for approval of the Sale Transaction at the Sale Hearing (each as defined herein).

Reservation of Rights

Except as otherwise set forth herein, the Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, after consultation with the advisors to any official committee of unsecured creditors (the **"Consultation Parties"**), to: (i) modify these Bidding Procedures; (ii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iii) extend the deadlines set forth herein; (iv) announce at the Auction modified or additional procedures for conducting the Auction; or (v) alter the assumptions set forth herein; *provided, that*, any modifications shall not be inconsistent with the Stalking Horse APA, the Bidding Procedures Order, or any other order of the Bankruptcy Court. Subject to the foregoing, the Debtors may, in consultation with the Consultation Parties, provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Debtors' business, in each case, to the extent not materially inconsistent with these Bidding Procedures and the Bidding Procedures Order. All parties reserve their rights to seek Bankruptcy Court relief, including on an expedited basis, with regard to the Auction, these Bidding Procedures, and any related items. Nothing in these Bidding Procedures or the Bidding Procedures Order shall amend, modify, waive, or impair, or be deemed to amend, modify, waive, or impair, any provision of the

³ The exact amount will vary based on the closing date, due to, among other things, the accrual of post-petition interest.

Stalking Horse APA or any rights or remedies of the Stalking Horse Bidder, all of which are hereby preserved.

Fiduciary Out

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body reasonably determines in good faith, in consultation with outside counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with applicable law or its fiduciary obligations under applicable law; *provided* that this Fiduciary Out shall not permit the Debtors to take any action to frustrate, delay, or otherwise avoid paying Bid Protections when such Bid Protections may become due in accordance with the Stalking Horse APA, which obligation shall survive any amendments or modifications to the Bidding Procedures.

Summary of Important Dates

<u>Key Event</u>	<u>Date</u>
Hearing on Bid Procedures Motion	November 17, 2023 (subject to Court availability)
Deadline to Serve Cure Notices	November 21, 2023
Deadline to Submit Indications of Interest	November 20, 2023 at 5:00 p.m. (prevailing Central Time)
Final Bid Deadline	November 30, 2023 at 5:00 p.m. (prevailing Central Time)
Cure Objection Deadline	December 4, 2023 at 5:00 p.m. (prevailing Central Time)
Deadline for Debtors to Notify Bidders of Status as Qualified Bidders	One (1) day after the Final Bid Deadline
Auction	December 5, 2023 at 9:00 a.m. (prevailing Central Time)
File Notice of Successful Bidder	One (1) business day after the Auction
Sale Objection Deadline	December 11, 2023 at 5:00 p.m. (prevailing Central Time)
Hearing to Approve Sale Transaction (the “ Sale Hearing ”)	December 18, 2023 (subject to Court availability)

Assets to be Acquired

All Bids must be for all or substantially all of the Debtors' assets (the "**Assets**"). More information concerning the Assets and the Debtors' business can be found in the First Day Declaration. Additional information concerning the Assets will be made available in the Data Room (as defined and discussed further below).

Due Diligence

The Debtors have posted copies of all material documents related to the Debtors' business and the Assets to the Debtors' confidential electronic data room (the "**Data Room**"). To access the Data Room, a party must submit to the Debtors' advisors:

1. an executed confidentiality agreement in form and substance that is satisfactory to the Debtors (unless such party is already a party to an existing customary confidentiality agreement with the Debtors that is acceptable to the Debtors for this due diligence process, in which case such agreement shall govern); and
2. sufficient information, as reasonably determined by the Debtors, to allow the Debtors to determine, in their reasonable business judgment, that the interested party (i) has the financial wherewithal to consummate the Sale Transaction, and (ii) intends to access the Data Room for a bona fide purpose consistent with these Bidding Procedures.

An interested party that meets the aforementioned requirements to the reasonable satisfaction of the Debtors shall be a "**Potential Bidder**" for purposes of these Bidding Procedures. As soon as practicable, the Debtors will provide such Potential Bidder access to the Data Room; *provided, that*, such access may be terminated by the Debtors in their reasonable discretion at any time for any reason whatsoever, in consultation with the Consultation Parties, including that a Potential Bidder does not become a Qualified Bidder, these Bidding Procedures are terminated, the Potential Bidder breaches any obligations under its confidentiality agreement, or the Debtors become aware that information submitted by the Potential Bidder for requesting access to the Data Room is inaccurate or misleading. The Debtors may restrict or limit access of a Potential Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment and in consultation with the Consultation Parties that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Potential Bidder. For the avoidance of doubt, the Stalking Horse Bidder shall be provided access to the Data Room.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors or their advisors regarding the ability of such Potential Bidder to consummate the Sale Transaction.

Except as otherwise provided herein, the Debtors will provide any Potential Bidder additional information requested by Potential Bidders (subject to any restrictions pursuant to applicable law or these Bidding Procedures) that the Debtors believe in their reasonable business judgment to be reasonable and appropriate under the circumstances. All additional due diligence requests shall

be directed to (i) Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attn: Sunny Singh (Email: Sunny.Singh@stblaw.com), Nicholas Baker (Email: NBaker@stblaw.com) and Moshe A. Fink (Email: Moshe.Fink@stblaw.com) and (ii) the Debtors' investment bankers, Robert W. Baird & Co., 1155 6th Ave, New York, New York 10036, Attn: Ajay Bijoor (Email: abijoor@rwbaird.com) and Max Molinsky (Email: mmolinsky@rwbaird.com) (collectively, the **"Debtor Notice Parties"**). In the event that any such additional information is in written form and provided to a Potential Bidder, the Debtors shall simultaneously provide such additional information to all other Potential Bidders (including the Stalking Horse Bidder) by posting it in the Data Room.

Notwithstanding anything herein to the contrary, neither the Debtors nor any of their representatives shall be obligated to furnish any information of any kind whatsoever relating to the Debtors' businesses or assets to any person or entity who (i) is not a Potential Bidder, (ii) does not comply with the participation requirements set forth herein, or (iii) in the case of competitively sensitive information, is a competitor or customer of the Debtors, in the reasonable business judgment of the Debtors in consultation with the Consultation Parties.

Each Potential Bidder shall be deemed to acknowledge and represent (i) that it has had an opportunity to (a) conduct any and all due diligence regarding the Assets prior to making a bid and (b) investigate and/or inspect any documents and the Assets in making its bid; (ii) that it has relied solely upon its own independent review in making its bid; and (iii) that 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, except as expressly stated in these Bidding Procedures. The Debtors and their respective estates are not responsible for, and will have no liability with respect to, any information obtained by, or provided to, any Potential Bidders in connection with these Bidding Procedures and the Sale Transaction.

Non-Binding Indications of Interest

Potential Bidders must submit an indication of interest (a **"Non-Binding IOI"**) to the Debtor Notice Parties by **November 20, 2023 at 5:00 p.m. (prevailing Central Time)** in writing.

Submitting a Non-Binding IOI by the deadline listed herein does not obligate the interested party to consummate a transaction, submit a formal bid or to participate in the bidding process, nor does it cause such party to be deemed to be a Qualified Bidder. It also does not exempt such party from having to submit a Qualified Bid by the Final Bid Deadline (as defined below) or comply with these Bidding Procedures to participate in any subsequent Auction, all as described below. For the avoidance of doubt, a party that does not submit a Non-Binding IOI is not precluded from submitting a Qualified Bid by the Final Bid Deadline.

Bid Deadline

A Potential Bidder that desires to make a bid shall deliver electronic copies of its bid so as to be received no later than **November 30, 2023 at 5:00 p.m. (prevailing Central Time)** (the **"Final Bid Deadline"**); *provided, that*, the Debtors may, in consultation with the Consultation Parties, extend the Final Bid Deadline without further order of the Bankruptcy Court subject to providing

notice to all Potential Bidders and the Stalking Horse Bidder. **The submission of a bid by the Final Bid Deadline shall constitute a binding and irrevocable offer to acquire the Assets.** Any party that does not submit a bid by the Final Bid Deadline will not be allowed to (i) submit any offer after the Final Bid Deadline or (ii) participate in any Auction.

Throughout the bidding process, the Debtors and their advisors will regularly and timely consult with the Consultation Parties.

The Debtors shall promptly provide copies of all Bids (as defined below) and Non-Binding IOIs received by the Debtors to the Consultation Parties; *provided, that*, the Consultation Parties must treat such Bids or Non-Binding IOIs and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtors and the applicable Bidder.

For the avoidance of doubt, any consultation rights afforded to the Consultation Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their reasonable business judgment. Further, for the avoidance of doubt, any rights that the Consultation Parties may have pursuant to the terms of other agreements, any orders of the Court, or the Bankruptcy Code are hereby reserved and shall not be affected by these Bidding Procedures or the Bidding Procedures Order. All rights of the Consultation Parties with respect to the proposed Sale Transaction are fully reserved.

In the event that any Consultation Party or an affiliate of the foregoing submits a Bid, such party shall no longer be a Consultation Party with respect to the bidding and auction relating to the assets subject to such Bid until such time as such party withdraws such Bid and any obligation of the Debtors to consult with the bidding party or its affiliates established under these Bidding Procedures with respect to the bidding and auction relating to the assets subject to such Bid until such time as such party withdraws such Bid will be waived, discharged, and released without further action. For the avoidance of doubt, the foregoing shall apply to the Stalking Horse Bidder.

Form and Content of Qualified Bid

A bid is a signed document from a Potential Bidder received by the Final Bid Deadline that identifies the purchaser by its legal name and any other party that will be participating in connection with the bid (a "**Bid**"). To constitute a "**Qualified Bid**" a Bid must include, at a minimum, the following:⁴

- i. Proposed Agreement. Each Bid must include an executed agreement (the "**Proposed Agreement**") for the acquisition of the Assets, marked with a

⁴ The Debtors may waive any of the following requirements for a Bid to constitute a Qualified Bid to the extent reasonably necessary to promote bids and a robust auction so long as any such waiver is not materially inconsistent with these Bidding Procedures; *provided, that*, any such modifications shall not be inconsistent with the Stalking Horse APA, Bidding Procedures Order, or any other order of the Bankruptcy Court.

redline to show the specific changes in the Proposed Agreement to the Stalking Horse APA. The Proposed Agreement shall:

- a. include a complete set of all disclosure schedules and exhibits thereto marked to show the specific changes to the disclosure schedules and exhibits to the Stalking Horse APA distributed by the Debtors to Potential Bidders; and
 - b. not condition the closing of the proposed Sale Transaction on the receipt of any third party approvals (excluding such approvals required by the Bankruptcy Court or governmental and/or regulatory approvals).
- ii. Purchase Price; Form of Consideration; Cash Requirements; Assets; Assumed Liabilities; Credit Bid. Each Bid must clearly set forth, as applicable:
- a. Purchase Price. Each Bid must clearly identify the purchase price to be paid (the “**Purchase Price**”) and specify the aggregate amount of cash and other non-cash consideration being offered.
 - b. Cash Requirements. The Purchase Price must consist of a cash consideration (the “**Cash Requirement**”) that equals at least the sum of:
 - (i) all amounts and obligations outstanding under the DIP Indenture (estimated to be \$22,000,000 as of December 29, 2023);
 - (ii) an amount sufficient to cause all obligations under the DIP ABL Facility (as defined in the DIP Motion) to be paid in full in cash in accordance with its terms, estimated to be \$6,206,692.20 as of December 29, 2023;
 - (iii) all amounts and obligations outstanding under the Prepetition 1L Notes Indenture (as defined in the DIP Motion) (estimated to be \$146,419,102.89 as of December 29, 2023);
 - (iv) the Stalking Horse Bid Protections of \$2,000,000; and
 - (v) the wind-down amount of \$1,500,000;
 - (vi) an overbid amount of \$1,000,000.

Assuming a closing of December 29, 2023 and no incremental borrowing under the DIP ABL Facility, the Debtors estimate the Cash Requirement will be approximately \$180,000,000. This

amount is subject to change depending on the actual closing date and outstanding amounts under the DIP ABL Facility. Prior to submitting a Bid, a Potential Bidder may contact the Debtors' advisors to obtain the then-current amounts for items (i) – (iv) above.

- c. Assumed Liabilities: Each Bid must clearly identify the particular liabilities, if any, the Bidder seeks to assume. For the avoidance of doubt, a Qualified Bid may include a bid for less than all or substantially all of the Debtors' liabilities.
 - d. Credit Bid: Persons or entities holding a valid and perfected security interest in the Debtors' assets may submit a credit bid (a "**Credit Bid**") on such assets, to the extent permitted by applicable law or the Bankruptcy Court.
- iii. Unconditional Offer / Contingencies. Each Bid must contain a statement that the Bid is formal, binding, and unconditional, is not subject to any further due diligence or financing contingency, and is irrevocable until the Debtors notify the Potential Bidder that such Bid is not a Successful Bid or a Back-Up Bid, or until the first business day after the close of the Sale Transaction.
 - iv. Proof of Financial Ability to Perform. Each Bid must contain such financial and other information that allows the Debtors, in consultation with the Consultation Parties, to make a reasonable determination as to the Potential Bidder's financial and other capabilities to consummate the Sale Transaction including, such financial and other information setting forth adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder's willingness to perform under any contracts that are assumed and assigned to such party (such information, "**Adequate Assurance Information**"). Without limiting the foregoing, such Adequate Assurance Information must include current financial statements or similar financial information certified to be true and correct as of the date thereof, proof of financing commitments if needed to consummate the transaction (not subject to, in the Debtors' reasonable business judgment in consultation with the Consultation Parties any unreasonable conditions), contact information for verification of such information, including any financing sources, and any other information reasonably requested by the Debtors or the Consultation Parties necessary to demonstrate adequate assurance of future performance and to demonstrate that such Potential Bidder has the ability to consummate the Sale Transaction in a timely manner. Each Bid must contain a representation that all Adequate Assurance Information provided to support adequate assurance of future performance is true and correct.

- v. Designation of Contracts and Leases. Each Bid must identify with particularity (i) each and every executory contract and unexpired lease that the Potential Bidder seeks to assume and receive an assignment; and (ii) each other contract and lease of the Debtors that the Potential Bidder seeks to assume and receive an assignment.
- vi. Required Approvals. A statement or evidence (i) that the Potential Bidder has not conditioned their Bid on (a) obtaining financing, (b) any internal approval, (c) the outcome or review of unperformed due diligence, or (d) regulatory contingencies (except as otherwise provided in this section), (ii) that the Potential Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott Rodino Antitrust Improvements Act of 1976, as amended, or other antitrust laws, as applicable, and pay the fees associated with such filings; (iii) identifying each governmental and regulatory approvals required for the Potential Bidder to consummate the Sale Transaction, if any, and the Potential Bidder's plan and ability to obtain all requisite governmental, regulatory, or other third-party approvals and the proposed timing for the Potential Bidder to undertake the actions required to obtain such approvals; and (iv) that the Bid is reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid or as the Back-Up Bid, within a time frame acceptable to the Debtors. A Potential Bidder further agrees that its legal counsel will coordinate in good faith with the Debtors' legal counsel to discuss and explain such Potential Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable.
- vii. Disclosure of Identity and Corporate Authorization. Each Bid must (i) fully disclose the identity of the Potential Bidder of each entity that will be bidding or otherwise participating in such Bid (including any equity owners or sponsors, if the Potential Bidder is an entity formed for the purpose of consummating the Sale Transaction), and the complete terms of any such participation, and (ii) include evidence of corporate authorization and approval from the Potential Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of a Bid, participation in the Auction, and closing of the transactions contemplated by the Potential Bidder's Proposed Agreement in accordance with the terms of the Bid and these Bidding Procedures.
- viii. No Entitlement to Expense Reimbursement or Other Amounts. With the exception of any Stalking Horse Bid, each Bid must expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement or similar type of payment or reimbursement, and a waiver of any substantial contribution administrative expense claims under section 503(b) of the Bankruptcy Code related to the bidding process.

- ix. Disclosure of Connections. Each Bid must fully disclose any connections or agreements with the Debtors, any other known Potential Bidder and/or any officer or director of the Debtors.
- x. Representations and Warranties. Each Bid must include the following representations and warranties:
 - a. a statement that the Potential Bidder has had an opportunity to conduct, and has completed, any and all due diligence regarding the applicable business or asset prior to submitting its Bid.
 - b. a statement that the Potential Bidder (i) has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the businesses or assets in making its Bid, (ii) did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the businesses or assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Potential Bidder's Proposed Agreement ultimately accepted and executed by the Debtors and (iii) disclaims reliance on any such written or oral statements, representations, promises, warranties or guaranties.
- xi. Back-Up Bid Commitment: Each Bid must contain a statement that the Potential Bidder agrees to serve as Back-Up Bidder, if its Bid is selected as the next highest or next best bid after the Successful Bid.
- xii. No Collusion: Each Bid must contain a statement that the Potential Bidder has not (i) engaged in any collusion with respect to the submission of any bid or the Auction, (ii) coordinated or joined with any other party on a bid or bids, or (iii) taken any other action to prevent a transparent and competitive auction process.
- xiii. Honoring the Bidding Procedures: Each Bid must contain a statement that the Potential Bidder agrees to be bound by the terms of the Bidding Procedures.

A Potential Bidder must also accompany its Bid with:

- xiv. a Good Faith Deposit (as defined and discussed below);
- xv. the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the Bid submitted by the Potential Bidder; and
- xvi. a covenant to cooperate with the Debtors and the Consultation Parties to provide pertinent factual information regarding the Potential Bidder's

operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements.

For the avoidance of doubt, the Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse Bid shall be deemed a Qualified Bid for purposes of these Bidding Procedures, which status cannot be abrogated by subsequent amendment or modification to these Bidding Procedures.

Good Faith Deposit

A deposit of at least ten percent (10%) of the Purchase Price (a “**Good Faith Deposit**”) must be deposited, prior to the Final Bid Deadline, with an escrow agent selected by the Debtors (the “**Escrow Agent**”) pursuant to a customary and reasonable escrow agreement to be provided by the Debtors; *provided*, that, a Potential Bidder submitting a Credit Bid will not be required to accompany its Bid with a Good Faith Deposit for any portion of the Purchase Price that is a Credit Bid. To the extent a Qualified Bid is modified before, during, or after the Auction, the Debtors reserve the right, in consultation with the Consultation Parties, to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent (10%) of the Purchase Price. If a Qualified Bidder is required to increase its Good Faith Deposit, its status as a Qualified Bidder shall be suspended pending satisfaction of such adjustment. No party, including any prepetition lenders, postpetition lenders, or the DIP Noteholders (as defined in the DIP Motion) have or shall have any lien, claim, or right with respect to the Good Faith Deposit, and such funds shall not be available for distribution to the Debtors’ creditors, unless and until such funds become property of the Debtors’ estates in accordance with the terms of these Bidding Procedures. Notwithstanding the foregoing, the Good Faith Deposit, including the amount thereof, and any remedies against the Stalking Horse Bidder shall be governed by the Stalking Horse APA.

Review of Bids; Designation of Qualified Bids

The Debtors, in consultation with the Consultation Parties, will evaluate Bids that are timely submitted and may engage in negotiations with Potential Bidders who submitted Bids as the Debtors deem appropriate in the exercise of their reasonable business judgment, based upon the Debtors’ evaluation of the content of each Bid.

A Bid that is reasonably determined by the Debtors, in consultation with the Consultation Parties, to meet the requirements set forth herein will be considered a “**Qualified Bid**” and any bidder that submits a Qualified Bid (including the Stalking Horse Bid) will be considered a “**Qualified Bidder**.”

The Debtors shall determine, in their reasonable business judgment and in consultation with the Consultation Parties, which of the Bids received by the Final Bid Deadline qualifies as a Qualified Bid. The Debtors shall notify each Bidder who submits a Qualified Bid of its status as a Qualified Bidder by no later than one (1) day after the Final Bid Deadline.

In evaluating the Bids, the Debtors may take into consideration the following non-exhaustive factors:

1. the amount of the Purchase Price, the Cash Requirement, and Credit Bid, as applicable, set forth in the Bid (*provided*, that, for purposes of evaluating competing

Bids, and except with respect to the requirement that each Bid must provide the Cash Requirement, every dollar of a Credit Bid shall be treated the same as a dollar from a cash or other non-cash Bid, and a Credit Bid shall not be considered inferior to a comparable cash or other non-cash Bid because it is a Credit Bid);

2. the assets and liabilities excluded from the Bid and any executory contracts or leases or other liabilities proposed to be assumed;
3. the value to be provided to the Debtors under the Bid, including the net economic effect upon the Debtors' estates, taking into account the Stalking Horse Bidder's rights to the Stalking Horse Bid Protections;
4. any benefit to the Debtors' bankruptcy estates from any assumption of liabilities or waiver of liabilities, including replacement letters of credit;
5. the transaction structure and execution risk, including conditions to, timing of, and certainty of closing; termination provisions; availability of financing and financial wherewithal to meet all commitments; and required governmental or other approvals;
6. the impact on employees and employee claims against the Debtors;
7. the impact on trade creditors; and
8. any other factors the Debtors may deem relevant, consistent with their fiduciary duties.

The Debtors reserve the right, after consulting with the Consultation Parties, to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed a Qualified Bid.

Without the written consent of the Debtors, after consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price, increase the amount of a Credit Bid, or otherwise improve the terms of the Qualified Bid for the Debtors during the period that such Qualified Bid remains binding as specified herein; *provided, that*, any Qualified Bid may be improved at the Auction as set forth in these Bidding Procedures. For the avoidance of doubt, any amendment to the Stalking Horse APA, shall be filed with the Bankruptcy Court within one (1) business day of such amendment, and the Debtors will take into account all such amendments or modifications at the Auction.

Failure to Receive Qualified Bids Other Than Stalking Horse Bid

If no Qualified Bid (other than the Stalking Horse Bid) is received by the Final Bid Deadline, the Debtors will not conduct the Auction with respect to the Assets, and shall file a notice with the Bankruptcy Court indicating that no Auction will be held with respect to the Assets and the Stalking Horse Bidder is the Successful Bidder for the Assets. The Debtors shall also publish such

notice on the website of their proposed claims and noticing agent, Kurtzman Carson Consultants LLC, located at <https://www.kccllc.net/Anagram> (the “Case Website”).

Auction Procedures

If the Debtors receive two or more Qualified Bids with respect to the Assets, the Debtors shall conduct the Auction on **December 5, 2023 beginning at 9:00 a.m. (prevailing Central Time) at (i) the offices of Simpson Thacher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, or (ii) virtually, pursuant to procedures to be announced to bidders, or such other later date as may be determined by the Debtors in consultation with the Consultation Parties and upon notice to all parties in interest.** Only Qualified Bidders will be eligible to participate at the Auction, subject to such limitations as the Debtors may impose in good faith and in consultation with the Consultation Parties. In addition, only the professionals and/or other representatives of the Qualified Bidders, the Debtors, the DIP ABL Agent (as defined in the DIP Motion), the Stalking Horse Bidder, and the Consultation Parties shall be permitted to attend and observe the Auction, *provided, that*, any other party in interest who wishes to attend the Auction may contact the Debtor Notice Parties and request attendance.

The following auction rules shall apply to the Auction to promote a spirited and robust auction (the “**Auction Rules**”). All bids in the Auction will be made and received on an open basis, and all other Qualified Bidders participating in the Auction will be entitled to be present for all bidding with the understanding that the true identity of each Qualified Bidder placing a bid at the Auction will be fully disclosed to all other bidders participating in the Auction and that all material terms of a bid submitted in response to any Overbids (as defined below) made at the Auction will be disclosed to all other Qualified Bidders participating in the Auction. Each Qualified Bidder will be permitted what the Debtors reasonably determine, in consultation with the Consultation Parties, to be an appropriate amount of time to respond to the previous bid at the Auction. The Auction will be conducted openly and shall be transcribed or recorded. The starting bid (the “**Starting Bid**”) shall be the highest or best Qualified Bid, as determined by the Debtors in consultation with the Consultation Parties. The Debtors shall notify all Qualified Bidders, including the Stalking Horse Bidder, at least twenty-four (24) hours prior to the Auction what Qualified Bid will be the Starting Bid. If the Starting Bid includes noncash consideration, the Debtors shall notify all Qualified Bidders of the value allocated to such non-cash consideration at or prior to the Auction. The Auction will proceed thereafter in minimum bid increments (each, an “**Overbid**”) to be determined by the Debtors at the Auction, in consultation with the Consultation Parties (the “**Overbid Amount**”). If the Stalking Horse Bid is selected as the Starting Bid, any Overbid shall include the Stalking Horse Bid Consideration, *plus* the Stalking Horse Bid Protections, *plus* the Overbid Amount.

The Debtors shall notify all Qualified Bidders, including the Stalking Horse Bidder, of any proposed amendments or modifications to the Auction Rules as soon as reasonably practicable prior to the Auction (but no later than twenty four (24) hours prior to the Auction).

Pursuant to 18 U.S.C. §§ 156 and 157, bidders and their representatives may not communicate with one another, collude, or otherwise coordinate for purposes of participating in the Auction. All parties are prohibited from (i) engaging in any collusion with respect to the submission of any bid or the Auction, (ii) coordinating or joining with any other party on a bid or bids, or (iii) taking

any other action to prevent a transparent and competitive auction process. Each Qualified Bidder participating in the Auction shall confirm in writing and on the record at the Auction that (i) it has not engaged in any of the foregoing prohibited actions and (ii) its Qualified Bid is a good faith bona fide offer that it intends to consummate if selected as the Successful Bidder.

All parties attending the Auction must keep the proceedings and results of the Auction confidential until the Debtors have publicly disclosed the results of the Auction; *provided, that*, parties may speak with clients or parties necessary to place their bid or increase it so long as such individuals are advised of the confidentiality restriction.

The Debtors may, in the exercise of their business judgment and in consultation with the Consultation Parties, identify the highest or otherwise best Qualified Bid as the successful bid for the Assets (each, a “**Successful Bid**” and the bidder submitting such bid, a “**Successful Bidder**”). The Debtors may also identify a Qualified Bidder that submitted the next highest or otherwise best Qualified Bid as a back-up bid (a “**Back-Up Bid**” and the bidder submitting such bid, a “**Back-Up Bidder**”).

Before determining that a bidder other than the Stalking Horse Bidder is the Successful Bidder, the Debtors shall notify the Stalking Horse Bidder of their intent to make such a determination, shall disclose to the Stalking Horse Bidder the applicable competing bid, and shall in good faith inform the Stalking Horse Bidder of the minimum changes required such that the Debtors would consider such modified Stalking Horse Bid, in the exercise of their good faith business judgment, the highest or otherwise best offer. If the Stalking Horse Bidder determines to modify its bid to become the highest or otherwise best bid in the judgment of the Debtors, any competing bidder will be given a similar opportunity to modify its bid, with this back and forth process continuing until there is a Successful Bidder.

Within one (1) business day after the Auction, or as soon as reasonably practicable thereafter, the Successful Bidder shall (i) submit to the Debtors fully executed documentation memorializing the terms of the Successful Bid such Successful Bidder submitted and (ii) unless otherwise agreed in the purchase agreement between the Debtors and the Successful Bidder, submit by transfer of immediately available funds to an account identified by the Debtors any amount required to increase the Successful Bidder’s Good Faith Deposit to an amount equal to ten percent (10%) of the Purchase Price contained in the Successful Bid, if the amount of the Good Faith Deposit previously delivered by the Successful Bidder is less than such amount.

At any time before the designation of a Successful Bid and Back-Up Bid, if any, the Debtors, in consultation with the Consultation Parties, reserve the right to and may reject such Qualified Bid(s) (other than the Stalking Horse Bid) if such Qualified Bid(s), in the Debtors’ reasonable business judgment, is/are: (i) inadequate or insufficient; (ii) not in conformity with the requirements of the Bankruptcy Code, these Bidding Procedures, or the terms and conditions of the Sale Transaction; or (iii) contrary to the best interests of the Debtors and their estates.

Post-Auction Process

Within one (1) business day after the conclusion of the Auction, or as soon as reasonably practicable thereafter, the Debtors shall file with the Bankruptcy Court a notice of the Successful Bid(s), Successful Bidder(s), Back-Up Bid(s), and Back-Up Bidder(s).

Within two (2) business days after the Auction, the Debtors shall direct the Escrow Agent to return the Good Faith Deposit of any bidder (including the Stalking Horse Bidder), together with interest accrued thereon, who is not declared the Successful Bidder or Back-Up Bidder. Within two (2) business days after the expiration of the Back-Up Bid, the Debtors shall direct the Escrow Agent to return the Good Faith Deposit of each Back-Up Bidder, together with interest accrued thereon, if any. Upon the authorized return of any such Good Faith Deposit, the bid of such Potential Bidder, Qualified Bidder or Back-Up Bidder, as applicable, shall be deemed revoked and no longer enforceable.

The Successful Bidder's Good Faith Deposit shall be applied against the cash portion of the purchase price of such bidder's Successful Bid upon the consummation of the Sale Transaction.

In addition to the foregoing, the Good Faith Deposit of a Qualified Bidder will be forfeited to the Debtors if (i) the Qualified Bidder attempts to modify, amend, or withdraw its Qualified Bid, except as permitted herein, during the time the Qualified Bid remains binding and irrevocable or (ii) the Qualified Bidder is selected as the Successful Bidder or Back-Up Bidder and refuses or fails to enter into the required definitive documentation or to consummate the Sale Transaction according to these Bidding Procedures. In addition to receipt of a Good Faith Deposit, the Debtors specifically reserve the right to seek all additional available damages from a defaulting Successful Bidder.

Notwithstanding the foregoing, the Good Faith Deposit, including the amount thereof, and any remedies against the Stalking Horse Bidder shall be governed by the Stalking Horse APA.

Notices Regarding Assumption and Assignment

The Debtors shall provide all notices regarding the proposed assumption and assignment of contracts and leases in accordance with the Assumption and Assignment Procedures included in the Bidding Procedures Order.

Plan Toggle Right

The Debtors, with the consent of the Successful Bidder, may elect to implement a sale under section 363 of the Bankruptcy Code or an alternative transaction accomplished through a chapter 11 plan (a "**Plan Toggle Right**").

Sale Objections and Hearing

The evidentiary hearing to consider approval of the Successful Bid (the "**Sale Hearing**") will be held at [●]:00 [●].m. (prevailing Central Time) on **December 18, 2023**, or such other date as the Debtors elect and that the Court's docket may accommodate. The Sale Hearing may be adjourned or rescheduled as ordered by the Court, but without further notice to creditors and parties in interest other than by announcement by the Debtors of the adjourned date at the Sale Hearing.

Objections to the Sale Transaction (each, a “**Sale Objection**”), shall: (i) be in writing; (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party; (iii) state with particularity the basis and nature of any objection, and if applicable, provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection; (iv) conform to the Bankruptcy Rules and the Local Rules; (v) be filed with the Bankruptcy Court; and (vi) be served upon the Debtor Notice Parties by **December 11, 2023 at 5:00 p.m. (prevailing Central Time)** (the “**Sale Objection Deadline**”); *provided, that*, the Debtors may extend the Sale Objection Deadline, as the Debtors deem appropriate in the exercise of their reasonable business judgment and upon notice to the Successful Bidder. If a timely Sale Objection cannot otherwise be resolved by the parties, such objection shall be heard by the Bankruptcy Court at the Sale Hearing.

An appropriate representative of the Successful Bidder shall appear at the Sale Hearing and be prepared, if necessary, to have such representative(s) testify in support of a Successful Bid and the Successful Bidder’s ability to close in a timely manner and provide adequate assurance of its future performance under any and all executory contracts and unexpired leases to be assumed and assigned to the Successful Bidder as part of the proposed transaction.

Any party who fails to timely file with the Court a Sale Objection will be forever barred from asserting any objection to the applicable sale, or to the consummation and performance of the Sale Transaction contemplated by a purchase agreement between the Debtors and the Successful Bidder, including the transfer of the Assets to the Successful Bidder, free and clear of all claims and interests pursuant to section 363(f) of the Bankruptcy Code. Failure to object shall constitute consent for the purposes of section 363(f) of the Bankruptcy Code. Any objection filed after the Sale Objection Deadline will not be considered by the Court.

Consent to Jurisdiction and Authority as Condition to Bidding

All Potential Bidders (including the Stalking Horse Bidder) that participate in the bidding process shall be deemed to have (i) consented to the core jurisdiction of the Bankruptcy Court to enter any order or orders, which shall be binding in all respects, in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction; (ii) waived bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction; and (iii) consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to the Sale Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

EXHIBIT 2

STALKING HORSE APA

[Attached]

Execution Version

ASSET PURCHASE AGREEMENT

among

ANAGRAM HOLDINGS, LLC,

ANAGRAM INTERNATIONAL, INC.,

and

ANAGRAM INTERNATIONAL HOLDINGS, INC.

and

CELEBRATION BIDCO, LLC

Dated as of November 8, 2023

TABLE OF CONTENTS

I.	DEFINITIONS	1
1.1	Certain Definitions	1
1.2	Terms Defined Elsewhere in this Agreement.....	10
1.3	Other Definitional and Interpretive Matters	13
II.	PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES.....	14
2.1	Purchase and Sale of Assets.....	14
2.2	Excluded Assets	16
2.3	Assumption of Liabilities	17
2.4	Excluded Liabilities	18
2.5	Cure Amounts.....	19
2.6	Non-Assignment of Assets.....	19
2.7	Further Conveyances and Assumptions	20
III.	CONSIDERATION.....	20
3.1	Consideration.....	20
3.2	Payment of the Credit Bid Consideration	21
3.3	Apportionments.....	21
IV.	CLOSING AND TERMINATION	22
4.1	Closing Date	22
4.2	Deliveries by Sellers	22
4.3	Deliveries by Purchaser	23
4.4	Termination of Agreement	23
4.5	Procedure Upon Termination.....	25
4.6	Effect of Termination.....	25
V.	REPRESENTATIONS AND WARRANTIES OF SELLERS.....	26
5.1	Organization and Good Standing.....	26
5.2	Authorization of Agreement	26
5.3	Conflicts; Consents of Third Parties.....	26
5.4	Litigation	27
5.5	Financial Data.....	27
5.6	Real Property.....	28
5.7	Title to Purchased Assets; Sufficiency.....	28
5.8	Taxes.....	28
5.9	Intellectual Property	29
5.10	Contracts	30

5.11	Validity of Contracts	31
5.12	Affiliate Transactions.....	31
5.13	Employee Benefits/Labor.....	32
5.14	Compliance with Laws; Permits	33
5.15	Financial Advisors.....	33
5.16	Subsidiaries	34
5.17	Insurance	34
5.18	Inventory	34
5.19	Foreign Corrupt Practices Act.....	34
5.20	OFAC.....	34
VI.	REPRESENTATIONS AND WARRANTIES OF PURCHASER.....	35
6.1	Organization and Good Standing.....	35
6.2	Authorization of Agreement	35
6.3	Conflicts; Consents of Third Parties.....	35
6.4	Litigation	36
6.5	Financial Advisors.....	36
6.6	Financial Capability.....	36
VII.	BANKRUPTCY COURT MATTERS	36
7.1	Competing Transaction.....	36
7.2	Expense Reimbursement.....	37
7.3	Bankruptcy Court Filings.....	38
VIII.	COVENANTS	38
8.1	Access to Information; Confidentiality	38
8.2	Conduct of the Business Pending the Closing	40
8.3	Consents and Permits.....	42
8.4	Regulatory Approvals.....	43
8.5	Further Assurances	44
8.6	Preservation of Records	45
8.7	Publicity	45
8.8	Letters of Credit	45
8.9	Transition Services	45
8.10	Damage or Destruction	46
8.11	Hengsheng Supply Agreement.....	46
8.12	Replacement of Insurance Policies.....	46
8.13	Replacement Employee Benefit Plans; Payroll.....	46
8.14	Purchaser Equity	47
8.15	Contracts.....	47
IX.	EMPLOYEES AND EMPLOYEE BENEFITS.....	47

9.1	Transferred Employees.....	47
9.2	Closing Year Annual Incentive Compensation.....	47
9.3	Accrued Vacation, Sick Leave and Personal Time	48
9.4	Service Credit	48
9.5	No Obligations	48
X.	CONDITIONS TO CLOSING	48
10.1	Conditions Precedent to Obligations of Purchaser	48
10.2	Conditions Precedent to Obligations of Sellers.....	49
10.3	Conditions Precedent to Obligations of Purchaser and Sellers.....	50
10.4	Frustration of Closing Conditions.....	51
XI.	TAXES.....	51
11.1	Transfer Taxes.....	51
11.2	Tax Treatment and Purchase Price Allocation.....	51
11.3	Cooperation and Audits	51
XII.	MISCELLANEOUS	52
12.1	No Survival of Representations and Warranties	52
12.2	Expenses.....	52
12.3	Injunctive Relief	52
12.4	Submission to Jurisdiction; Consent to Service of Process	52
12.5	Waiver of Right to Trial by Jury.....	53
12.6	Entire Agreement; Amendments and Waivers	53
12.7	Governing Law.....	53
12.8	Notices.....	53
12.9	Severability	54
12.10	Assignment.....	55
12.11	Non-Recourse.....	55
12.12	Counterparts	55

Exhibit A Bidding Procedures Order

ASSET PURCHASE AGREEMENT

ASSET PURCHASE AGREEMENT (this "Agreement"), dated as of November 8, 2023, by and between Celebration Bidco, LLC ("Purchaser"), Anagram Holdings, LLC (the "Company"), Anagram International, Inc. ("International") and Anagram International Holdings, Inc. ("International Holdings") and together with the Company and International, each, a "Seller" and, collectively, "Sellers").

RECITALS:

A. Sellers are debtors and debtors in possession under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") as a result of each filing a voluntary petitions for relief under chapter 11 of the Bankruptcy Code on November 8, 2023 (the "Petition Date") in the United States Bankruptcy Court for the Southern District of Texas (the "Bankruptcy Court"), where Sellers' bankruptcy cases are jointly administered (collectively, the "Bankruptcy Cases" and each taken individually, a "Bankruptcy Case").

B. Sellers are engaged in designing, manufacturing, sourcing and distributing balloons and related businesses (the "Business").

C. Subject to the terms and conditions set forth in this Agreement, Purchaser has agreed to (or to cause a Purchaser Designee to) purchase, and Sellers have agreed to sell, the Purchased Assets in accordance with sections 363 and 365 of the Bankruptcy Code.

NOW, THEREFORE, the parties hereby agree as follows:

I. DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms, when used in this Agreement with initial capital letters, have the meanings specified in this Section 1.1 or in other Sections of this Agreement identified in Section 1.2:

"ABL Credit Agreement" means the credit agreement, dated as of May 7, 2021 (as amended, restated, supplemented, or otherwise modified from time to time), by and among the Company and International as borrowers, the other borrowers from time to time party thereto, Wells Fargo Bank, National Association, as administrative agent, sole lead arranger, sole book runner and a lender, and the other financial institutions from time to time party thereto.

"Accounts Payable" means all accounts payable and accrued expenses to the extent arising in the Ordinary Course of Business prior to, on or after the Petition Date and not paid before the Closing Date.

"Accounts Receivable" means, to the extent related to the Business, any and all (i) accounts receivable, notes receivable and other amounts receivable owed to the Sellers

(whether current or non-current), together with all security or collateral therefor and any interest or unpaid financing charges accrued thereon, including all actions pertaining to the collection of amounts payable, or that may become payable, to the Sellers with respect to products sold or services performed on or prior to the Closing Date, (ii) construction allowances and other amounts due from landlords (including in respect of prior overcharges and insurance recoveries), (iii) license and royalty receivables, (iv) rebate receivables from suppliers, (v) insurance claims receivables, and (vi) other amounts due to the Sellers which the Sellers have historically classified as accounts receivable in the consolidated balance sheet of the Seller.

"Affiliate" of any specified Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such specified Person. For purposes of this definition, *"control"* (including, with correlative meanings, the terms *"controlling," "controlled by"* and *"under common control with"*), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of such Person, whether through the ownership of voting securities, by agreement or otherwise. The First Lien Trustee shall not be deemed to be an Affiliate of Purchaser or any of the holders of Prepetition 1L Obligations (as defined in the DIP Financing Orders) for the purposes of this Agreement.

"Alternate Bidder" has the meaning set forth in the Bidding Procedures.

"Auction" has the meaning set forth in the Bidding Procedures.

"Bidding Procedures" means the bidding procedures approved by the Bankruptcy Court.

"Bidding Procedures Order" means an order of the Bankruptcy Court, substantially in the form attached hereto as Exhibit A.

"Budget" has the meaning set forth in the DIP Indenture.

"Business Day" means any day of the year on which banking institutions in New York City are open to the public for conducting business and are not required or authorized to close.

"Code" means the Internal Revenue Code of 1986, as amended.

"Competing Transaction" means any of the following transactions (or series of transactions), other than the transactions contemplated by this Agreement (the "Proposed Transaction"): (a) any investment in, financing of, capital contribution or loan to, or restructuring or recapitalization of all or a substantial portion of a Seller (including any exchange of all or a substantial portion of a Seller's outstanding debt obligations for equity securities of one or more Sellers), (b) any merger, consolidation, share exchange or other similar transaction to which a Seller or any of its Affiliates is a party that has the effect of transferring, directly or indirectly, all or a substantial portion of the assets of, or any issuance, sale or transfer of equity interests in, a Seller, the Purchased Assets or the Business, (c) any direct or indirect sale of all or a substantial portion of the assets of, or

any issuance, sale or transfer of equity interests in, a Seller, the Purchased Assets or the Business or (d) any other transaction, including a plan of liquidation or reorganization (in any jurisdiction, whether domestic, foreign, international or otherwise), in each instance (i) that transfers or vests ownership of, economic rights to, or benefits in all or a substantial portion of the assets of a Seller, the Purchased Assets or the Business to any party other than Purchaser and (ii) whether or not such transactions are entered into in connection with any bankruptcy, insolvency or similar legal proceedings.

“Consultants” means Jim Plutt and Jim Harrison, in their capacities as consultants.

“Contract” means any contract, indenture, note, bond, lease or other agreement, whether written or oral.

“DIP ABL Facility” means the debtor-in-possession financing asset based loan facility provided to the Sellers pursuant to the DIP Financing Orders and the ABL Credit Agreement.

“DIP Financing Orders” means, together, the Interim DIP Financing Order and the Final DIP Financing Order.

“DIP Indenture” means that certain Indenture, dated as of November 8, 2023, by and among the Company and International, as borrowers, International Holdings and the other guarantors from time to time party thereto, as guarantors, the lenders from time to time party thereto, and Computershare Trust Company, National Association, as DIP Trustee and Collateral Agent, as amended from time to time.

“Documents” means all files, documents, books, records, information, ledgers, journals, title policies, customer and supplier lists, mailing lists, regulatory filings, operating data and plans, promotional materials, personnel files for Transferred Employees, customer files (including customer account information) and documents (including credit information), emails, records, literature, correspondence and other similar materials, in each case, to the extent used or held for use in, or related to, the Business, the Purchased Assets or the Assumed Liabilities, in each case whether or not in electronic form.

“Employees” means all individuals who are employed by Sellers on the Closing Date.

“Equipment” means all equipment, computers, machinery, tooling, dies, fixtures, furniture, furnishings, vehicles, improvements and other tangible personal property owned or leased pursuant to a Purchased Contract by Sellers and used or held for use in the Business.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.

“ERISA Affiliate” means any trade or business (whether or not incorporated) that is under common control with any Seller or any subsidiary of Seller and is treated as a single employer within the meaning of Section 414 of the Code or Section 4001 of ERISA.

“Excluded Matter” means: (i) any change in United States or foreign economies, financial markets (including those relating to debt financing, interest rates or currency exchange rates) or business or geopolitical conditions in general; (ii) any change that generally affects the businesses with which the Business generally competes; (iii) any change arising in connection with hostilities, acts of war, sabotage or terrorism or military actions or any escalation or worsening of any such hostilities, acts of war, sabotage or terrorism or military actions existing or underway as of the date of this Agreement; (iv) any natural or manmade disasters or weather developments, acts of God or similar force majeure events, including any worsening of such conditions existing as of the date of this Agreement; (v) any epidemics, pandemics, other outbreaks of infectious disease, including in each case any quarantine restrictions (including any shelter in place, stay at home or similar orders or guidelines), or any action, applicable Law, pronouncement or guideline taken or promulgated by any Governmental Body or industry group in respect to any of the foregoing; (vi) any change in applicable Laws or accounting rules or the enforcement, implementation or interpretation thereof; (vii) the public announcement or other disclosure of this Agreement or the Proposed Transaction, the execution of this Agreement or the consummation of the transactions contemplated by this Agreement; provided that this clause (vii) shall not apply to any breach of Section 5.3; (viii) the identity of Purchaser as the acquirer of the Purchased Assets and Assumed Liabilities; (ix) the failure to meet any projected or estimated revenues or profits for any period (provided that the underlying causes of such failures (subject to the other provisions of this definition) shall not be Excluded Matters); (x) any action required by this Agreement or any action taken or omitted to be taken by, or with the consent of, Purchaser or any of its Affiliates prior to the Closing Date; (xi) any rejection by a Parent Entity of any Intercompany Contract in the bankruptcy proceedings described on Schedule 5.11(a), provided that a replacement contract on terms reasonably acceptable to Buyer is entered into prior to the Closing Date; or (xii) the filing of the Bankruptcy Cases, including Sellers’ inability to pay certain obligations as a result of the filing of the Bankruptcy Cases; provided, however, such effects set forth in the foregoing clauses (i), (ii), (iii) or (vi) shall be taken into account in determining whether any Seller Material Adverse Effect has occurred to the extent that any such effect has, or would reasonably be expected to have, a materially disproportionate effect on the Business (excluding the Excluded Assets and the Excluded Liabilities) relative to other businesses with which the Business generally competes.

“Final DIP Financing Order” means the order of the Bankruptcy Court, approving the DIP Indenture and the DIP ABL Facility on a final basis.

“Final Order” means an Order (a) as to which no appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing, motion for reconsideration or motion for new trial has been timely filed or, if any of the foregoing has been timely filed, it has been disposed of in a manner that upholds and affirms the subject order in all material respects without the possibility for

further appeal or rehearing thereon; and (b) as to which the time for instituting or filing an appeal, motion for rehearing, motion for reconsideration or motion for new trial shall have expired, provided, however, that even if an appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing, motion for reconsideration or motion for new trial is timely filed, an Order will be deemed a Final Order if it provides that it is effective immediately upon entry on the Bankruptcy Court's docket and not subject to any stay notwithstanding the provisions of FRBP 6004(h), 6006(d) and 7062 and FRCP 62, and that no stay pending appeal has been obtained.

"First Lien Notes Indenture" means that certain Indenture (as amended, amended and restated, supplemented or otherwise modified from time to time), dated as of July 30, 2020, by and among the Company and International, as issuers, International Holdings, as guarantor, and Computershare Trust Company, National Association, as trustee (the "First Lien Trustee"), relating to the 15.00% PIK/Cash Senior Secured First Lien Notes due 2025.

"GAAP" means the U.S. generally accepted accounting principles.

"Governmental Body" means any government or governmental or regulatory body thereof, or political subdivision thereof, whether foreign, federal, state, or local, or any agency, instrumentality or authority thereof, or any court or arbitrator (public or private).

"Hengsheng Supply Agreement" means that certain Supply Agreement, dated as of June 14, 2018, by and between Anagram International, Inc. and Chaoan Hengsheng Industrial Co., Ltd.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"Indebtedness" of any Person means, without duplication: (i) the outstanding principal amount of, and accrued and unpaid interest in respect of, (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments of such Person; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the Ordinary Course of Business); (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 under derivative financial instruments, including hedges, currency and interest rate swaps and other similar instruments; (vi) all obligations of the type referred to in clauses (i) through (v) 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; and (vii) all obligations of the type referred to in clauses (i) through (vi) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such

Person), in each case of clauses (i) through (vii), including any and all prepayment fees, premiums and penalties payable in connection with any prepayments thereof.

“Intellectual Property” means all worldwide intellectual property and rights, title and interests arising from or in respect of the following: all (i) inventions, discoveries, industrial designs, utility models, business methods, patents and patent applications (including provisional and Patent Cooperation Treaty applications), including continuations, divisionals, continuations-in-part, reexaminations and reissues, extensions, renewals and any patents that may be issued with respect to the foregoing (collectively, “Patents”); (ii) trademarks, service marks, trade names, business names, slogans, assumed names, d/b/a’s, fictitious names, brand names, trade dress, logos, designs, internet domain names, corporate names and other indicia of identity, origin or quality, whether registered, unregistered or arising by Law, and all applications, registrations, and renewals for any of the foregoing, together with the goodwill associated with and symbolized by each of the foregoing (collectively, “Trademarks”); (iii) published and unpublished works of authorship in any medium, whether copyrightable or not, whether in final form or not, in all media, including writings, graphics, artworks, photographs, compositions, sound recordings, motion pictures and audiovisual works, databases and other compilations of information, computer software, software, mobile and internet applications and content, source code, object code, algorithms, and other similar materials and all copyrights and moral rights, to the fullest extent assignable or waivable, therein and thereto, and registrations and applications therefor (collectively, “Copyrights”); and (iv) confidential and proprietary information, trade secrets, and know-how, including methods, processes, business plans, strategy, schematics, formulae, recipes, and customer information and lists (collectively, “Trade Secrets”), together with all rights of action for past, present and future infringement of any of the foregoing Intellectual Property and the right to receive all proceeds and damages therefrom.

“Intercompany Contract” means each of (i) that certain Supply Agreement, dated as of July 30, 2020, by and among International, Amscan Inc., and solely in its capacity as guarantor pursuant to the terms thereof, Party City Holdings Inc.; (ii) that certain Intellectual Property Cross-License Agreement, dated as of July 30, 2020, by and between Party City Holdings Inc. and International; and (iii) that certain Services Agreement, dated as of July 30, 2020, by and between Party City Holdings Inc. and International.

“Interim DIP Financing Order” means the order of the Bankruptcy Court, approving the DIP Indenture and the DIP ABL Facility on an interim basis.

“Inventory” means, to the extent related to the Business, all inventory (including raw materials, products in-process and finished products) owned by any of the Sellers, whether in transit to or from the Sellers and whether in the Sellers’ warehouses, distribution facilities, held by any third parties or otherwise.

“IRS” means the Internal Revenue Service.

“IT Systems” means computer systems, software, servers, network equipment and other computer hardware and data processing systems.

“Knowledge of Sellers” means the actual knowledge of the individuals identified on Schedule 1.1(b).

“Law” means any federal, state, local or foreign law, statute, code, ordinance, rule or regulation or common law requirement.

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private) or claims by or before a Governmental Body.

“Liability” means any debt, liability or obligation (whether direct or indirect, known or unknown, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due), and including all costs and expenses relating thereto.

“Lien” means, with respect to any asset, any mortgage, lien, deed of trust, hypothecation, pledge, charge, security interest or encumbrance of any kind in respect of such asset, whether or not filed, recorded or otherwise perfected under applicable law (including any conditional sale or other title retention agreement).

“Order” means any order, injunction, judgment, decree, ruling, writ, assessment or arbitration award of a Governmental Body.

“Ordinary Course of Business” means the ordinary and usual course of normal day-to-day operations of the Business through the date of this Agreement consistent with past practice, with such deviations therefrom from and after the date hereof through the Closing as are reasonably necessary to preserve the value of the debtor’s estate (subject to substantial compliance with the Budget).

“Parent Employee Benefit Plan” means any Employee Benefit Plan in which Employees participate in, or are party to, that are sponsored or maintained by a Parent Entity.

“Parent Entity” means Party City Holdco Inc. and each of its Affiliates, other than Sellers and their respective subsidiaries.

“Permits” means any approvals, authorizations, consents, licenses, permits, certificates, certificates of exemption, tax benefits franchises, accreditations and environmental permits of a Governmental Body.

“Permitted Exceptions” means: (i) statutory Liens for current Taxes, assessments or other governmental charges not yet delinquent; (ii) mechanics’, carriers’, workers’, repairers’ and similar Liens arising or incurred in the Ordinary Course of Business; (iii) zoning, entitlement and other land use and environmental regulations by any Governmental Body (provided that such regulations have not been violated in any material respect and in the aggregate do not and will not materially interfere with the use and operation of the property or assets to which they relate in the manner and for the

purposes heretofore used by Sellers); (iv) title of a lessor under a capital or operating lease; (v) any other imperfections in title, charges, easements, restrictions and encumbrances that do not materially affect the value or use of the affected asset; (vi) Liens for Taxes that constitute Assumed Liabilities; (vii) Liens that will be released by the Sale Order; (viii) any Lien which does not materially interfere with the use or operation of the Purchased Assets as currently used or operated and (ix) Liens listed on Schedule 1.1(c).

“Person” means an individual, firm, corporation (including any non-profit corporation), partnership, limited partnership, limited liability company, joint venture, association, trust, Governmental Body, unincorporated organization, or other entity or organization.

“Professional Fees Escrow Account” has the meaning set forth in the Interim DIP Financing Order.

“Purchased Contracts” means all Contracts of Sellers used or held for use in or related to the Business that are unexpired as of the Closing Date and have not been rejected (or the subject of a pending rejection motion) by Purchaser or designated as Excluded Assets on Schedule 2.2(c), and all licenses for use of Intellectual Property owned by others to the extent such licensed Intellectual Property is used or held for use in connection with the operation of the Business; provided, that notwithstanding anything in this Agreement to the contrary, each Contract of Sellers used or held for use in or related to the Business that is entered into on or after the Petition Date shall be a Purchased Contract for all purposes hereunder.

“Purchased Intellectual Property” means all of the following (i) Trademarks, Patents, Copyrights, Trade Secrets, and other Intellectual Property owned by Sellers; and (ii) all rights of action for past, present and future infringements of any of the foregoing and the right to receive all proceeds and damages therefrom.

“Purchaser Designee” means a special purpose entity, established by Purchaser for the purpose of purchasing the Purchased Assets.

“Purchaser Material Adverse Effect” means an effect that is, or would reasonably be expected to be, materially adverse to the ability of Purchaser to consummate the Proposed Transaction.

“Real Property” means the real property described on Schedule 1.1(e).

“Registered Intellectual Property” means all Trademarks, Patents, and Copyrights which are registered or applied for with any Governmental Body.

“Related Party” means, with respect to a particular Person, any past, present or future director, officer, employee, incorporator, member, manager, advisors, counsel, partner or equityholder of such Person or its subsidiaries.

“Representative” means, with respect to a particular Person, any director, officer, employee or other authorized representative of such Person or its subsidiaries, including such Person’s attorneys, accountants, financial advisors and restructuring advisors.

“Sale Order” means the order (or orders) of the Bankruptcy Court, in form and substance reasonably acceptable to Purchaser and Sellers, approving this Agreement and all of the terms and conditions of this Agreement and approving and authorizing Sellers to consummate the Proposed Transaction pursuant to sections 363 and 365 of the Bankruptcy Code and providing, among other things, substantially as follows: (i) the Purchased Assets sold to Purchaser (or a Purchaser Designee) pursuant to this Agreement will be transferred to Purchaser (or a Purchaser Designee) free and clear of all Liens (other than Liens created by Purchaser (or a Purchaser Designee) and other than Permitted Exceptions, Liabilities expressly assumed by Purchaser (or a Purchaser Designee) under this Agreement); (ii) the Purchased Contracts are assumed by Sellers and assigned to Purchaser (or a Purchaser Designee) on the terms set forth in this Agreement; (iii) the Sellers and their Related Parties (other than the Parent Entities or any director, officer, employee or other authorized representative of a Parent Entity) are released from any and all causes of actions that are purchased by the Purchaser hereunder upon entry of the Sale Order by the Bankruptcy Court; (iv) Purchaser has acted in “good faith” within the meaning of section 363(m) or other applicable section of the Bankruptcy Code; (v) this Agreement was negotiated, proposed and entered into by the parties without collusion, in good faith and from arm’s-length bargaining positions; (vi) the Bankruptcy Court will retain jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement as provided in Section 12.4 of this Agreement; (vii) this Agreement and the Proposed Transaction may be specifically enforced against, and not subject to rejection or avoidance by, Sellers or any chapter 7 or chapter 11 trustee of Sellers; and (viii) the Closing will occur in accordance with the terms and conditions of this Agreement.

“Second Lien Notes Indenture” means that certain Indenture (as amended, amended and restated, supplemented or otherwise modified from time to time), dated as of July 30, 2020, by and among the Company and International, as issuers, International Holdings, as guarantor, and Computershare Trust Company, National Association, as trustee, relating to the 10.00% PIK/Cash Senior Secured Second Lien Notes due 2026.

“Seller Material Adverse Effect” means any event, occurrence, change, condition, circumstance, development or effect (regardless of whether such event, occurrence, change, condition, circumstance, development or effect constitutes a breach of any representation, warranty or covenant of Sellers hereunder) which (i) has had or would reasonably be expected, individually or in the aggregate, to have a material and adverse effect on, or results in a material and adverse change in or to, (a) the results of operations, financial condition, properties, assets, liabilities, businesses or operations of the Business (excluding the Excluded Assets and Excluded Liabilities), taken as a whole or (b) the Purchased Assets and the Assumed Liabilities, taken as a whole; or (ii) would or would reasonably be expected to, individually or in the aggregate, prohibit or materially impair or delay the ability of Sellers to consummate the Proposed Transaction or perform their

obligations under this Agreement, other than in the case of clause (i), an effect or change resulting from, relating to or arising from an Excluded Matter.

"Tax Authority" means any Governmental Body or employee thereof charged with the administration of any Law relating to Taxes.

"Tax Return" means all returns, declarations, reports, estimates, information returns and statements required to be filed in respect of any Taxes (including any attachments thereto or amendments thereof and all supporting work papers relating to any of the foregoing).

"Taxes" means: (i) all federal, state, local or foreign taxes, charges or other assessments, including all net income, gross receipts, capital, sales, use, ad valorem, value added, transfer, franchise, profits, inventory, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, property and estimated taxes; (ii) any item described in clause (i) for which a taxpayer is liable as a transferee or successor, by reason of being a member of an affiliated, consolidated, combined or unitary group or the regulations under Section 1502 of the Code, or by contract, indemnity or otherwise; and (iii) all interest, penalties, fines, additions to tax or additional amounts imposed by any Tax Authority in connection with any item described in clause (i) or (ii).

"Trade Payables" means all Accounts Payable and all trade obligations and accrued operating expenses incurred in the Ordinary Course of Business, whether arising prior to, on or after the Petition Date.

"Transaction Documents" mean this Agreement and each other agreement, document or instrument executed by the parties hereto in connection with the consummation of the Proposed Transaction.

"UCC" means the Uniform Commercial Code.

"Wind-Down Amount" means cash in an amount equal to (i) \$1,500,000 or such greater amount as to be reasonably determined by Sellers with the approval of Purchaser (which approval may be granted or withheld in the sole discretion of Purchaser) that is reasonably necessary to fund the wind-down of Sellers' estates minus (ii) to the extent the Post-Carve-Out Trigger Notice Cap (as defined in the DIP Financing Orders) is transferred to the Professional Fees Escrow Account, such transferred amount of the Post-Carve-Out Trigger Notice Cap.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated below:

<u>Term</u>	<u>Section</u>
Acquired Cash	<u>2.1(b)(iv)</u>

<u>Term</u>	<u>Section</u>
Acquired Entities	<u>2.1(b)(xviii)</u>
Agreement	Preamble
Antitrust Division	<u>8.4(a)</u>
Allocation Statement	<u>11.2(a)</u>
Antitrust Laws	<u>8.4(b)</u>
Antitrust Order	<u>8.4(b)</u>
Assumed Liabilities	<u>2.3</u>
Avoidance Actions	<u>2.1(b)(ii)</u>
Bankruptcy Cases	Recitals
Bankruptcy Code	Recitals
Bankruptcy Court	Recitals
Business	Recitals
Closing	<u>4.1</u>
Closing Date	<u>4.1</u>
Closing Date Cash Payment	<u>3.1(d)</u>
Closing Year Annual Incentive Compensation	<u>9.2</u>
Company	Preamble
Copyrights	<u>1.1</u> (“Intellectual Property”)
Credit Bid Consideration	<u>3.1(b)</u>
Cure Amounts	<u>2.5</u>
Deposits	<u>2.1(b)(i)</u>
Employee Benefit Plans	<u>5.13(a)</u>
Employee List	<u>5.13(g)</u>

<u>Term</u>	<u>Section</u>
Excluded Assets	<u>2.2</u>
Excluded Liabilities	<u>2.4</u>
Excluded Taxes	<u>5.8(a)</u>
Expense Reimbursement	<u>7.2(b)</u>
Financial Statements	<u>5.5</u>
FCPA	<u>5.19</u>
Interim Financial Statements	<u>5.5</u>
Necessary Consent	<u>2.6(a)</u>
Outside Date	<u>4.4(a)</u>
Parent Employee Benefit Plan	<u>2.1(b)(vii)</u>
Patents	<u>1.1</u> (“Intellectual Property”)
Petition Date	Recitals
Proposed Transaction	<u>1.1</u> (“Competing Transaction”)
Purchase Price	<u>3.1</u>
Purchased Assets	<u>2.1(b)</u>
Purchaser	Preamble
Purchaser Fundamental Representations	<u>10.2(a)</u>
Real Property Lease	<u>5.6</u>
Registered Purchased Intellectual Property	<u>4.2(b)</u>
Replacement Plan	8.13
Seller or Sellers	Preamble
Seller Fundamental Representations	<u>10.1(a)(i)</u>

<u>Term</u>	<u>Section</u>
Trade Secrets	<u>1.1</u> (“Intellectual Property”)
Trademarks	<u>1.1</u> (“Intellectual Property”)
Transfer Taxes	<u>11.1</u>
Transferred Employees	<u>9.1</u>
Transition Services Agreement	<u>8.9</u>

1.3 Other Definitional and Interpretive Matters. (a) Unless otherwise expressly provided, for purposes of this Agreement, the following rules of interpretation will apply:

(i) Calculation of Time Period. When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded.

(ii) Dollars. Any reference in this Agreement to “\$” will mean U.S. dollars.

(iii) Exhibits/Schedules. All Exhibits and Schedules annexed hereto or referred to in this Agreement are hereby incorporated in and made a part of this Agreement as if set forth in full in this Agreement. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein will be defined as set forth in this Agreement.

(iv) Gender and Number. Any reference in this Agreement to gender will include all genders, and words imparting the singular number only will include the plural and vice versa.

(v) Headings. The division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and will not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any “Section” are to the corresponding Section of this Agreement unless otherwise specified.

(vi) Herein. 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.

(vii) Including. The word “including” or any variation thereof means “including, without limitation,” and will not be construed to limit any

general statement that it follows to the specific or similar items or matters immediately following it.

(b) The parties hereto have participated jointly in the negotiation and drafting of this Agreement and, in the event an ambiguity or question of intent or interpretation arises, this Agreement will be construed as jointly drafted by the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any provision of this Agreement.

II. PURCHASE AND SALE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase and Sale of Assets. (a) On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser will (or will cause a Purchaser Designee to) purchase, acquire and accept from Sellers, and Sellers will sell, transfer, convey and deliver to Purchaser or a Purchaser Designee (as applicable), all of Sellers' right, title and interest in, to and under the Purchased Assets, free and clear of all Liens other than those created by Purchaser and other than Permitted Exceptions.

(b) The term "Purchased Assets" means all of Sellers' right, title and interest in, to or under the assets, properties, contractual rights, goodwill, going concern value, rights and claims used or held for use in the Business (other than the Excluded Assets) as of the Closing, including Sellers' right, title and interest in, to or under:

(i) all deposits (including customer deposits and security deposits for rent, electricity, telephone or otherwise) and prepaid charges and expenses of Sellers related to the Business, in each case to the extent utilizable by Purchaser as of or after the Closing ("Deposits");

(ii) all avoidance actions or similar causes of action arising under sections 544 through 553 of the Bankruptcy Code related to the Business brought, or that could be brought, against any landlords, lessors, vendors, service providers or similar Persons, including any proceeds thereof (collectively, the "Avoidance Actions");

(iii) the Real Property, together with (to the extent of Sellers' interest therein) the structures located on or attached to the Real Property and all leasehold or possessory interests, or other rights to use or occupy all or any portion of the same, of the Sellers and all rights, title, interest and entitlement arising from or thereunder;

(iv) all accounts (as defined in the UCC), general intangibles (as defined in the UCC), receivables, cash and cash equivalents (except for cash held in the Professional Fees Escrow Account) ("Acquired Cash") and all other obligations for the payment of money arising out of Sellers' operation, including all rights to reimbursement under any agreements with and payments from any obligors and other Persons arising out of Sellers' operation, and all proceeds of any of the foregoing;

(v) rents and any other amounts due or reimbursable under and arising from the lease of any Real Property by the Sellers;

(vi) all Purchased Contracts;

(vii) all Employee Benefit Plans and assets related thereto, other than any Parent Employee Benefit Plans;

(viii) the Equipment;

(ix) all Accounts Receivable;

(x) all open purchase orders with customers of the Business;

(xi) rights of Sellers to any warranties, express or implied, and licenses received from manufacturers, sellers and lessors with respect to the Equipment;

(xii) all Inventory, supplies and materials to the extent used or held for use in, or related to, the Business, including all rights of the Sellers to receive such Inventory, supplies and materials that are on order;

(xiii) to the extent transferrable, all Permits that are used in or relate to the operation of the Business and the Purchased Assets;

(xiv) any other tangible or intangible assets of Sellers used in, or related to, the operation of Business, which are not expressly identified herein as Excluded Assets;

(xv) all causes of actions against any landlords, lessors, vendors, service providers, customers, licensors or similar Persons (including causes of action against each Parent Entity in its capacity as a landlord, lessor, vendor, service provider, customer, licensor or similar Person), in each case to the extent relating to the Purchased Assets or Assumed Liabilities or the Business (including Avoidance Actions);

(xvi) the Purchased Intellectual Property;

(xvii) all Documents in any Seller's possession or under its control; provided, however, that Sellers may retain copies of all Documents to the extent required by Law;

(xviii) all shares of capital stock or other equity interest held by any Seller of any direct or indirect foreign subsidiary of any Seller listed on Schedule 2.1(b)(xviii) (the "Acquired Entities");

(xix) all goodwill and other intangible assets associated with the Business, including goodwill associated with the Purchased Intellectual Property;

(xx) all rights under or arising out of all insurance policies relating to the Business or the Purchased Assets, other than any such insurance policies that are maintained by a Parent Entity and listed under Schedule 2.1(b)(xx) (each, an "Excluded Insurance Policy") and unless non-assignable as a matter of Law or expressly identified as an Excluded Asset;

(xxi) all rights of the Sellers under non-disclosure or confidentiality, non-compete, or non-solicitation agreements with current Employees, former employees or current or former directors, consultants, independent contractors and agents of any of the Sellers or any of their Affiliates or with third parties, in each case, to the extent relating to the Business or the Purchased Assets (or any portion thereof); provided, that to the extent any such rights exist pursuant to a Contract, such rights shall only constitute Purchased Assets if such Contract is a Purchased Contract; and

(xxii) refunds, credits and rebates of Taxes.

2.2 Excluded Assets. Nothing contained in this Agreement will be deemed to constitute an agreement to sell, transfer, assign or convey the Excluded Assets to Purchaser, and Sellers will retain all right, title and interest to, in and under the Excluded Assets. The term "Excluded Assets" means:

(a) (i) any minute books, stock ledgers, corporate seals and stock certificates or similar corporate records of Sellers, (ii) books and records that (A) Sellers are required by Law or by Order of the Bankruptcy Court to retain or (B) Sellers retain pursuant to Section 8.1(b), and (iii) Tax Returns of Sellers; provided, however, that Sellers will deliver to Purchaser at Closing copies of any portions of such retained books and records related to the Business or any of the Purchased Assets and Sellers agree to preserve such records in accordance with Section 8.6;

(b) all post-petition adequate assurance Deposits provided to utilities and any Deposits provided to suppliers or service providers to Sellers on a prepetition or post-petition basis, or any retainers or other Deposits with such professionals;

(c) any assets of Sellers designated as Excluded Assets on Schedule 2.2(c);

(d) all rights in or to assets leased by Sellers except to the extent the Liabilities under the associated lease are assumed by Sellers and such lease is assigned to Purchaser;

(e) all Parent Employee Benefit Plans and assets related thereto;

(f) any shares of capital stock or other equity interest of any Seller or any subsidiary of any Seller unless specifically identified as a Purchased Asset;

(g) all current and prior director and officer insurance policies of the Sellers and all rights of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries listed on Schedule 2.2(g);

(h) all of Sellers' assets, rights, Contracts and properties that are exclusively related to any Excluded Asset;

(i) all confidential communications between Sellers and their Related Parties, on the one hand, and Simpson Thacher & Bartlett LLP ("STB"), on the other hand, relating to the Business or the Purchased Assets or arising out of or relating to the negotiation, execution or delivery of this Agreement or the transactions contemplated hereby, including any attendant attorney-client privilege, attorney work product protection, and expectation of client confidentiality applicable thereto, and including any information or files in any format of STB in connection therewith; and

(j) all cash held in the Professional Fees Escrow Account.

2.3 Assumption of Liabilities. On the terms and subject to the conditions set forth in this Agreement, Purchaser will (or will cause a Purchaser Designee to) assume, effective as of the Closing, and will timely perform and discharge in accordance with their respective terms, only the following Liabilities (collectively, the "Assumed Liabilities"):

(a) all Trade Payables;

(b) all Liabilities of Sellers under the Purchased Contracts that arise from and after the Closing;

(c) any Cure Amounts that Purchaser is required to pay pursuant to Section 2.5;

(d) all Liabilities that Purchaser has specifically agreed to assume, pay or discharge pursuant to this Agreement;

(e) any and all amounts, costs or expenses that must be paid or actions or obligations that must be performed or satisfied, in each case in accordance with the terms of the applicable Purchased Contracts, pursuant to Section 365(b)(1) of the Bankruptcy Code to effectuate the assumption and assignment of the Purchased Contracts that are to be transferred to Purchaser pursuant to this Agreement;

(f) other than with respect to any Liabilities under a Parent Employee Benefit Plan, all Liabilities of any Seller with respect to any Employee or any past employee or other service provider of Sellers, including, (i) any compensation, wages, salaries, back pay, damages, overtime pay, meal period payments, reinstatement, pension, profit sharing, successorship liabilities, incentives, payments, entitlements,

retirement, deferred compensation, other remuneration, holiday, vacation pay or other paid time-off, bonus, commissions, severance pay (statutory or otherwise), retiree or other post-employment medical or life insurance obligations, pension obligations, insurance premiums or Taxes, that arise, or have arisen; (ii) any Liability or other obligation arising or incurred by Sellers under, or in connection with, or non-compliance with, any applicable Law respecting labor, invasion of privacy, health or injury, discrimination for any reason (including by reason of age, sex, religion, race, political affiliation, marriage, social condition or origin, or condition as a victim of domestic violence), disability, sexual harassment, employment, employment practices, terms and conditions of employment, the Worker Adjustment and Retraining Notification Act or similar state or local Law, wages and hours, or occupational safety and health; (iii) any Liabilities, payments, costs and disbursements or other obligations, arising in connection with the termination of employment or service of any employee or other service provider by any Sellers, including severance or other termination costs, if any, arising as a result of the Proposed Transaction; and (iv) all grievances, arbitrations, claims, demands, charges or other Legal Proceedings of any nature whatsoever, including any such grievances, arbitrations, claims, demands, charges or other Legal Proceedings whether now known or not yet made by any Employee or other employee or service provider of Sellers, bargaining agents, or governmental agencies;

(g) Liabilities with respect to Transferred Employees and Employee Benefit Plans that constitute Purchased Assets under Section 2.1(b); and

(h) those Liabilities of Sellers designated as Assumed Liabilities on Schedule 2.3(h).

2.4 Excluded Liabilities. Purchaser will not assume and will not be deemed to have assumed, and Sellers will remain liable with respect to, any Liabilities of Sellers other than the Assumed Liabilities (such other Liabilities, the "Excluded Liabilities"), including:

(a) all Liabilities arising out of Excluded Assets;

(b) all Liabilities of any Seller arising under this Agreement;

(c) all Liabilities of any Seller arising under any Parent Employee Benefit Plan;

(d) all Liabilities for any and all Taxes (i) of any Seller or any Affiliate of any Seller, including Taxes of any other Person imposed on any Seller or any Affiliate of any Seller under Treasury Regulation Section 1.1502-6 or other applicable Law, as a transferee or successor, by Contract, or otherwise, (ii) imposed on or with respect to, or attributable to the ownership or operation of, any Excluded Asset and (iii) imposed on or with respect to, or attributable to the ownership or operation of, the Purchased Assets or the Business for any Tax period (or portion thereof) ending on or prior to the Closing Date, including any liabilities or obligations of Purchaser or any Affiliate or designee of

Purchaser, as a transferee or successor as a result of the transactions contemplated by this Agreement; and

(e) any Liability arising out of the Purchased Assets or the Business related to facts or actions occurring or accruing prior to the Closing that is not expressly included among the Assumed Liabilities, except as otherwise provided in this Agreement.

2.5 Cure Amounts. Pursuant to section 365 of the Bankruptcy Code, Sellers will, effective as of Closing, assume the Purchased Contracts (to the extent not previously assumed) and assign the Purchased Contracts to Purchaser or a Purchaser Designee (as applicable), and Purchaser or a Purchaser Designee (as applicable) will assume all Assumed Liabilities pursuant to the Purchased Contracts. The cure amounts necessary to cure all defaults, if any, and to pay all actual or pecuniary losses that have resulted from such defaults under the Purchased Contracts (as ultimately determined by the Bankruptcy Court, the "Cure Amounts") will be paid by Purchaser (to the extent not paid by Sellers prior to Closing), as and when finally determined by the Bankruptcy Court pursuant to the procedures set forth in the Sale Order, and not by Sellers, and Sellers will have no liability for any Cure Amounts. After the Closing, Purchaser shall have the right to control, and Sellers shall reasonably cooperate with Purchaser in connection with, the prosecution of any litigation relating to the final determination of Cure Amounts.

2.6 Non-Assignment of Assets. (a) Notwithstanding any other provision of this Agreement to the contrary, this Agreement will not constitute an agreement to assign or transfer and will not effect the assignment or transfer of any Purchased Asset if (i) an attempted assignment thereof, without the approval, authorization or consent of, or granting or issuance of any license or permit by, any third party thereto (each such action, a "Necessary Consent"), would constitute a breach thereof or in any way adversely affect the rights of Purchaser thereunder and (ii) the Bankruptcy Court has not entered an Order providing that such Necessary Consent is not required. In such event, Sellers and Purchaser will use their reasonable best efforts to obtain the Necessary Consents with respect to any such Purchased Asset or any claim or right or any benefit arising thereunder for the assignment thereof to Purchaser as Purchaser may reasonably request; provided, however, that Sellers will not be obligated to pay any consideration therefor to any third party from whom consent or approval is requested. If such Necessary Consent has not been obtained, or if an attempted assignment thereof would be ineffective or would adversely affect the rights of any Seller thereunder so that Purchaser would not in fact receive all such rights, such Seller and Purchaser will cooperate in a mutually agreeable arrangement, to the extent feasible and at no expense to such Seller, under which Purchaser would obtain the benefits and assume the obligations thereunder in accordance with this Agreement, including subcontracting, sub-licensing, or sub-leasing to Purchaser, or under which such Seller would enforce for the benefit of Purchaser with Purchaser assuming such Seller's obligations and any and all rights of such Seller against a third party thereto. Sellers shall hold in trust for, and pay to, Purchaser promptly upon receipt thereof, all income, proceeds and other monies received by Sellers derived from their use of any such Purchased Asset or any claim or right or any benefit arising thereunder. Once any such Necessary Consent is obtained, Sellers

shall promptly transfer, assign, convey and deliver such Purchased Asset and all claims, right and benefits arising thereunder at no additional cost to Purchaser.

(b) Subject to Section 2.6(a), if after the Closing (i) Purchaser or any of its subsidiaries holds any Excluded Assets or Excluded Liabilities or (ii) any Seller or any of their subsidiaries holds any Purchased Assets or Assumed Liabilities, Purchaser or the applicable Seller will promptly transfer (or cause to be transferred) such assets or assume (or cause to be assumed) such Liabilities to or from (as the case may be) the other party. Prior to any such transfer, the party receiving or possessing any such asset will hold it in trust for such other party.

(c) Notwithstanding anything in this Agreement to the contrary, (i) at any time prior to the date that is three (3) Business Days prior to the Closing Date, Purchaser will be entitled, in its sole discretion, to designate any Contract of Sellers entered into prior to the Petition Date as an Excluded Asset by providing written notice thereof to Sellers and any Contract so added will be deemed to be an "Excluded Asset" (and not a "Purchased Contract") for all purposes hereunder and (ii) at any time prior to the date that is five (5) Business Days prior to the Closing Date, Purchaser will be entitled, in its sole discretion, to request Sellers to add to the list of Purchased Contracts any Contract used or held for use in or related to the Business to which any Seller is a party that has been made available to Purchaser by providing written notice thereof to Sellers, and any such Contract that Sellers agree to add to the list of Purchased Contracts will be deemed to be a "Purchased Asset". Sellers will give written notice to Purchaser prior to the submission by any Seller of any motion in its Bankruptcy Case or Bankruptcy Cases to reject any Contract used or held for use in the Business; provided that in no event will any Seller reject or seek to reject any Contract used or held for use in the Business prior to the Closing Date unless prior written approval has been obtained from Purchaser; and provided, further, that Sellers will not reject or seek to reject any Contract which is a Purchased Contract.

2.7 Further Conveyances and Assumptions. From time to time following the Closing, Sellers and Purchaser will execute, acknowledge and deliver all such further conveyances, notices, assumptions, assignments, releases and other instruments, and will take such further actions, as may be reasonably necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and to assure fully to each Seller and its Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement, and to otherwise make effective the Proposed Transaction.

III. CONSIDERATION

3.1 Consideration. The aggregate consideration for the Purchased Assets (the "Purchase Price") will consist of:

(a) the discharge in full of all amounts and obligations outstanding under the DIP Indenture, plus any penalty, pre-payment or other fees owed under the DIP Indenture;

(b) the discharge in full of all amounts and obligations outstanding under the First Lien Notes Indenture as of the Petition Date, including the principal amount of Indebtedness and interest accrued as of the Petition Date, plus any penalty, pre-payment or other fees owed under the First Lien Notes Indenture, such that the aggregate amount of funds discharged under clauses (a) through (b) of this Section 3.1 is equal to \$168,419,102.89 (such aggregate amount, the "Credit Bid Consideration");

(c) the assumption of the Assumed Liabilities;

(d) the Wind-Down Amount; and

(e) a cash payment sufficient to discharge in full all amounts and obligations outstanding under the DIP ABL Facility (including, without limitation, any remaining obligations under the DIP ABL Facility incurred to fund the "Carve-Out" (as defined in the DIP Financing Orders)), plus any penalty, pre-payment or other fees owed under the DIP ABL Facility, unless the DIP ABL Facility is assumed by Purchaser with the written consent of the providers of the DIP ABL Facility (the payments set forth in clause (d) and clause (e) of this Section 3.1, collectively the "Closing Date Cash Payment").

3.2 Payment of the Credit Bid Consideration. On the Closing Date, Purchaser, or the collateral agent in respect of the DIP Indenture and the First Lien Notes Indenture, on behalf of Purchaser, will satisfy the Credit Bid Consideration by:

(a) releasing Sellers from the Indebtedness under the DIP Indenture and any other documents or agreements entered into in connection therewith in an amount equal to all amounts outstanding thereunder, including the principal amount of Indebtedness and interest accrued, plus any penalty, pre-payment or other fees owed; and

(b) releasing Sellers from the Indebtedness under the First Lien Notes Indenture and any other documents or agreements entered into in connection therewith in an amount equal to all amounts outstanding thereunder, including the principal amount of Indebtedness and interest accrued as of the Petition Date, plus any penalty, pre-payment or other fees owed under the First Lien Notes Indenture.

3.3 Apportionments. (a) To the extent the following (and credits therefor to the extent paid prior to the Closing Date) relate to or arise from a Purchased Contract or a location that is subject to a Real Property Lease assumed by Purchaser, in each case for a period that begins as of the date of this Agreement and ends after the Closing Date, such expenses (and credits) are to be apportioned between Sellers, on the one hand, and Purchaser, on the other hand, as of midnight on the Closing Date:

(i) rent for the month in which the Closing Date occurs;

(ii) annual utility assessments, water meter charges, and sewer rents, if any, on the basis of the year for which assessed; and

(iii) charges and fees payable for telephone services, water, heat, steam, electric power, gas and other utilities, at the price charged by the suppliers, including any Taxes thereon and based upon applicable meter readings, where available, made on or immediately prior to or immediately after the Closing Date.

(b) If, after apportioning the foregoing expenses, a party has borne more than its allocable share of such expenses, the other parties will promptly make the appropriate compensating payment(s) to such party.

IV. CLOSING AND TERMINATION

4.1 Closing Date. Subject to the satisfaction of the conditions set forth in Sections 10.1, 10.2 and 10.3 hereof (or the waiver thereof by the party entitled to waive that condition), the closing of the purchase and sale of the Purchased Assets and the assumption of the Assumed Liabilities provided for in Article II (the “Closing”) will be conducted remotely via the electronic exchange of signatures and documents on the date that is three (3) Business Days following the satisfaction or waiver of the conditions set forth in Article X (other than conditions that by their nature are to be satisfied at or upon the Closing, but subject to the satisfaction or waiver of such conditions), or at such other time or place as may be agreed in writing by the parties hereto. The date on which the Closing is held is referred to in this Agreement as the “Closing Date”. For accounting purposes, the Closing shall be deemed to occur at 12:01 a.m. (local time) on the Closing Date.

4.2 Deliveries by Sellers. At the Closing, Sellers will deliver:

(a) to Purchaser (or a Purchaser Designee, as applicable), one or more bills of sale in a form and substance to be agreed upon by the parties hereto, duly executed by each applicable Seller;

(b) to Purchaser (or a Purchaser Designee, as applicable), one or more duly executed assignments of the Registered Intellectual Property included in the Purchased Intellectual Property (the “Registered Purchased Intellectual Property”), in a form suitable for recording in the U.S. Patent and Trademark Office, the U.S. Copyright Office or other similar, applicable Governmental Body;

(c) to Purchaser (or a Purchaser Designee, as applicable), the officer’s certificates required to be delivered pursuant to Sections 10.1(a) and 10.1(b);

(d) to Purchaser (or a Purchaser Designee, as applicable), a certified copy of the Sale Order;

(e) to Purchaser from each Seller (or, if any Seller is disregarded for federal income Tax purposes, such Seller's regarded owner), an executed IRS Form W-9;

(f) to Purchaser, a good standing certificate for each Seller dated not more than thirty (30) days prior to the Closing Date; and

(g) to Purchaser (or a Purchaser Designee, as applicable), all other instruments of conveyance and transfer, in form and substance reasonably acceptable to Purchaser, as may be necessary to convey the Purchased Assets to Purchaser or Purchaser Designee (as applicable).

4.3 Deliveries by Purchaser. At the Closing, Purchaser will, or will cause Purchaser Designee to, deliver:

(a) to the Company, on behalf of Sellers, one or more assignment and assumption agreements in a form and substance to be agreed upon by the parties hereto, duly executed by Purchaser or Purchaser Designee (as applicable);

(b) to the Company, on behalf of Sellers, the officer's certificates required to be delivered pursuant to Sections 10.2(a) and 10.2(b);

(c) the Closing Date Cash Payment to Sellers or, at Purchaser's election, to such other Person(s) as may be entitled to payment therefrom, by wire transfer of immediately available funds to such bank account(s) as shall be designated in writing by the applicable recipient at least two (2) Business Days prior to the date such payment is to be made; it being understood that the portion of the Closing Date Cash Payment constituting the Wind-Down Amount shall be paid with the Acquired Cash (to the extent the Acquired Cash equals or exceeds the Wind-Down Amount); it being further understood, following Closing, the Seller and Purchaser shall consult in good faith on a cost-effective means of closing the chapter 11 cases and the Purchaser and its shareholders reserve all rights with respect thereto; and

(d) to the Company, on behalf of Sellers, such other documents, instruments and certificates as Sellers may reasonably request.

4.4 Termination of Agreement. This Agreement may be terminated prior to the Closing as follows:

(a) by Purchaser, if the Closing has not occurred by December 29, 2023 (the "Outside Date"); provided, however, that if the Closing shall not have occurred on or before the Outside Date due to a material breach of representations, warranties or covenants by Purchaser then Purchaser may not terminate the Agreement due to the occurrence of the Outside Date;

(b) by Purchaser, if Sellers shall not have filed the Bidding Procedures Motion no later than one (1) Business Day after the Petition Date;

(c) by Purchaser, if (i) the Bidding Procedures Order shall not have been entered by the Bankruptcy Court on or before the date that is twenty-one (21) after the Petition Date or (ii) the Bankruptcy Court shall have entered an order invalidating, disallowing or otherwise prohibiting Purchaser from discharging at least an amount equal to the outstanding amounts due under the First Lien Notes Indenture and the DIP Indenture as Credit Bid Consideration;

(d) by Purchaser, if (i) Sellers shall not have commenced the Auction on or before December 15, 2023 or (ii) Sellers comply with the Bidding Procedures and accept a Qualified Bid (as defined in the Bidding Procedures) from a Person other than Purchaser or a Purchaser Designee and Purchaser is not designated as an Alternate Bidder in accordance with the Bidding Procedures;

(e) by Purchaser, if the Sale Order shall not have been entered by the Bankruptcy Court on or before December 22, 2023;

(f) by Purchaser, if any secured creditor obtains relief from the automatic stay provided by section 362 of the Bankruptcy Code to foreclose on any of the Purchased Assets other than a de minimis portion of the Purchased Assets;

(g) by Purchaser, if there shall be a breach by any Seller of any representation, warranty, covenant, agreement or obligation contained in this Agreement which would result in a failure of one or more of the conditions set forth in Article X and which breach cannot be cured or has not been cured by the earlier of (i) fifteen (15) calendar days after the giving of written notice by such Seller to Purchaser and (ii) the Outside Date;

(h) by Sellers, if there shall be a breach by Purchaser of any representation, warranty, covenant, agreement or obligation contained in this Agreement which would result in a failure of one or more of the conditions set forth in Article X and which breach cannot be cured or has not been cured by the earlier of (i) fifteen (15) calendar days after the giving of written notice by Purchaser to Sellers and (ii) the Outside Date;

(i) by Sellers, if the conditions to closing set forth in Article X hereof have been satisfied or waived (other than conditions that by their nature are to be satisfied at or upon the Closing) and Purchaser or Purchaser Designee refuses or is unable to close on or before the date that Purchaser is required to effect the Closing pursuant to Section 4.1;

(j) by Sellers, prior to the conclusion of the Auction, if its board of directors or managers, based on the advice of counsel, determines in good faith that proceeding with the transactions contemplated by this Agreement or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties;

(k) by either Sellers or Purchaser, if the Bankruptcy Court or any Governmental Body issues any Order permanently enjoining or otherwise prohibiting the transactions contemplated by this Agreement and such Order shall have become a Final

Order; provided, however, that the right to terminate this Agreement under this Section 4.4(k) shall not be available to any Party if such Order was primarily caused by (i) such Party's material breach of any provision of this Agreement, or (ii) such Party's failure to comply in any material respect with its obligations hereunder;

(l) by Purchaser or Sellers, if (i) the Bankruptcy Court enters an order appointing a trustee, examiner with expanded powers or responsible officer in the Bankruptcy Cases, (ii) the Bankruptcy Cases are converted to a case under chapter 7 of the Bankruptcy Code, or (iii) the Bankruptcy Cases are dismissed; provided that if any of the foregoing occurs as the result of a material breach of any representations, warranties, covenants or agreements contained in this Agreement by Purchaser or a Seller, then the breaching party may not terminate this Agreement pursuant to this Section 4.4(l);

(m) by Purchaser or Sellers, subject to the terms of the Bidding Procedures (including with respect to alternative bids from a Qualified Bidder(s)), if (i) Sellers consummate a Competing Transaction, (ii) Sellers enter into any contract with respect thereto, or (iii) the Bankruptcy Court approves, or authorizes Sellers to enter into, a Competing Transaction, provided that with respect to clauses (ii) and (iii), Purchaser or Sellers may not terminate this Agreement if Purchaser or Purchaser Designee has been designated as the Back-Up Bidder (as defined in the Bidding Procedures) in accordance with the Bidding Procedures Order and the Bidding Procedures; or

(n) by Purchaser, if Purchaser or any of its Affiliates shall have been named as a defendant or third-party defendant in or otherwise subject to any legal proceeding in any of the Bankruptcy Cases or any ancillary or adversary legal proceedings related thereto, in which a person is seeking to equitably subordinate or disallow or recharacterize any of its Liens related to the First Lien Notes Indenture or the DIP Indenture and, solely with respect such proceedings commenced by a party or parties other than Sellers, such party or parties are successful in such proceedings.

Notwithstanding anything to the contrary contained herein, in no event may Purchaser terminate this Agreement on account of Purchaser's failure to satisfy the conditions contained in sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code with respect to any proposed Purchased Contract.

4.5 Procedure Upon Termination. In the event of termination pursuant to Section 4.4, written notice thereof will forthwith be given to the other party or parties, and this Agreement will terminate, and the purchase of the Purchased Assets hereunder will be abandoned, without further action by Purchaser or Sellers.

4.6 Effect of Termination. In the event that this Agreement is validly terminated as provided in this Agreement, then each of the parties will be relieved of its duties and obligations arising under this Agreement after the date of such termination and such termination will be without liability to Purchaser or Sellers; provided, however, that the provisions of this Section 4.6, Sections 7.1 and 7.2 and Article XII (other than Section 12.3) of this Agreement and, to the extent necessary to effectuate the foregoing enumerated provisions, Section 1.1 of this Agreement, will survive any such termination

and will be enforceable hereunder; provided, further, that nothing in this Section 4.6 will be deemed to release any party from liability for any breach of its obligations under this Agreement or fraud.

V. REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as qualified or supplemented by the Schedules attached to this Agreement, each Seller hereby jointly and severally represents and warrants to Purchaser as of the date hereof and as of the Closing Date (except to the extent such representations and warranties speak expressly as of an earlier date) as follows:

5.1 Organization and Good Standing. Each Seller is an entity duly organized, validly existing and in good standing under the Laws of the jurisdiction of its organization and, subject to the provisions of the Bankruptcy Code, has the requisite power and authority to own, lease and operate the Purchased Assets and to carry on the Business as now conducted. Each Seller is duly qualified or licensed to do business in each jurisdiction in which the nature of the Business or the ownership or leasing of the Purchased Assets makes such qualification or licensing necessary for the operation of the Business as now conducted, except where the failure to be so qualified would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.2 Authorization of Agreement. Subject to entry of the Bidding Procedures Order and the Sale Order and such other authorization as is required by the Bankruptcy Court, each Seller has the requisite power and authority to execute and deliver this Agreement and each other Transaction Document to which it is (or will become at Closing) a party and to perform its respective obligations hereunder and thereunder. The execution and delivery of this Agreement and each other Transaction Document to which it is (or will become at Closing) a party and the consummation of the Proposed Transaction and any other transactions contemplated thereby have been duly authorized by all requisite corporate action on the part of each Seller. This Agreement and each other Transaction Document to which it is (or will become at Closing) a party has been duly and validly executed and delivered by each Seller and (assuming the due authorization, execution and delivery by the other parties hereto and the entry of the Bidding Procedures Order and the Sale Order) this Agreement and each other Transaction Document to which it is (or will become at Closing) a party constitutes legal, valid and binding obligations of each Seller enforceable against such Seller in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

5.3 Conflicts; Consents of Third Parties.

(a) The execution and delivery by each Seller of this Agreement and each other Transaction Document to which it is (or will become at Closing) a party, the

consummation of the Proposed Transaction or any other transactions contemplated thereby and compliance by such Seller with any of the provisions of this Agreement do not 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 termination or cancellation under any provision of (i) the certificate or articles of formation and operating agreement and by-laws or comparable organizational documents of any Seller or any Acquired Entity; or (ii) subject to the entry of the Bidding Procedure Order and the Sale Order, (A) any Contract or Permit to which any Seller or any Acquired Entity is a party or by which any of the properties or assets of any Seller or any Acquired Entity are bound, (B) any Order of any Governmental Body applicable to such Seller or any of the Purchased Assets as of the date of this Agreement or (C) any applicable Law, other than, in the case of clause (ii), such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(b) Except to the extent not required if the Bidding Procedures Order and the Sale Order are entered, no consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Sellers in connection with the execution and delivery of this Agreement or any other Transaction Document to which it is (or will become at Closing) a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the Proposed Transaction or any other transactions contemplated thereby or the taking by Sellers of any other action contemplated hereby or thereby, except for (i) compliance with the applicable requirements of the HSR Act, to the extent required, (ii) the entry of the Bidding Procedures Order and the Sale Order and (iii) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.4 Litigation. There are no Legal Proceedings pending or, to the Knowledge of Sellers, threatened in writing against any Seller or any Acquired Entity, or to which any Seller or any Acquired Entity is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect (in each case, other than the Bankruptcy Cases). No Seller is subject to any Order of any Governmental Body (other than those issued in relation to the Bankruptcy Cases) except to the extent the same would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.5 Financial Data. Complete copies of the unaudited financial statements consisting of the consolidated balance sheet of each Seller and its subsidiaries as of December 31, 2022 and the related statements of operations and cash flow for the year then ended (the "Unaudited Financial Statements"), and unaudited financial statements consisting of the balance sheet of the Business as of August 30, 2023 and the related statements of operations and cash flow for the 8-month period then ended (the "Interim Financial Statements" and, together with the Unaudited Financial Statements, the "Financial Statements") have been provided to Purchaser. The Financial Statements

have been prepared in accordance with GAAP applied on a consistent basis throughout the period involved, subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse to the Business). The Financial Statements are based on the books and records of the Business, and fairly present in all material respects the financial condition of the Business as of the respective dates they were prepared and the results of the operations of the Business for the periods indicated. Sellers maintain a standard system of accounting for the Business established and administered in accordance with GAAP.

5.6 Real Property. No Seller owns any real property used in connection with the Business. No Seller leases any real property used in connection with the Business other than that identified on Schedule 5.6. Schedule 5.6 lists all real property included in the Purchased Assets or leased pursuant to leases included in the Purchased Contracts (each, a “Real Property Lease”). Except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect: (a) there is no pending or, to the Knowledge of Sellers, threatened condemnation proceeding, administrative action or judicial proceeding of any type relating to the Real Property or other matters affecting adversely the current use, occupancy or value of the Real Property; (b) to the Knowledge of Sellers, the Real Property does not serve any adjoining property for any purpose inconsistent with the use of the Real Property, and the Real Property is not located within any flood plain or subject to any similar type of restriction for which any permits or licenses necessary to the use thereof have not been obtained; and (c) to the Knowledge of Sellers, neither the current use of the Real Property nor the operation of the Business violates any instrument of record or agreement affecting the Real Property or any applicable legal requirements.

5.7 Title to Purchased Assets; Sufficiency. Except as set forth on Schedule 5.7, Sellers have good and valid title to, or valid leasehold interests in, the Purchased Assets, and, at the Closing, subject to the entry of the Sale Order, Purchaser will be vested with good and valid title to such Purchased Assets, free and clear of all Liens (including any and all prepetition and post-petition adequate protection Liens of the Sellers’ prepetition lenders), other than those created by Purchaser and Permitted Exceptions. Except as set forth on Schedule 5.7, the Purchased Assets constitute all of the material properties used in or held for use in the conduct of the Business and are sufficient for Purchaser to conduct the Business from and after the Closing Date without interruption and in the Ordinary Course of Business.

5.8 Taxes.

(a) (i) Sellers have timely filed all Tax Returns (other than Tax Returns for income Taxes for which Anagram is part of a consolidated, combined or unitary tax group of which a Parent Entity is the parent) (such Taxes, “Excluded Taxes”) required to be filed with respect to the Purchased Assets or the Business with the appropriate Tax Authorities in all jurisdictions in which such non-Excluded Taxes Tax Returns are required to be filed (taking into account any extension of time to file granted), and all such non-Excluded Taxes Tax Returns are correct and complete in all material respects, and (ii) except as to non-income Taxes of Sellers the payment of which is prohibited or stayed by

the Bankruptcy Code, each Seller has paid all non-Excluded Taxes with respect to the Purchased Assets or the Business due and payable by it (whether or not such Taxes are shown on any Tax Return). During the preceding five (5) years, no claim has been made by a Tax Authority in a jurisdiction where a Seller does not file non-Excluded Taxes Tax Returns that such Seller, with respect to the Purchased Assets or the Business, is or may be subject to taxation by such jurisdiction.

(b) Sellers have made available complete copies of material non-Excluded Taxes Tax Returns relating to the Purchased Assets or the Business relating to taxable periods that ended after December 31, 2018.

(c) Except for non-Excluded Taxes that are not yet due, there are no Liens for non-Excluded Taxes with respect to the Purchased Assets or the Business.

(d) No Tax allocation, Tax sharing or Tax indemnity or similar agreement or arrangement in each case, with respect to non-Excluded Taxes, is in effect, in each case, with respect to the Purchased Assets or the Business, that would, in any manner, bind, obligate or otherwise restrict Purchaser.

(e) All non-Excluded Taxes required to be withheld with respect to any employees, independent contractors or other third parties related to the Purchased Assets or the Business have been withheld and, to the extent due and payable, have been duly and timely paid to the appropriate Tax Authority, or set aside in an account for such purpose.

(f) No agreement, waiver or other document or arrangement extending or having the effect of extending the period for assessment or collection of non-Excluded Taxes (including, but not limited to, any applicable statute of limitations) or the period for filing any non-Excluded Taxes Tax Return, has been executed or filed with any Tax Authority by or on behalf of any Seller. No Seller has requested any extension of time within which to file any non-Excluded Taxes Tax Return, which non-Excluded Taxes Tax Return has since not been filed.

(g) No Seller is currently the subject of any non-Excluded Tax audit, examination or other similar proceeding.

(h) No power of attorney with respect to any non-Excluded Tax matter is currently in force with respect to the Purchased Assets or the Business that would, in any manner, bind, obligate, or restrict Purchaser or its Affiliate(s) or designee(s).

(i) No Seller has executed or entered into any agreement with, or obtained any consents or clearances from, any Tax Authority, or has been subject to any ruling guidance specific to any Seller, in each case, with respect to non-Excluded Taxes, which would be binding on Purchaser or any Affiliate(s) or designee(s) for any taxable period (or portion thereof) ending after the Closing Date.

5.9 Intellectual Property Schedule 5.9 sets forth a complete and accurate list of all Registered Purchased Intellectual Property. Except as limited by Section

365(c)(1)(A) or Section 365(e)(2) of the Bankruptcy Code, to the Knowledge of Sellers, Sellers own all Purchased Intellectual Property. To the Knowledge of Sellers, the Registered Purchased Intellectual Property is subsisting, in full force and effect, and has not been cancelled, abandoned, expired or otherwise terminated. To the Knowledge of Sellers, no Person is infringing, violating or misappropriating any of the Purchased Intellectual Property owned by Sellers in any material respect. As of the date of this Agreement, there is no pending claim, demand, or proceeding against Sellers challenging the validity, enforceability or ownership of, or the right to use, any of the Purchased Intellectual Property and, to the Knowledge of Sellers, there is no such claim, demand, or proceeding threatened in writing.

5.10 Contracts.

(a) Sellers have made available to Purchaser prior to the Closing, true and correct copies, of the following Purchased Contracts to which any Seller is a party as of the date of this Agreement:

(i) any Purchased Contract pursuant to which one or more Sellers has made payments in excess of \$500,000 during the twelve (12)-month period ended October 31, 2023, excluding purchase orders entered into in the Ordinary Course of Business and any expenditures contingent upon the Closing (each, a "Material Purchased Contract");

(ii) any Purchased Contract that provides for the sale after the date of this Agreement of any property, right or asset, other than in the Ordinary Course of Business, for consideration in excess of \$500,000;

(iii) any Purchased Contract that constitutes a joint venture, partnership or similar Contract involving a sharing of profits or expenses;

(iv) any Purchased Contract between a Seller or an Acquired Entity, on the one hand, and any Affiliate of any Seller (other than an Acquired Entity) on the other hand;

(v) any Purchased Contract that is evidence of Indebtedness in excess of \$500,000;

(vi) any Purchased Contract that grants any rights of first refusal, rights of first offer, rights of first negotiation or other similar rights to any Person with respect to any material assets, rights or Real Property that constitute Purchased Assets;

(vii) any Purchased Contract that requires Sellers to provide goods or services (or to act in any manner) on an exclusive basis, or containing "most favored nation" provisions;

(viii) any Purchased Contract that contains a covenant that limits the right of Sellers to engage or compete in any line of business or

geographic region or that contains any standstill or similar agreement that has not expired or terminated;

(ix) any Purchased Contract that is a settlement, conciliation or similar Contract that would require Sellers to pay consideration of more than \$500,000 after the date of this Agreement or that contains continuing restrictions on the Business and operations of Sellers that are material to the Business, taken as a whole; or

(x) any Purchased Contract (A) that provides for the acquisition or disposition by Sellers of any material assets (whether by merger, sale of stock, sale of assets or otherwise), excluding Inventory in the Ordinary Course of Business or (B) pursuant to which Sellers acquired or will acquire any material ownership interest in any other Person or other business enterprise, in each case, under which Sellers have obligations remaining to be performed as of the date of this Agreement.

5.11 Validity of Contracts. Except as would not, individually or in the aggregate, reasonably be expected to have a Seller Material Adverse Effect, each Purchased Contract is a valid and binding obligation of the Seller party thereto and, to the Knowledge of Sellers, the other parties thereto in accordance with its terms and conditions, except as set forth on Schedule 5.11(a) or as such validity and enforceability may be limited by (a) bankruptcy, insolvency, or other similar Laws affecting the enforcement of creditors' rights generally, (b) equitable principles of general applicability (whether considered in a proceeding at law or in equity), (c) the obligation to pay Cure Amounts under Section 2.5. Except as set forth on Schedule 5.11(b), no event has occurred which, with the passage of time or the giving of notice, or both, would constitute a default under or a violation of any such Contract or would cause the acceleration of any obligation of any Seller or, to the Knowledge of Sellers, any other party thereto or the creation of a Lien upon any Purchased Asset, except for such events that would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.12 Affiliate Transactions.

(a) Except as set forth on Schedule 5.12, none of Sellers, any controlled Affiliates of any Seller or any of their respective officers, directors or employees (i) owns any direct or indirect interest of any kind in, or controls or is a director, officer, employee or partner of, or consultant to, or lender to or borrower from, or has the right to participate in the profits of, any Person which is a participant in any transaction to which any Seller or Acquired Entity is a party related to the Business or the Purchased Assets or (ii) is a party to any Purchased Contract or any Contract with any Acquired Entity.

(b) Each Purchased Contract or other arrangement between any Seller or Acquired Entity on the one hand, and any Affiliate of any Seller or Acquired Entity or any officer, director or employee of any Seller or Acquired Entity on the other hand, is on commercially reasonable terms no more favorable to the Affiliate, director, officer or

employee of such Seller or Acquired Entity than what any third party negotiating on an arm's-length basis would expect.

(c) Schedule 5.12(c) lists all of the material services provided by any Affiliate of Seller to any Seller or Acquired Entity utilizing either (i) assets not included in the Purchased Assets or (ii) employees that are not Employees.

5.13 Employee Benefits/Labor.

(a) Schedule 5.13(a) lists all Employee Benefit Plans. "Employee Benefit Plans" means (i) all "employee benefit plans," as defined in Section 3(3) of ERISA (whether or not subject to ERISA); (ii) all employment, consulting or other individual compensation Contracts; and (iii) all bonus or other incentive, equity or equity-based compensation, deferred compensation, severance pay, sick leave, vacation pay, salary continuation, disability, hospitalization, medical, life insurance, scholarship programs, plans or arrangements or any other benefit plans or arrangements as to which Sellers sponsor, maintain, contribute to, or have any obligation or Liability, contingent or otherwise or in which any Employee is a participant.

(b) True, correct and complete copies of the following documents, with respect to each of the Employee Benefit Plans (other than the Parent Employee Benefit Plans), have been made available to Purchaser: (i) any plans and related trust documents, and all amendments thereto; (ii) the most recent Forms 5500 and schedules thereto; (iii) the most recent financial statements and actuarial valuations; (iv) the most recent IRS determination or opinion letter; and (v) the most recent summary plan descriptions (including letters or other documents updating such descriptions).

(c) No Employee Benefit Plan is intended to be qualified under Code Section 401(a).

(d) Except as provided for under the terms of this Agreement, neither the execution and delivery of this Agreement nor the consummation of the Proposed Transaction will, either alone or in combination with any other event (i) result in any payment becoming due to any current or former employee; (ii) increase any benefits otherwise payable under any Employee Benefit Plan or any other agreement or arrangement; (iii) result in the acceleration of the time of payment, funding or vesting of any such benefits; or (iv) result in any amount failing to be deductible by reason of Code Section 280G.

(e) No Seller, nor any of their respective subsidiaries, is a party to any labor or collective bargaining agreement. There are no (i) strikes, work stoppages, slowdowns, lockouts or arbitrations or (ii) material grievances or other labor disputes pending or, to the Knowledge of Sellers, threatened against or involving any of the Sellers. There are no unfair labor practice charges, grievances or complaints pending or, to the Knowledge of Sellers, threatened by or on behalf of any of the employees of the Sellers.

(f) Each of the Sellers is in compliance in all material respects with all applicable Laws relating to employment, labor and wage and hour matters, including the

classification of workers, labor relations, leave of absence requirements, pay equity, civil rights, workers' compensation, privacy, harassment, retaliation, wrongful discharge, wages, hours, collective bargaining, unlawful discrimination, immigration, terms and conditions of employment and plant closing, reductions in force or mass layoffs.

(g) Sellers have made available to Purchaser a true, complete and accurate list of each Employee as of the date hereof (the "Employee List"), including name or employee number, job title, length of service, status as exempt or non-exempt, leave status, employment location and current base salary or hourly rate of pay and target bonus opportunity for 2023 (if applicable). Sellers shall provide an updated Employee List to Purchaser at least five days prior to the Closing Date.

(h) None of the Sellers nor any of their respective ERISA Affiliates contribute to, or has any obligation to contribute to, or in the past six (6) years had any obligation to contribute to, or has any Liability with respect to (i) an "employee pension benefit plan" (as defined in Section 3(2) of ERISA) subject to Title IV of ERISA, Sections 412, 430, or 4971 of the Code or Section 302 of ERISA (including any "multiemployer plan"), (ii) a "multiple employer plan" as defined in Section 413(c) of the Code, or (iii) a "multiple employer welfare arrangement" within the meaning of Section 3(40) of ERISA.

(i) Other than the Parent Employee Benefit Plans, no Employee Benefit Plan is (i) an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA or (ii) an "employee welfare benefit plan" within the meaning of Section 3(1) of ERISA.

(j) Each of the Employee Benefit Plans has been maintained, in all material respects, in accordance with its terms and all provisions of applicable Law. Other than as required under Sections 601 to 608 of ERISA or other applicable Law, no Employee Benefit Plan provides post-termination or retiree health benefits to any individual for any reason, and none of the Sellers nor any of their respective ERISA Affiliates have any Liability to provide post-termination or retiree health benefits to any individual.

5.14 Compliance with Laws; Permits. Each Seller is, and since the date three (3) years prior to the date of this Agreement has been, in compliance with all, and not subject to any Liability pursuant to any, Laws (including, without limitation, all Laws with respect to protection of the environment) applicable to the operation of the Business, except (i) where the failure to be in compliance would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect or (ii) as related to or as a result of the filing or pendency of the Bankruptcy Cases. Sellers have all Permits which are required for the operation of the Business as presently conducted, except where the absence of which would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

5.15 Financial Advisors. No agent, broker, financial advisor or investment banker is entitled to any brokerage, finder's or other fee or commission payable by Purchaser in connection with the Proposed Transaction based upon arrangements made by or on behalf of any Seller.

5.16 Subsidiaries. Except as set forth on Schedule 5.16, Sellers own (beneficially and of record) all of the outstanding shares of capital stock or other equity interests of the Acquired Entities, and there are no options, warrants, calls, rights, or Contracts of any character to which any Seller or Acquired Entity is a party or by which any Seller or Acquired Entity is bound obligating any Acquired Entity to issue, deliver or sell, or cause to be issued, delivered or sold, shares of capital stock or other equity interests of any Acquired Entity or obligating any Seller or Acquired Entity to grant, extend or enter into any such option, warrant, call, right, commitment or agreement. Other than the Acquired Entities and Sellers, no subsidiary of the Company is engaged in the Business or holds assets related to the Business.

5.17 Insurance. Sellers do not maintain any insurance relating to the Purchased Assets or the Assumed Liabilities. All insurance policies related to the Purchased Assets or Assumed Liabilities are maintained by a Parent Entity.

5.18 Inventory. The Inventories of the Business are in good and marketable condition, and are saleable in the Ordinary Course of Business, other than for normal discounts and liquidations in the Ordinary Course of Business and reserves established in accordance with GAAP for markdowns, shortage, salvage, lower of cost or market, obsolete, excess, damaged or otherwise unsaleable and unusable Inventory. Reserves for markdowns, shortage, salvage, lower of cost or market, obsolete, excess, damaged or otherwise unsaleable and unusable Inventory have been reflected in the Financial Statements in accordance with GAAP subject, in the case of the Interim Financial Statements, to normal and recurring year-end adjustments (the effect of which will not be materially adverse to the Business).

5.19 Foreign Corrupt Practices Act. Neither the Sellers or the Acquired Entity, nor, to the Knowledge of Sellers, any Representative, consultant or agent thereof acting on any Seller or Acquired Entity's behalf, directly or indirectly, has made any payment or promise to pay, or gift or promise to give or authorized such a promise or gift, of any money or anything of value, directly or indirectly, to (a) any foreign official (as such term is defined in the Foreign Corrupt Practices Act of 1977, as amended (the "FCPA")) for the purpose of influencing any official act or decision of such official or inducing him or her to use his or her influence to affect any act or decision of a foreign government, or any agency or subdivision thereof, or (b) any foreign political party or official thereof or candidate for foreign political office for the purpose of influencing any official act or decision of such party, official or candidate or inducing such party, official or candidate to use his, her or its influence to affect any act or decision of a foreign government or agency or subdivision thereof, in the case of both (a) and (b) above in order to assist any Seller or any Acquired Entity to obtain or retain business for or direct business to any Seller or any Acquired Entity and under circumstances which would subject any Seller or any Acquired Entity to liability under the FCPA or any corresponding foreign Laws.

5.20 OFAC. None of the Sellers, any of the Acquired Entities, any of their respective officers, managers, or employees, or, to the Knowledge of Sellers, any of their consultants, Representatives, agents or Affiliates, is (a) a person that is designated on, or is owned or controlled by a person that is designated on any list of sanctioned parties

maintained by the United States, the United Nations, Canada, the United Kingdom, or the European Union, including the list of Specially Designated Nationals and Blocked Persons maintained by the Office of Foreign Assets Control of the U.S. Treasury Department; or (b) located or organized in a country or territory that is or whose government is, or has been in the past five (5) years, the target of comprehensive sanctions imposed by the United States, the United Nations, Canada, European Union or United Kingdom (including Cuba, Iran, North Korea, Sudan, Syria, Venezuela, and the Crimean region of the Ukraine).

VI. REPRESENTATIONS AND WARRANTIES OF PURCHASER

Except as qualified or supplemented by the Schedules attached to this Agreement, Purchaser hereby represents and warrants to each Seller as of the date hereof and as of the Closing Date (except to the extent such representations and warranties speak expressly as of an earlier date) as follows:

6.1 Organization and Good Standing. Purchaser is an entity duly organized, validly existing and in good standing under the Laws of the state of its formation and has the requisite limited liability company power and authority to own, lease and operate its properties and to carry on its business as now conducted.

6.2 Authorization of Agreement. Purchaser has the requisite limited liability company power and authority to execute and deliver this Agreement and each other Transaction Document to which it is (or will become at Closing) a party and to perform its obligations hereunder and thereunder. The execution and delivery of this Agreement and each other Transaction Document to which Purchaser is (or will become at Closing) a party and the consummation of the Proposed Transaction and any other transactions contemplated thereby have been duly authorized by all requisite corporate action on the part of Purchaser. This Agreement and each other Transaction Document to which Purchaser is (or will become at Closing) a party has been duly and validly executed and delivered by Purchaser and (assuming the due authorization, execution and delivery by the other parties hereto) this Agreement and each other Transaction Document to which Purchaser is (or will become at Closing) a party constitutes legal, valid and binding obligations of Purchaser enforceable against each such entity in accordance with its respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and similar Laws affecting creditors' rights and remedies generally, and subject, as to enforceability, to general principles of equity, including principles of commercial reasonableness, good faith and fair dealing (regardless of whether enforcement is sought in a proceeding at law or in equity).

6.3 Conflicts; Consents of Third Parties. (a) The execution and delivery by Purchaser of this Agreement and each other Transaction Document to which Purchaser is (or will become at Closing) a party, the consummation of the Proposed Transaction and any other transactions contemplated thereby, or compliance by Purchaser with any of the provisions hereof or thereof do not 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 termination or cancellation under any provision of (i) the certificate of formation and limited liability

company agreement of Purchaser; (ii) any Contract or Permit to which Purchaser is a party or by which any of the properties or assets of Purchaser are bound; (iii) any Order of any Governmental Body applicable to Purchaser or any of the properties or assets of Purchaser as of the date hereof; (iv) the ABL Intercreditor Agreement (as defined in the First Lien Indenture) or the First Lien/Second Lien Intercreditor Agreement (as defined in the First Lien Indenture); or (v) any applicable Law, other than, in the case of clauses (ii), (iii), (iv) and (v), such conflicts, violations, defaults, terminations or cancellations that would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

(b) No consent, waiver, approval, Order, Permit or authorization of, or declaration or filing with, or notification to, any Person or Governmental Body is required on the part of Purchaser in connection with the execution and delivery of this Agreement and each other Transaction Document to which Purchaser is a party, the compliance by Purchaser with any of the provisions hereof or thereof, the consummation of the Proposed Transaction or any other transactions contemplated thereby, the taking by Purchaser of any other action contemplated hereby or thereby, except for (i) compliance with the applicable requirements of the HSR Act, to the extent required and (ii) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings and notifications, the failure of which to obtain or make, would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

6.4 Litigation. There are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened in writing against Purchaser, or to which Purchaser is otherwise a party before any Governmental Body, which, if adversely determined, would reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect. Purchaser is not subject to any Order of any Governmental Body except to the extent the same would not reasonably be expected to have, individually or in the aggregate, a Purchaser Material Adverse Effect.

6.5 Financial Advisors. No agent, broker, financial advisor or investment banker is entitled to any brokerage, finder's or other fee or commission payable by any Seller in connection with the Proposed Transaction based upon arrangements made by or on behalf of Purchaser.

6.6 Financial Capability. Purchaser has, or at the time of Closing will have access to, all assets or funds necessary to satisfy all of Purchaser's obligations under this Agreement, including payment of the Purchase Price pursuant to Section 3.1 and all fees, expenses of, and other amounts required to be paid by Purchaser in connection with the transactions contemplated hereby. At the Closing, Purchaser shall be capable of satisfying the conditions contained in Section 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Purchased Contracts.

VII. BANKRUPTCY COURT MATTERS

7.1 Competing Transaction. This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers and the Bankruptcy Court of higher or

better competing bids pursuant to the Bidding Procedures Order. Subject to Sellers' obligation to pay the Expense Reimbursement pursuant to the terms of this Agreement if approved by the Bankruptcy Court, from and after the date of this Agreement until the date that the Auction is declared closed by Sellers, Sellers are permitted to cause their respective representatives and Affiliates to initiate contact with, or solicit or encourage submission of any inquiries, proposals or offers by, any Person (in addition to Purchaser and its Affiliates, agents and representatives) with respect to any Competing Transaction.

7.2 Expense Reimbursement.

(a) In the event that this Agreement is terminated for any reason other than a termination by Sellers pursuant to Section 4.4(h), Section 4.4(i) or Section 4.4(k), Sellers shall reimburse Purchaser an amount in cash equal to the reasonable and documented out-of-pocket costs incurred by or on behalf of Purchaser (including by its equity holders and members) in connection with the Proposed Transaction and the transactions contemplated hereby, including, but not limited to, the fees and expenses of Purchaser and its equity holders and members' counsel and other advisors (the "Expense Reimbursement"), in an aggregate amount not to exceed (i) in the event that this Agreement is terminated by (x) Purchaser pursuant to Section 4.4(g), (y) Purchaser or Sellers pursuant to Section 4.4(m) or (z) Sellers pursuant to Section 4.4(j), \$2,000,000, or (ii) in the event that this Agreement is terminated for any reason other than (x) by Sellers pursuant to Section 4.4(h), Section 4.4(i) or Section 4.4(k), or (y) by Purchaser in the circumstances set forth in the foregoing clause (i), \$750,000, which amount shall be payable on consummation of a Competing Transaction. Purchaser shall provide Sellers with documentary evidence of such reasonable and documented out-of-pocket costs incurred in connection with the Proposed Transaction and the transactions contemplated hereby, prior to payment of the Expense Reimbursement.

(b) Except in the case of fraud or willful misconduct, upon payment of the Expense Reimbursement, Sellers and their respective representatives and Affiliates will be fully released and discharged from any Liability resulting from the termination of this Agreement and neither Purchaser nor any other Person will have any other remedy or cause of action under or relating to this Agreement or any applicable Law, including for reimbursement of expenses.

(c) The Expense Reimbursement shall be entitled to allowed administrative expense status pursuant to sections 105(a), 364 and 503(b) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in sections 503(b) and 507 of the Bankruptcy Code and shall be senior to all other superpriority administrative expenses in the Bankruptcy Cases, but shall be subordinate to the Carve-Out (as defined in the DIP Financing Orders). To the extent that all amounts due in respect of the Expense Reimbursement pursuant to this Section 7.2(c) have actually been paid by Sellers to Purchaser, except in the case of fraud or willful misconduct, Purchaser shall not have any additional recourse against any Seller or any Affiliates of any Seller for any Liabilities relating to or arising from this Agreement.

7.3 Bankruptcy Court Filings. Sellers shall file with the Bankruptcy Court a motion seeking entry of the Bidding Procedures Order and the Sale Order, and, subject to Section 7.1, Sellers will pursue diligently, and use their reasonable best efforts to cause, the entry of the Bidding Procedures Order and the Sale Order as promptly as possible. Purchaser agrees that it will promptly take such actions as are reasonably requested by Sellers to assist in obtaining entry of the Bidding Procedures Order and the Sale Order and a finding of adequate assurance of future performance by Purchaser of the Purchased Contracts, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of providing necessary assurances of performance by Purchaser under this Agreement, preserving the First Lien Trustee's ability to credit bid in respect of the Purchased Assets, and demonstrating that Purchaser is a "good faith" purchaser under section 363(m) of the Bankruptcy Code. Sellers shall provide Purchaser and First Lien Trustee with advance drafts of any motions, pleadings or Bankruptcy Court filings relating to the Bidding Procedures Order, the sale of the Purchased Assets, or the Sale Order as soon as reasonably practicable but in any event no later than three (3) Business Day prior to the date Sellers intend to file such motion, pleading or Bankruptcy Court filing. Purchaser may file or join in any motion, pleading or Bankruptcy Court filing in support or seeking approval of, and reply to any response or objection to, the Bidding Procedures Order (including the Bidding Procedures), the sale of Purchased Assets hereunder, and the Sale Order. In the event the entry of the Bidding Procedures Order or the Sale Order is appealed, Sellers and Purchaser will use their respective reasonable efforts to defend such appeal(s). Sellers shall file such motions or pleadings as may be appropriate or necessary to assume and assign the Purchased Contracts and to determine the amount of cure costs.

VIII. COVENANTS

8.1 Access to Information; Confidentiality.

(a) Prior to the Closing Date, Purchaser will be entitled, through its officers, employees, consultants and representatives (including its legal advisors and accountants), to make such reasonable investigation of the properties, businesses and operations of the Business and such reasonable examination of the books and records of the Business, the Purchased Assets and the Assumed Liabilities in the Sellers' possession as it reasonably requests and to make extracts and copies of such books and records; provided that, for the avoidance of doubt, information in the possession of the Parent Entities shall not be subject to this Section 8.1; provided, further, that Sellers shall request the Parent Entities to make available to Purchaser information in the Parent Entities' possession for investigation and examination in accordance with this Section 8.1. Any such investigation and examination will be conducted upon reasonable advance notice and under reasonable circumstances and will be subject to restrictions under applicable Law. Notwithstanding anything in this Agreement to the contrary, no such investigation or examination will be permitted to the extent that it would require Sellers to disclose information that is subject to attorney-client privilege or would violate applicable Law (provided, that each Seller shall use its reasonable best efforts to allow for such access in a way that would not have any of the foregoing effects).

(b) From and after the Closing Date, for a period of seven (7) years Purchaser will, and will cause each of its Affiliates and their respective Representatives to, upon reasonable advance notice (i) provide Sellers and their Representatives and Affiliates with reasonable access, during normal business hours, at Sellers' expense, to the books and records (for the purpose of examining and copying) regarding the Purchased Assets and Assumed Liabilities, and (ii) make available to Sellers and their Representatives and Affiliates those employees of Purchaser or its Affiliates whose assistance, expertise, testimony, notes or recollections or presence may be necessary to assist Sellers and the Representatives and Affiliates in connection with their inquiries, in each case of clauses (i) and (ii), in connection with the wind-down and liquidation of Sellers, the preparation or amendment of Tax Returns, claims or obligations relating to Excluded Liabilities, the preparation of financial statements, as is necessary to administer, or satisfy their obligations in connection with, the Bankruptcy Cases or for other bona fide legal compliance purpose; provided that Purchaser shall not be required to provide Sellers with access to any such books and records or employees to the extent necessary to (i) ensure compliance with any applicable Law or an Order of the Bankruptcy Court, (ii) preserve any applicable privilege (including the attorney-client privilege) or (iii) comply with any contractual confidentiality obligations (provided, that Purchaser shall use its reasonable best efforts to allow for such access in a way that would not have any of the foregoing effects); provided, further, that such access shall not unreasonably interfere with the business or operations of the Business; provided, further, that Purchaser shall not be required to provide Sellers with any such access in connection with a Legal Proceeding between any Purchaser or any of its Affiliates, on the one hand, and any Seller or any of its Affiliates, on the other hand.

(c) From the date of this Agreement and for a period of three years following the Closing, each Seller shall keep confidential any non-public information in its possession (other than information which was or becomes available to a Seller on a non-confidential basis from a source other than Purchaser or any of its Affiliates) relating to Purchaser and its Affiliates; provided, however, that each Seller shall not be liable hereunder with respect to any disclosure to the extent such disclosure is required pursuant to the Bankruptcy Code or other applicable Law, legal process (including pursuant to the assertion of Sellers' rights under this Agreement) (by interrogatories, subpoena, civil investigative demand or similar process), regulatory process or request, or to the extent such disclosure is reasonably necessary for purposes of compliance by a Seller or its Affiliates with tax or regulatory reporting requirements; provided that in the event of any such disclosure pursuant to this Section 8.1(b), Sellers shall (i) provide Purchaser prompt (but in any case within 2 days) written notice of the existence, terms and circumstances surrounding such disclosure and (ii) exercise commercially reasonable efforts to preserve the confidentiality of the non-public information disclosed, including by cooperating with Purchaser (at Purchaser's sole cost) to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the non-public information required to be disclosed.

(d) From the date of this Agreement and for a period of three years following the Closing, Purchaser shall keep confidential any non-public information in its possession (other than information which was or becomes available to Purchaser on a

non-confidential basis from a source other than a Seller or any of their respective Affiliates) relating to a Seller or any their respective Affiliates other than information relating to the Business, the Purchased Assets and the Assumed Liabilities; provided, however, that Purchaser shall not be liable hereunder with respect to any disclosure to the extent such disclosure is required pursuant to the Bankruptcy Code or other applicable Law, legal process (including pursuant to the assertion of Purchaser's rights under this Agreement) (by interrogatories, subpoena, civil investigative demand or similar process) or regulatory process or request; provided, further that in the event of any disclosure pursuant to legal process Purchaser exercises commercially reasonable efforts to preserve the confidentiality of the non-public information disclosed, including by cooperating with Sellers (at Sellers' sole cost) to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded the non-public information required to be disclosed.

8.2 Conduct of the Business Pending the Closing.

(a) Except (i) as set forth on Schedule 8.2(a), (ii) as required by applicable Law or the Bankruptcy Code, (iii) as otherwise expressly contemplated by this Agreement, (iv) as contemplated by the Budget, (v) for any limitations on operations imposed by the Bankruptcy Court or the Bankruptcy Code or (vi) with the prior written consent of Purchaser or the approval of the Bankruptcy Court, including approval pursuant to a "first day order", during the period from the date of this Agreement to and through the Closing Date, Sellers will (A) conduct the Business only in the Ordinary Course of Business and (B) use their commercially reasonable efforts to (I) preserve the present business operations, organization and goodwill of the Business and (II) preserve the present relationships with employees, customers, and suppliers of, and others having material business relationships with, the Business; provided, however, that Sellers may act outside of the Ordinary Course of Business as is required by the Bankruptcy Code.

(b) Except (i) as set forth on Schedule 8.2(b), (ii) as required by applicable Law or the Bankruptcy Code, (iii) as otherwise expressly contemplated by this Agreement, (iv) as contemplated by the Budget, (v) with the prior written consent of Purchaser or (vi) with the approval of the Bankruptcy Court, including approval pursuant to a "first day order" (provided that the exception set forth in this clause (vi) shall not apply with respect to actions taken by Seller or its subsidiaries to the extent that Bankruptcy Court approval of such actions was granted after Seller has petitioned, sought, requested or moved, or authorized, supported or directed any other Person to petition, seek, request or move, the Bankruptcy Court to approve or create an exception to the obligations of Sellers set forth in this Section 8.2), during the period from the date of this Agreement to and through the Closing Date, Sellers will not, and will cause their subsidiaries not to:

- (i) subject any of the Purchased Assets to any Lien, except for existing Liens and Permitted Exceptions;
- (ii) other than sales of Inventory in the Ordinary Course of Business, assign, license, transfer, convey, lease or otherwise dispose of

any of the Purchased Assets (except for the purpose of disposing of obsolete assets);

(iii) waive or release any material right of Sellers or any of their subsidiaries that constitutes a Purchased Asset;

(iv) modify, terminate, amend or waive any material rights or obligations under or otherwise seek to reject any Purchased Contract;

(v) enter into any Contract (other than any Contract with respect to IT Systems) for aggregate liability for the Sellers in excess of \$50,000;

(vi) waive, release or assign any material rights or claims that would otherwise constitute a Purchased Asset;

(vii) institute, settle or agree to settle any material proceeding (other than the Bankruptcy Cases) before any Governmental Body relating to the Purchased Assets or the Business;

(viii) modify any existing rights under, or enter into any settlement regarding the breach, infringement, misappropriation or dilution of, any material Purchased Intellectual Property;

(ix) (A) increase the level of compensation of any Employee, (B) grant any new compensation to any Employee (including any new employment agreement, bonus award, incentive, retention or transaction-based compensation, equity-based award, or severance agreement), (C) increase the coverage or benefits available under any (or create any new) Employee Benefit Plan (other than a Parent Employee Benefit Plan that is either (x) an "employee pension benefit plan" within the meaning of Section 3(2) of ERISA or (y) an "employee welfare benefit plan" within the meaning of Section 3(1) of ERISA), (D) adopt or enter into any compensation arrangement or employee benefit plan that would be an Employee Benefit Plan, (E) enter into, amend, or modify any collective bargaining agreement or any other agreement with any union or works council (F) implement any layoff or (G) terminate the employment of (other than for cause or permanent disability) or hire any new employee whose annual base salary exceeds \$200,000;

(x) with respect to an Acquired Entity, amend any of its organizational documents;

(xi) with respect to an Acquired Entity, create, incur, assume, guarantee or otherwise be liable with respect to any Indebtedness other than in the Ordinary Course of Business;

(xii) settle or compromise any Tax liability; make, change or revoke any election with respect to its Taxes; change (or request to any

Governmental Authority to change) any aspect of any method of accounting for Tax purposes; file any amended Tax Return; enter into any "closing agreement" as described in Section 7121 of the Code (or any similar provision of Law) with any Governmental Authority; or surrender any claim for a refund of Taxes to the extent any such action can reasonably be expected to adversely impact Purchaser or the Business;

(xiii) make any loans, advances or capital contributions to, or investments in, any Person, other than advances to another Seller or Acquired Entity to the extent permitted by the DIP Indenture and consistent with the Budget;

(xiv) fail to maintain in full force and effect insurance policies covering the Purchased Assets and the operation of the Business, in form and amount consistent with past practices;

(xv) incur any account payable that would constitute an Assumed Liability other than in the Ordinary Course of Business; or

(xvi) (A) agree to do anything prohibited by this Section 8.2 or (B) agree to do anything that would cause Sellers' Fundamental Representations in this Agreement to be false or that would cause the Sellers' other representations and warranties in this Agreement to be false, except as would not reasonably be expected to have, individually or in the aggregate, a Seller Material Adverse Effect.

(c) Further, in addition to the exceptions set forth in Section 8.2(b)(i)-(v), the consent of each Consultant shall also be required during the period from the date of this Agreement to and through the Closing Date for Sellers or their subsidiaries to take any of the following actions:

(i) hire or terminate any members of their respective executive teams;

(ii) enter into any Contract, agreement or commitment for aggregate liability for the Sellers in excess of \$500,000; or

(iii) enter into transactions with customers, clients, suppliers, contractors, or purchasers or sellers of goods or services, in each case, that are Affiliates of any Seller, or enter into transactions otherwise relating to the purchase or sale of goods or services with any Affiliate of any Seller, with a value of \$500,000 or more.

8.3 Consents and Permits. Sellers will use their reasonable best efforts, and Purchaser will cooperate with Sellers, to obtain at the earliest practicable date the consents, waivers, approvals, Orders, Permits or authorizations set forth on Schedule 10.1(c) (collectively, the "Required Consents"); provided, however, that in no event shall Purchaser, Sellers or any of their respective subsidiaries be required to pay, prior to the

Closing, any fee, penalty or other consideration or incur any Liability to any third party for any Required Consent or to initiate any litigation or Legal Proceedings to obtain any Required Consent.

8.4 Regulatory Approvals.

(a) To the extent required, Purchaser and Sellers will (i) make or cause to be made all filings required of each of them or any of their respective Affiliates under the HSR Act or other Antitrust Laws with respect to the Proposed Transaction, as applicable, as promptly as practicable and, in any event, within five (5) Business Days after the entry of the Bidding Procedures Order in the case of all filings required under the HSR Act and within four (4) weeks in the case of all other filings required by other Antitrust Laws, (ii) comply at the earliest practicable date with any request under the HSR Act or other Antitrust Laws for additional information, documents or other materials received by each of them or any of their respective subsidiaries from Federal Trade Commission (the “FTC”), the Antitrust Division of the United States Department of Justice (the “Antitrust Division”) or any other Governmental Body in respect of such filings or such transactions, and (iii) cooperate with each other in connection with any such filing (including, to the extent permitted by applicable Law, providing copies of all such documents to the non-filing parties prior to filing and considering all reasonable additions, deletions or changes suggested in connection therewith) and in connection with resolving any investigation or other inquiry of any of the FTC, the Antitrust Division or other Governmental Body under any Antitrust Laws with respect to any such filing or any such transaction. Each such party will use commercially reasonable efforts to furnish to each other all information required for any application or other filing to be made pursuant to any applicable Law in connection with the Proposed Transaction. Each such party will promptly inform the other parties hereto of any oral communication with, and provide copies of written communications with, any Governmental Body regarding any such filings or any such transaction. No party hereto will independently participate in any formal meeting with any Governmental Body in respect of any such filings, investigation, or other inquiry without giving the other parties hereto prior notice of the meeting and, to the extent permitted by such Governmental Body, the opportunity to attend and/or participate. Subject to applicable Law, the parties hereto will consult and cooperate with one another in connection with any analyses, appearances, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party hereto relating to proceedings under the HSR Act or other Antitrust Laws. Sellers and Purchaser may, as each deems advisable and necessary, reasonably designate any competitively sensitive material provided to the other under this Section 8.4 as “outside counsel only.” Such materials and the information contained therein will be given only to the outside legal counsel of the recipient and will not be disclosed by such outside counsel to employees, officers or directors of the recipient, unless express written permission is obtained in advance from the source of the materials (Sellers or Purchaser, as the case may be).

(b) Purchaser and each Seller will use its reasonable best efforts to resolve such objections, if any, as may be asserted by any Governmental Body with respect to the Proposed Transaction under the HSR Act, the Sherman Act, as amended,

the Clayton Act, as amended, the Federal Trade Commission Act, as amended, and any other United States federal or state or foreign statutes, rules, regulations, orders, decrees, administrative or judicial doctrines or other Laws that are designed to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade (collectively, the “Antitrust Laws”). In connection therewith, if any Legal Proceeding is instituted (or threatened to be instituted) challenging any transaction contemplated by this Agreement is in violation of any Antitrust Law, Purchaser and each Seller will cooperate and use their commercially reasonable efforts to contest and resist any such Legal Proceeding, and to have vacated, lifted, reversed, or overturned any decree, judgment, injunction or other order whether temporary, preliminary or permanent (“Antitrust Order”), that is in effect and that prohibits, prevents, or restricts consummation of the Proposed Transaction, including by pursuing all available avenues of administrative and judicial appeal and all available legislative action, unless, by mutual agreement, Purchaser and Sellers decide that litigation is not in their respective best interests. Purchaser and each Seller will use their commercially reasonable efforts to take such action as may be required to cause the expiration of the notice periods under the HSR Act or other Antitrust Laws with respect to such transactions as promptly as possible after the execution of this Agreement. In connection with and without limiting the foregoing, Purchaser and each Seller agree to use their commercially reasonable efforts to take promptly any and all steps necessary to avoid or eliminate each and every impediment under any Antitrust Laws that may be asserted by any Federal, state and local and non-United States antitrust or competition authority, so as to enable the parties to close the Proposed Transaction as expeditiously as possible.

(c) Without limiting the generality of the foregoing or any other provision of this Agreement, if requested by Sellers or a Governmental Body in order to obtain clearance under or to terminate any waiting period required by any Antitrust Law or to avoid the entry of, or to effect the dissolution of, any Antitrust Order that would have the effect of preventing or delaying the Closing beyond the Outside Date, Purchaser will propose, negotiate, offer to commit and effect (and if such offer is accepted, commit to and effect), by consent decree, hold separate Order or otherwise, the sale, divestiture or disposition of such assets or businesses of Purchaser or its subsidiaries, including the Purchased Assets and the Business, or otherwise offer to take or offer to commit to take any action which it is capable of taking, and if the offer is accepted, take or commit to take, such action that limits its freedom of action with respect to, or its ability to retain, any of the businesses or assets of Purchaser or its subsidiaries, including the Purchased Assets and the Business. For the avoidance of doubt, Purchaser will take any and all actions necessary in order to ensure that (i) no requirement for a waiver, consent or approval of the FTC, the Antitrust Division, any State Attorney General or other Governmental Body, (ii) no decree, judgment, injunction, temporary restraining Order or any other Order in any suit or proceeding, and (iii) no other matter relating to any Antitrust Law would preclude consummation of the Proposed Transaction by the Outside Date.

8.5 Further Assurances. Subject to the other provisions of this Agreement, Purchaser and each Seller will use their commercially reasonable efforts to (a) take all actions necessary or appropriate to consummate the Proposed Transaction and (b) cause the fulfillment at the earliest practicable date of all of the conditions to their

respective obligations to consummate the Proposed Transaction. Sellers shall (x) use their reasonable best efforts to cooperate with Purchaser and determine as promptly as practicable, and in any event prior to the day that is six (6) Business Days before the Closing Date, the Cure Amounts for each Purchased Contract so as to permit the assumption and assignment of each such Purchased Contract pursuant to section 365 of the Bankruptcy Code in connection with the Proposed Transaction and (y) provide all information reasonably requested by Purchaser regarding its outstanding and forecasted Accounts Payable.

8.6 Preservation of Records. Each of the Sellers and Purchaser agrees that each of them will preserve and keep the records held by it or its Affiliates relating to the Business for a period of twenty-four (24) months from the Closing Date (except as provided below) and will make such records and personnel available to the other (a) as may be reasonably required by such party solely to the extent necessary (i) in connection with any insurance claims by, Legal Proceedings or tax audits against or governmental investigations of Sellers or Purchaser or any of their Affiliates or (ii) in order to enable Sellers or Purchaser to comply with their respective obligations under this Agreement and each other agreement, document or instrument contemplated hereby, or (b) as otherwise required by this Agreement (including Section 8.1(b)).

8.7 Publicity. The initial press release concerning this Agreement and the Proposed Transaction will be in substantially a form previously agreed upon by the parties. Prior to the Closing, none of the parties hereto will issue any press release concerning this Agreement or the Proposed Transaction without obtaining the prior written approval of the other parties hereto, which approval will not be unreasonably withheld or delayed, unless, in the sole judgment of Purchaser or Sellers, as applicable, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement, provided, however, that the party intending to make such release uses its commercially reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other party with respect to the form and substance thereof.

8.8 Letters of Credit. At the Closing, Purchaser will cause any letters of credit, surety bonds, performance bonds and similar bonds posted by Sellers or their Affiliates with respect to the Purchased Assets or the Business to be terminated and released or cash collateralized, supported by a backstop letter of credit or otherwise.

8.9 Transition Services. Purchaser and Seller agree to, and Seller shall use commercially reasonable efforts to cause its Affiliates to, negotiate in good faith and enter into at the Closing a transition services agreement, pursuant to which the Seller or one of its Affiliates will provide Purchaser with certain transition services in respect of the Business as are mutually acceptable (the "Transition Services Agreement"). All reasonable and documented out-of-pocket fees, expenses and costs incurred by the Seller and its Affiliates in connection with the services rendered under the Transition Services Agreement shall be borne by Purchaser, and the fees, expenses and costs payable by Purchaser under the transition services agreement shall be solely limited to the pass-through costs of such services.

8.10 Damage or Destruction. Until the Closing, the Purchased Assets shall remain at the risk of the Sellers. In the event of any material damage to or destruction of any of the Purchased Assets after the date hereof and prior to the Closing, the Seller shall give notice thereof to Purchaser. If any damage or destruction of any Purchased Assets is covered by policies of insurance, Sellers will use their reasonable best efforts (a) to file, prior to the Closing Date, claims with respect to such damage or destruction under any insurance policy (including any applicable Excluded Insurance Policy) covering such Purchased Assets and (b) to resolve such claims as promptly as reasonably practicable. If any such damage or destruction is not repaired or replaced by a similar facility in reasonable proximity to any former facility, all right and claim of the Sellers to any proceeds of insurance for such damage or destruction shall be assigned and (if previously received by the Sellers and not used prior to the Closing Date to repair any damage or destruction) paid to Purchaser or a Purchaser Designee at Closing.

8.11 Hengsheng Supply Agreement. Sellers agree to use commercially reasonable efforts to negotiate to extend and to amend on or before the Closing Date, the Hengsheng Supply Agreement.

8.12 Replacement of Insurance Policies. With respect to each Excluded Insurance Policy, Sellers shall use commercially reasonable efforts to obtain, prior to the Closing Date, a replacement insurance policy providing substantially the same benefits, limits of liability and deductibles as such Excluded Insurance Policy.

8.13 Replacement Employee Benefit Plans; Payroll. Sellers shall cooperate with, and provide commercially reasonable assistance to, Purchaser in order for Purchaser to establish, as soon as commercially practicable, but in no event effective later than January 1, 2024, a replacement plan that is sponsored and maintained by Purchaser or one of its Affiliates (collectively, the “Replacement Plans”) for each Parent Employee Benefit Plan in which the Transferred Employees participate in that is either (i) an “employee pension benefit plan” within the meaning of Section 3(2) of ERISA (not including any employee pension benefit plan subject to Title IV of ERISA) or (ii) an “employee welfare benefit plan” within the meaning of Section 3(1) of ERISA and Purchaser shall cause each Transferred Employee (and his or her eligible dependents) to be covered by (unless a Transferred Employee declines coverage) such Replacement Plans effective as of January 1, 2024. The Replacement Plans shall provide substantially similar benefits to the Transferred Employees as were provided under the corresponding Parent Employee Benefit Plans effective as of immediately prior to the Closing, in each case measured in the aggregate and, in the case of Replacement Plans that are group health plans, to the extent permitted under the applicable Replacement Plan, shall not limit or exclude coverage on the basis of any pre-existing condition of any such Transferred Employee or dependent (other than any limitation already in effect under the corresponding Parent Employee Benefit Plan) or on the basis of any other exclusion or waiting period not in effect under the applicable Parent Employee Benefit Plan. In addition, with respect to any such Replacement Plan, Purchaser shall use reasonable best efforts to provide each Transferred Employee full credit, for the first year of eligibility, for any deductible, co-payment or out-of-pocket expenses already incurred by the Transferred Employee under the applicable Parent Employee Benefit Plan during such

year for purposes of any deductible, co-payment or maximum out-of-pocket expense provisions, as applicable, of such Replacement Plans, subject to Seller providing Purchaser with sufficient written documentation with respect to the amount of any such deductible, co-payment or out-of-pocket expenses applied prior to the Closing.

8.14 Purchaser Equity. Prior to the Closing, Purchaser will cause the equity interests in Purchaser or any Purchaser Designee to be distributed to holders of DIP Notes Obligations (as defined in the DIP Financing Orders) and holders of Prepetition 1L Obligations (as defined in the DIP Financing Orders) pro rata based on the amounts of such obligations constituting the Credit Bid Consideration held by such holder.

8.15 Contracts. Sellers shall deliver to Purchaser a true and complete list of the Purchased Contracts referred to in Section 5.10(a) by no later than ten (10) days following the date hereof.

IX. EMPLOYEES AND EMPLOYEE BENEFITS

9.1 Transferred Employees. Prior to the date that is the later of (i) fifteen (15) days prior to the Closing and (ii) three (3) days after Purchaser is selected as the Successful Bidder (as defined in the Bidding Procedures), Purchaser will offer employment to each of the Employees identified on Schedule 9.1, which schedule shall be provided to Purchaser at least twenty (20) days prior to the Closing. Such individuals who accept such offer by the Closing Date are hereinafter referred to as the “Transferred Employees.” Sellers shall cause all Employees to be terminated from employment with the Sellers or their Affiliates on the Closing Date, and Purchaser shall cause all Transferred Employees to become employees of Purchaser or its Affiliates at 12:01 am on the day immediately following the Closing Date. Notwithstanding the foregoing, until the earlier to occur of (i) the last day of the month in which the Closing occurs, and (ii) January 1, 2024, Transferred Employees will continue to be covered by any Parent Employee Benefit Plans that offer health, vision and dental coverage. Such offers of employment will be on terms and conditions which will provide for a substantially similar title or position applicable to such Transferred Employee as of immediately prior to the Closing as well as (i) a base salary or hourly wage rate, as applicable, (ii) target annual cash bonus opportunity and (iii) other employee benefits (excluding any long-term incentive compensation, retention or transaction bonuses or other special or one-time compensation bonuses, and any pension or other retiree medical benefits (collectively, the “Excluded Benefits”)), that are substantially similar to the base salary or wage rate, as applicable, target annual cash bonus opportunity and, measured in the aggregate, other employee benefits (other than the Excluded Benefits) to those provided to such Transferred Employee by Seller immediately prior to the Closing.

9.2 Closing Year Annual Incentive Compensation. Purchaser shall assume all Liability for any annual incentive compensation payable to Transferred Employees under any Employee Benefit Plan with respect to the year in which the Closing occurs (the “Closing Year Annual Incentive Compensation”), which amount shall not exceed the amount accrued for such Closing Year Annual Incentive Compensation through December 31, 2023 if the Closing occurs in the 2023 calendar year, and the Sellers shall

not have any Liability for the Closing Year Annual Incentive Compensation. All Closing Year Annual Incentive Compensation shall continue to be governed by the applicable Employee Benefit Plan in which the applicable Transferred Employee participates and Purchaser shall not terminate any such Employee Benefit Plan prior to the expiration of the applicable performance period and payment of all bonuses earned by Transferred Employees thereunder.

9.3 Accrued Vacation, Sick Leave and Personal Time. Purchaser shall recognize and assume all Liabilities with respect to accrued but unused vacation, sick leave and personal time for all Transferred Employees (including any Liabilities to Transferred Employees for payments in respect of earned but unused vacation, sick leave and personal time that arise as a result of the transfer of employment contemplated by this Article IX). Purchaser shall allow Transferred Employees to use the vacation, sick leave and personal time recognized or established in accordance with the first sentence of this Section 9.3 in accordance with the terms of the Sellers' programs in effect immediately prior to the Closing Date (in addition to, and not in lieu of, any vacation accrued under the applicable vacation, sick leave and personal time plans or policies of Purchaser or its Affiliates on or following the Closing).

9.4 Service Credit. As of and after the Closing, Purchaser shall, or shall cause its applicable Affiliate to, give each Transferred Employee full credit for all purposes under (a) each employee benefit plan, policy or arrangement and (b) any other service-based or seniority-based entitlement, in each case maintained or made available for the benefit of Transferred Employees as of and after the Closing by Purchaser or any of its Affiliates, for such Transferred Employee's service prior to the Closing with Sellers and their respective predecessors, to the same extent such service is recognized by Sellers immediately prior to the Closing; provided, that such credit shall not be given to the extent that it would result in a duplication of benefits for the same period of service.

9.5 No Obligations. Nothing contained in this Agreement will be construed to require, or prevent the termination of, employment of any individual, require minimum benefit or compensation levels following the Closing or prevent any change in the employee benefits provided to any individual Transferred Employee nor will it be construed as creating or amending any Employee Benefit Plan. The parties hereto agree that nothing in this Article IX, whether express or implied, is intended to create any third-party beneficiary rights in any Transferred Employee or any other Person.

X. CONDITIONS TO CLOSING

10.1 Conditions Precedent to Obligations of Purchaser. The obligation of Purchaser to consummate the Proposed Transaction is 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 Purchaser, in whole or in part, to the extent permitted by applicable Law:

(a) (i) the representations and warranties of Sellers set forth in Sections 5.1, 5.2 and 5.16 (the "Seller Fundamental Representations") shall be true and correct as

of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and (ii) the other representations and warranties of Sellers contained in Article V (other than the Seller Fundamental Representations), taken together, without giving effect to any qualification as to “material”, “materiality” or Seller Material Adverse Effect set forth therein, shall be true and correct as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, except for such failures to be so true and correct that, individually or in the aggregate, would not reasonably be expected to have a Seller Material Adverse Effect. Purchaser shall have received a certificate signed by an authorized officer of the Company (on behalf of Sellers), dated the Closing Date, to the effect that the conditions set forth in this Section 10.1(a) have been satisfied;

(b) Sellers shall have performed and complied in all material respects with all obligations, covenants and agreements required in this Agreement to be performed or complied with by them prior to the Closing Date, and Purchaser shall have received a certificate signed by an authorized officer of the Company (on behalf of Sellers), dated the Closing Date, to the effect that the conditions set forth in this Section 10.1(b) have been satisfied;

(c) Sellers shall have transferred or issued, as necessary and as the case may be, the Required Consents to Purchaser;

(d) since the date hereof, there shall not have occurred a Seller Material Adverse Effect;

(e) (i) the amount of Acquired Cash shall be equal to or greater than the Wind-Down Amount, or (ii) if the amount of Acquired Cash is less than the Wind-Down Amount, Sellers shall have notified Purchaser in writing at least three (3) days prior to Closing that Sellers waive the payment by Purchaser pursuant to Section 4.3(c) of the portion of the Closing Date Cash Payment constituting the Wind-Down Amount that exceeds the amount of Acquired Cash; and

(f) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Sections 4.2(a) through (g).

10.2 Conditions Precedent to Obligations of Sellers. The obligations of Sellers to consummate the Proposed Transaction are subject to the fulfillment, prior to or on the Closing Date, of each of the following conditions (any or all of which may be waived by Sellers in whole or in part to the extent permitted by applicable Law):

(a) (i) the representations and warranties of Purchaser set forth in Sections 6.1 and 6.2 (the “Purchaser Fundamental Representations”) shall be true and correct as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, and (ii) the other representations and warranties of Purchaser contained in Article VI (other than the Purchaser Fundamental Representations), taken together,

without giving effect to any qualification as to “material”, “materiality” or Purchaser Material Adverse Effect set forth therein, shall be true and correct as of the date hereof and as of the Closing Date as though made on the Closing Date, except to the extent expressly made as of an earlier date, in which case as of such earlier date, except for such failures to be so true and correct that, individually or in the aggregate, would not reasonably be expected to have a Purchaser Material Adverse Effect. Sellers shall have received a certificate signed by an authorized officer of the Company (on behalf of Sellers), dated the Closing Date, to the effect that the conditions set forth in this Section 10.2(a) have been satisfied;

(b) Purchaser 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 Purchaser on or prior to the Closing Date, and Sellers shall have received a certificate signed by an authorized officer of Purchaser, dated the Closing Date, to the effect that the conditions set forth in this Section 10.2(b) have been satisfied;

(c) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Sections 4.3(a) through (d).

10.3 Conditions Precedent to Obligations of Purchaser and Sellers. The respective obligations of Purchaser and Sellers to consummate the Proposed Transaction 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 by mutual agreement of Purchaser and Sellers in whole or in part to the extent permitted by applicable Law):

(a) there shall not be in effect any Law or Order by a Governmental Body of competent jurisdiction restraining, enjoining, making illegal or otherwise prohibiting the consummation of the Proposed Transaction;

(b) the Required Consents set forth on Schedule 10.1(c) shall have been obtained, in form and substance reasonably acceptable to the parties, and such Required Consents shall remain in full force and effect;

(c) the Bankruptcy Court shall have entered the Bidding Procedures Order;

(d) the Bankruptcy Court shall have entered the Sale Order;

(e) the waiting period applicable to the Proposed Transaction under the HSR Act, if any, shall have expired or early termination shall have been granted; and

(f) the Wind-Down Amount shall have been funded into a segregated account that shall not be subject to any Liens or claims of any other party (including Purchaser) or any Liens or claims granted in connection with the First Lien Notes Indenture, the Second Lien Notes Indenture, the DIP Indenture or the DIP ABL Facility.

10.4 Frustration of Closing Conditions. None of Purchaser or the Sellers may rely, either as a basis for not consummating the transactions contemplated hereby or terminating this Agreement, on the failure of any condition set forth in Sections 10.1, 10.2 or 10.3, as the case may be, to be satisfied if such failure was caused by such party's breach of any provision of this Agreement.

XI. TAXES

11.1 Transfer Taxes. Purchaser will be responsible for all documentary, stamp, transfer, motor vehicle registration, sales, use, excise and other similar Taxes and all filing and recording fees arising from or relating to the consummation of the Proposed Transaction (collectively, "Transfer Taxes"), regardless of the party on whom liability is imposed under the provisions of the Laws relating to such Transfer Taxes. Sellers and Purchaser will consult and cooperate in timely preparing and making all filings, Tax Returns, reports and forms as may be required to comply with the provisions of the Laws relating to such Transfer Taxes and will cooperate and otherwise take commercially reasonable efforts to minimize any Transfer Taxes and to obtain any available refunds for or exemptions from such Transfer Taxes.

11.2 Tax Treatment and Purchase Price Allocation. (a) For U.S. federal and applicable state and local income tax purposes, the parties intend that the transfer of the Purchased Assets to Purchaser (or its Affiliate(s) or designee(s)) be treated as a taxable acquisition of the Purchased Assets for an amount equal to the Credit Bid Consideration and any Assumed Liabilities properly treated as purchase price for tax purposes, as determined by Purchaser. No later than ninety (90) days after the Closing Date, Purchaser will prepare and deliver to Sellers, an allocation schedule setting forth the aggregate consideration for tax purposes and the amounts to be allocated among Sellers and among the Purchased Assets of each Seller, pursuant to (and to the extent necessary to comply with) Section 1060 of the Code and the applicable regulations promulgated thereunder (or, if applicable, any similar provision under state, local or foreign Law or regulation) (the "Allocation Statement"), which shall be binding on the Parties absent manifest error.

(b) If Sellers accept the Allocation Statement, Sellers and Purchaser and their respective Affiliates will report, act, and file Tax Returns (including, but not limited to IRS Form 8594) in all respects and for all purposes consistent with the Allocation Statement, and neither Sellers nor Purchaser will take any position (whether in audits, Tax Returns, or otherwise) that is inconsistent with such allocation unless required to do so by applicable Law.

11.3 Cooperation and Audits. Purchaser, its Affiliates and Sellers will cooperate fully with each other regarding Tax matters (including the execution of appropriate powers of attorney) and will make available to the others as reasonably requested all information, records and documents relating to Taxes governed by this Agreement until the expiration of the applicable statute of limitations or extension thereof or the conclusion of all audits, appeals or litigation with respect to such Taxes.

XII. MISCELLANEOUS

12.1 No Survival of Representations and Warranties. The parties hereto agree that the representations and warranties contained in this Agreement will not survive the Closing hereunder, and none of the parties will have any liability to each other after the Closing for any breach thereof. The parties hereto agree that the covenants contained in this Agreement to be performed at or after the Closing will survive the Closing hereunder in accordance with their terms.

12.2 Expenses. Except as otherwise expressly set forth herein, each of the Sellers and Purchaser will bear its own expenses 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 Proposed Transaction. Without limiting the foregoing, Purchaser will pay the filing fee required in connection with the HSR Act filing contemplated by Section 8.4(a) if any, and any other filings required to obtain any regulatory approvals required pursuant to Section 10.3(e).

12.3 Injunctive Relief. Damages at Law may be an inadequate remedy for the breach of any of the covenants, promises and agreements contained in this Agreement, and, accordingly, any party hereto will be entitled to injunctive relief with respect to any such breach, including specific performance of such covenants, promises or agreements or an order enjoining a party from any threatened, or from the continuation of any actual, breach of the covenants, promises or agreements contained in this Agreement. The rights set forth in this Section 12.3 will be in addition to any other rights which a party hereto may have at Law or in equity pursuant to this Agreement.

12.4 Submission to Jurisdiction; Consent to Service of Process. (a) Without limiting any party's right to appeal any order of the Bankruptcy Court, (i) the Bankruptcy Court will retain exclusive jurisdiction to enforce the terms of this Agreement and to decide any claims or disputes which may arise or result from, or be connected with, this Agreement, any breach or default hereunder, or the Proposed Transaction, and (ii) any and all proceedings related to the foregoing will be filed and maintained only in the Bankruptcy Court, and the parties hereby consent to and submit to the jurisdiction and venue of the Bankruptcy Court and will receive notices at such locations as indicated in Section 12.8; provided, however, that if the Bankruptcy Cases have been closed pursuant to Section 350 of the Bankruptcy Code, the parties agree to unconditionally and irrevocably submit to the exclusive jurisdiction of the United States District Court for the Southern District of New York sitting in New York County or the Commercial Division, Civil Branch of the Supreme Court of the State of New York sitting in New York County and any appellate court from any thereof, for the resolution of any such claim or dispute. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law.

(b) Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by delivery of a copy thereof in accordance with the provisions of Section 12.8.

12.5 Waiver of Right to Trial by Jury. Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

12.6 Entire Agreement; Amendments and Waivers. This Agreement (including the Schedules and Exhibits attached hereto) represents the entire understanding and agreement between the parties hereto with respect to the subject matter hereof. This Agreement can be amended, supplemented or changed, and any provision hereof can 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, will be deemed to constitute a waiver by the party taking such action of compliance with any representation, warranty, covenant or agreement contained in this Agreement. The waiver by any party hereto of a breach of any provision of this Agreement will 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 will operate as a waiver thereof, nor will 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. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

12.7 Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of New York (without giving effect to any conflicts of law principles that would result in the application of the laws of another state), except to the extent that the Laws of such state are superseded by the Bankruptcy Code.

12.8 Notices. All notices or other communications required or permitted under, or otherwise made in connection with, this Agreement shall be in writing and shall be deemed to have been duly given or made (a) when delivered in person, (b) when transmitted by electronic mail if on a Business Day and prior to 5:00PM local time of the recipient on such Business Day, otherwise the next succeeding Business Day, (c) upon receipt after dispatch by registered or certified mail, postage prepaid, or (d) on the next Business Day if transmitted by national overnight courier (with confirmation of delivery), in each case, addressed as follows:

If to Sellers, to:

Anagram Holdings, LLC
7700 Anagram Drive
Eden Prairie, MN 55344
Attention: Adrian Frankum
Christopher Wiles
Email: Adrian.Frankum@ankura.com
wilesc@anagramintl.com

With a copy (which will not constitute notice) to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Sunny Singh
Nicholas Baker
Moshe A. Fink
Email: Sunny.Singh@stblaw.com
NBaker@stblaw.com
Moshe.Fink@stblaw.com

If to Purchaser, to:

Attention:
Address:
Email:

With copies (which will not constitute notice) to:

Milbank LLP
55 Hudson Yards
New York, NY 10001
Attention: Abhilash M. Raval
Matthew Brod
Jason Anderson
Email: araval@milbank.com
mbrod@milbank.com
jtanderson@milbank.com

12.9 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Law or public policy, all other terms or provisions of this Agreement will nevertheless remain in full force and effect so long as the economic or legal substance of the Proposed Transaction is not affected in any

manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, the parties hereto will 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 in order that the Proposed Transaction are consummated as originally contemplated to the greatest extent possible.

12.10 Assignment. This Agreement will be binding upon and inure to the benefit of the parties and their respective successors and permitted assigns. Nothing in this Agreement will create or be deemed to create any third party beneficiary rights in any Person or entity not a party to this Agreement. No assignment of this Agreement or of any rights or obligations hereunder may be made by any Seller or 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 will be void. Except as otherwise expressly provided in this Section 12.10, no assignment of any obligations hereunder will relieve the parties hereto of any such obligations. Upon any such permitted assignment, the references in this Agreement to Sellers or Purchaser will also apply to any such assignee unless the context otherwise requires.

12.11 Non-Recourse. No past, present or future director, officer, employee, incorporator, member, partner or equityholder of Sellers will have any liability for any obligations or liabilities of Sellers under this Agreement or any agreement entered into in connection herewith of or for any claim based on, in respect of, or by reason of, the Proposed Transaction and thereby.

12.12 Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

[Signature page follows]

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

PURCHASER:

CELEBRATION BIDCO, LLC

By: _____

Name: Gentry Klein

Title: Authorized Person

SELLERS:

ANAGRAM HOLDINGS, LLC

By: _____
Name: Adrian Frankum
Title: Chief Restructuring Officer

ANAGRAM INTERNATIONAL, INC.

By: _____
Name: Adrian Frankum
Title: Chief Restructuring Officer

**ANAGRAM INTERNATIONAL HOLDINGS,
INC.**

By: _____
Name: Adrian Frankum
Title: Chief Restructuring Officer

Exhibit A

Bidding Procedures Order

[Attached as Exhibit A to the Emergency Motion of Debtors For Entry of an Order (I)(A) Approving the Bidding Procedures For Sale of Debtors' Assets, (B) Approving Stalking Horse Bid Protections, (C) Scheduling Certain Dates With Respect Thereto, (D) Approving Form and Manner of Notices of Thereof and (E) Approving Contract Assumption and Assignment Procedures, (II)(A) Approving Sale of Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Authorizing Assumption and Assignment of Executory Contracts and Unexpired Leases and (III) Granting Related Relief]

EXHIBIT 3

SALE NOTICE

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

In re:)	
)	Chapter 11
)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> ¹)	Case No. 23-90901 (MI)
)	
Debtors.)	(Joint Administration Requested)
)	(Emergency Hearing Requested)

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

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 8, 2023, Anagram Holdings, LLC and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (“**Anagram Holdings**” together with its debtor affiliates, collectively, the “**Debtors**,” “**Anagram**,” or the “**Company**”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**” or the “**Court**”) a motion (ECF No. [●]) (the “**Motion**”) for the entry of an order (the “**Bidding Procedures Order**”)² (i) approving (a) the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the “**Bidding Procedures**”); (b) the Stalking Horse Bid Protections; (c) setting Final Bid Deadline (as defined herein); (d) authorizing and scheduling an auction (the “**Auction**”); (e) authorizing and scheduling the Sale Hearing (as

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion, Bidding Procedures Order, and the Bidding Procedures, as applicable. Any summary of the Bidding Procedures Order or the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

defined herein); (f) authorizing and approving the form and manner of the Sale Notice; (g) authorizing and approving the Cure Notice to Contract Counterparties regarding the Debtors' potential assumption and assignment of the Assigned Contracts and of the Debtors' calculation of the amount necessary to cure any defaults thereunder (the "**Cure Costs**"); and (h) authorizing and approving procedures for the assumption and assignment of the Assigned Contracts and the determination of Cure Costs with respect thereto (collectively, the "**Assumption and Assignment Procedures**"); (ii) authorizing the sale of the Assets (as defined herein), free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code following the sale process and completion of the Auction (collectively, the "**Sale Transaction**"); and (iii) granting related relief.

2. On [●], 2023, the Bankruptcy Court entered the Bidding Procedures Order (ECF No. [●]).

The Stalking Horse Bid

3. On November 8, 2023, the Debtors and the Stalking Horse Bidder entered into the Stalking Horse APA, which provide for, among other things, the sale of substantially all of the Debtors' business and assets (the "**Assets**"). The Stalking Horse APA is subject to higher or otherwise better offers submitted in accordance with the terms and provisions of the Bidding Procedures. A copy of the Stalking Horse APA is available on the website dedicated to the Debtors' chapter 11 cases maintained by their proposed claims and noticing agent and administrative advisor, Kurtzman Carson Consultants LLC, located at <https://www.kccllc.net/Anagram> (the "**Case Website**") and on the Bankruptcy Court's docket at (ECF No. [●]).

Important Dates and Deadlines

- Non-Binding Indication of Interest Deadline. Any person or entity interested in participating in the Auction is encouraged to submit a Non-Binding Indication of Interest (each, a “**Non-Binding IOI**”) on or before November 20, 2023 at 5:00 p.m. (prevailing Central Time).
- Final Bid Deadline. Any person or entity interested in participating in the Auction must submit a Qualified Bid on or before November 30, 2023 at 5:00 p.m. (prevailing Central Time) (the “**Final Bid Deadline**”).
- Auction. The Auction, if necessary, has been scheduled for December 5, 2023 at 9:00 a.m. (prevailing Central Time).
- Sale Objection Deadlines. Objections to the Sale Transaction, including any objection to the sale of the Assets free and clear of all claims and interests pursuant to section 1141(c) of the Bankruptcy Code must be (i) filed in accordance with the Bidding Procedures and (ii) filed with the Bankruptcy Court by no later than December 11, 2023 at 5:00 p.m. (the “**Sale Objection Deadline**”).
- Sale Hearing. A hearing (the “**Sale Hearing**”) to approve the Sale Transaction shall be held before the Bankruptcy Court before the Honorable Marvin Isgur on December 18, 2023 at [●]:00 [a.m./p.m.] (prevailing Central Time).

Additional Information

4. Any party interested in submitting a bid should contact the Debtors’ investment banker, Robert W. Baird (“**Baird**”) 1155 6th Ave, New York, NY 10036 New York, New York 10036, Attn: Ajay Bijoor (Email: abijoor@rwbaird.com) and Max Molinsky (Email: mmolinsky@rwbaird.com).

5. Copies of the Motion, the Bidding Procedures Order, and the Bidding Procedures may be obtained free of charge at the Case Website.

Reservation of Rights

6. Except as otherwise set forth herein, the Debtors reserve the right to, in their reasonable business judgment, in a manner consistent with their fiduciary duties and applicable law, after consultation with the Consultation Parties, to: (i) modify the Bidding Procedures; (ii) waive terms and conditions set forth herein with respect to all Potential Bidders; (iii) extend

the deadlines set forth herein; (iv) announce at the Auction modified or additional procedures for conducting the Auction; or (v) alter the assumptions set forth herein; *provided*, that, any modifications shall not be inconsistent with the Stalking Horse APA, the Bidding Procedures Order, or any other order of the Bankruptcy Court and shall not modify the consent or consultation rights of any party. Subject to the foregoing, the Debtors may, in consultation with the Consultation Parties, provide reasonable accommodations to any Potential Bidder(s) with respect to such terms, conditions, and deadlines of the bidding and Auction process to promote further bids on the Assets, in each case, to the extent not materially inconsistent with the Bidding Procedures and the Bidding Procedures Order. All parties reserve their rights to seek Bankruptcy Court relief, including on an expedited basis, with regard to the Auction, the Bidding Procedures, and any related items (including, if necessary, to seek an extension of the Final Bid Deadline). Nothing in these Bidding Procedures or the Bidding Procedures Order shall amend, modify, waive, or impair, or be deemed to amend, modify, waive, or impair, any provision of the Stalking Horse APA or any rights or remedies of the Stalking Horse Bidder, all of which are hereby preserved. For the avoidance of doubt, the Consultation Parties shall be deemed to consent to the Sale Transaction, as applicable, if (i) the Debtors and any Successful Bidder and any Back-Up Bidder adhere to the Bidding Procedures and (ii) liens attach to the proceeds of the Sale Transaction with the same validity and priority as existed on the Assets prior to the Sale Transaction.

7. FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER, OR ANY OTHER ORDER OF THE BANKRUPTCY COURT IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID.

8. THE FAILURE OF ANY PERSON OR ENTITY TO FILE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER BY THE SALE

OBJECTION DEADLINES SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING ANY OBJECTION TO THE MOTION, THE ORDER APPROVING THE SALE TRANSACTION, THE PROPOSED SALE TRANSACTION, OR THE DEBTORS' CONSUMMATION OF THE STALKING HORSE APA OR ANY OTHER AGREEMENT EXECUTED BY THE DEBTORS AND THE SUCCESSFUL BIDDER AT THE AUCTION.

Dated: [], 2023
Houston, Texas

Respectfully submitted,

By: /s/ Tom A. Howley

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*Proposed Counsel to the Debtors and the Debtors
in Possession*

EXHIBIT 4

CURE NOTICE

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

In re: ANAGRAM HOLDINGS, LLC, <i>et al.</i> ¹ Debtors.)))))))	Chapter 11 Case No. 23-90901 (MI) (Joint Administration Requested) (Emergency Hearing Requested)
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**NOTICE OF CURE COSTS AND POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES
IN CONNECTION WITH SALE**

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On November 8, 2023, Anagram Holdings, LLC and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (“**Anagram Holdings**” together with its debtor affiliates, collectively, the “**Debtors**,” “**Anagram**,” or the “**Company**”) filed with the United States Bankruptcy Court for the Southern District of Texas (the “**Bankruptcy Court**” or the “**Court**”) a motion (ECF No. [●]) (the “**Motion**”) for the entry of an order (the “**Bidding Procedures Order**”)² (i) approving (a) the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the “**Bidding Procedures**”); (b) the Debtors’ designation of the stalking horse bidder (the “**Stalking Horse Bidder**,” and such bidder’s bid, the “**Stalking Horse Bid**”) and offer such bidder certain bid protections identified in the

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344.

² Capitalized terms used but not defined herein shall have the respective meanings ascribed to such terms in the Motion, Bidding Procedures Order, and the Bidding Procedures, as applicable. Any summary of the Bidding Procedures Order or the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any conflict between any such summary and such actual terms and conditions, the actual terms and conditions shall control.

Motion and the Bidding Procedures (the “**Stalking Horse Bid Protections**”); (c) setting the deadline for potential bidders to submit a proposal to purchase the Debtors’ businesses or assets (the “**Final Bid Deadline**”); (d) authorizing and scheduling an auction (the “**Auction**”); (e) authorizing and scheduling a hearing with respect to the approval of a proposed sale transaction (the “**Sale Hearing**”); (f) authorizing and approving the form and manner of the Sale Notice; (g) authorizing and approving the Cure Notice to Contract Counterparties regarding the Debtors’ potential assumption and assignment of the Assigned Contracts and of the Debtors’ calculation of the amount necessary to cure any defaults thereunder (the “**Cure Costs**”); and (h) authorizing and approving procedures for the assumption and assignment of the Assigned Contracts and the determination of Cure Costs with respect thereto (collectively, the “**Assumption and Assignment Procedures**”); (ii) authorizing the sale of the Assets (as defined and identified in the Stalking Horse Asset Purchase Agreement (“**Stalking Horse APA**”)), free and clear of all liens, claims, encumbrances, and other interests pursuant to section 363(f) of the Bankruptcy Code following the sale process and completion of the Auction (collectively, the “**Sale Transaction**”); and (iii) granting related relief.

2. Each of the Assigned Contracts that may be assumed and assigned in connection with the Sale Transaction with the Successful Bidder and the Debtors’ calculation of the Cure Costs with respect thereto are set forth on Exhibit A hereto. The Cure Costs are the only amounts proposed to be paid upon the assumption and assignment of the Assigned Contracts.

3. The inclusion of any contract or lease on Exhibit A hereto shall not constitute or be deemed a determination or admission by the Debtors that such contract or other 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).

4. Notwithstanding the inclusion of any lease or contract on Exhibit A hereto, the Successful Bidder is not bound to accept assignment of any Assigned Contract, and may amend the schedule of Assigned Contracts to remove any contract or lease.

5. If (a) the Debtors identify (i) additional contracts or leases to be assumed and assigned to the Successful Bidder or (ii) modifications that need to be made to a proposed Cure Cost previously stated in the Cure Notice, or (b) the Successful Bidder designates any additional contracts or leases not previously included on this Cure Notice for assumption and assignment, the Debtors shall promptly file with the Court and serve by first class mail on the applicable Contract Counterparty a supplemental Cure Notice. The Debtors shall assume and assign contracts and leases to the Successful Bidder.

Objections

A. Cure Objections.

6. Any objection to the proposed assumption, assignment, or potential designation of an Assigned Contract identified on Exhibit A hereto, the subject of which objection is the Debtors' proposed Cure Costs (a "**Cure Objection**") must:

- (i) be in writing;
- (ii) state the name and address of the objecting party and the amount and nature of the claim or interest of such party;
- (iii) state with particularity the basis and nature of any objection, and provide proposed language that, if accepted and incorporated by the Debtors, would obviate such objection;
- (iv) conform to the Bankruptcy Rules and the Local Rules; and
- (v) be filed with the Court no later than **5:00 p.m. (prevailing Central Time on December 4, 2023)** (the "**Cure Objection Deadline**").

7. IF NO OBJECTION IS TIMELY RECEIVED WITH RESPECT TO AN ASSIGNED CONTRACT (THE “CONTRACT OBJECTION”): (I) THE CONTRACT COUNTERPARTY TO SUCH ASSIGNED CONTRACT SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT TO SUCCESSFUL BIDDER OF THE ASSIGNED CONTRACT, AND BE FOREVER BARRED FROM ASSERTING ANY OBJECTION WITH REGARD TO SUCH ASSUMPTION AND ASSIGNMENT (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE SUCCESSFUL BIDDER); (II) ANY AND ALL DEFAULTS UNDER THE ASSIGNED CONTRACT AND ANY AND ALL PECUNIARY LOSSES RELATED THERETO SHALL BE DEEMED CURED AND COMPENSATED PURSUANT TO BANKRUPTCY CODE SECTION 365(B)(1)(A) AND UPON PAYMENT OF THE CURE COSTS SET FORTH IN THE CURE NOTICE FOR SUCH ASSIGNED CONTRACT; AND (III) THE CONTRACT COUNTERPARTY SHALL BE FOREVER BARRED FROM ASSERTING ANY OTHER CLAIMS RELATED TO SUCH ASSIGNED CONTRACT AGAINST THE DEBTORS AND THEIR ESTATES OR THE SUCCESSFUL BIDDER, OR THE PROPERTY OF ANY OF THE THEM, THAT EXISTED PRIOR TO THE ENTRY OF THE ORDER RESOLVING SUCH CONTRACT OBJECTION AND ANY SALE ORDER.

B. Adequate Assurance Objections

8. Objections to the provision of adequate assurance of future performance (each, an “Adequate Assurance Objection”) with respect to the assumption and assignment of any

Assigned Contracts identified on Exhibit A hereto to the Successful Bidder must be filed in accordance with the preceding paragraphs 6-7 by the Cure Objection Deadline.³

9. **IF NO TIMELY ADEQUATE ASSURANCE OBJECTION IS FILED WITH RESPECT TO AN ASSIGNED CONTRACT OR THE SUCCESSFUL BIDDER, THE DEBTORS WILL BE DEEMED TO HAVE PROVIDED ADEQUATE ASSURANCE OF FUTURE PERFORMANCE FOR SUCH ASSIGNED CONTRACT IN ACCORDANCE WITH SECTION 365(F)(2)(B) OF THE BANKRUPTCY CODE AND THE CONTRACT COUNTERPARTY SHALL FOREVER BE BARRED FROM ASSERTING AGAINST THE DEBTORS, THEIR ESTATES, AND THE SUCCESSFUL BIDDER, ANY ADDITIONAL OBLIGATION TO PROVIDE ADEQUATE ASSURANCE OF FUTURE PERFORMANCE. FURTHER, IF NO TIMELY CURE OBJECTION OR ADEQUATE ASSURANCE OBJECTION IS FILED WITH RESPECT TO AN ASSIGNED CONTRACT, THE RELEVANT CONTRACT COUNTERPARTY SHALL BE DEEMED TO HAVE CONSENTED TO THE ASSUMPTION AND ASSIGNMENT OF THE ASSIGNED CONTRACT TO THE SUCCESSFUL BIDDER.**

Sale Hearing

10. The Debtors will seek to assume and assign the Assigned Contracts at the Sale Hearing that is scheduled to commence on December 18, 2023 at [●] [a.m./p.m.] (prevailing Central Time) before the Honorable Marvin Isgur of the United States Bankruptcy Court for the

³ The Stalking Horse APA is subject to higher or otherwise better offers submitted in accordance with the terms and provisions of the Bidding Procedures. If a Qualified Bidder(s) (other than the Stalking Horse Bidder) is selected as Successful Bidder(s) following the Auction, Contract Counterparties will have an additional opportunity to evaluate and object to adequate assurance of future performance with respect to such Successful Bidder(s).

Southern District of Texas, 515 Rusk Street, Houston, Texas 77002. Objections, if any, that cannot otherwise be resolved by the parties, will be heard at a hearing scheduled prior to the scheduled closing of the Sale Transaction, as determined by the Debtors in accordance with the Bidding Procedures Order.

Additional Information

11. Copies of the Motion, the Bidding Procedures Order, the Bidding Procedures, and the Stalking Horse APA may be obtained free of charge at the website dedicated to the Debtors' chapter 11 cases maintained by the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC, located at <https://www.kccllc.net/Anagram>.

Dated: [], 2023
Houston, Texas

Respectfully submitted,

By: /s/ Tom A. Howley

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*Proposed Counsel to the Debtors and the Debtors
in Possession*

EXHIBIT A

[Assigned Contracts and Cure Costs]