

**ENTERED**

December 22, 2023

Nathan Ochsner, Clerk

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

In re:

ANAGRAM HOLDINGS, LLC, *et al.*,<sup>1</sup>

Debtors.

Chapter 11

Case No. 23-90901 (MI)

(Jointly Administered)

**Re: Docket Nos. 26, 174, 175****ORDER (A) APPROVING THE ASSET PURCHASE  
AGREEMENT, (B) AUTHORIZING THE SALE OF ASSETS,  
(C) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF  
CONTRACTS AND LEASES, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> (Docket No. 26) of the above-captioned debtors and debtors-in-possession (collectively the “Debtors”) for an order, pursuant to sections 105(a), 363(b), 363(f), and 365 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004, 6006(f), 6007, 9007, 9008, 9013, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1 and 4002-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Local Rules”), authorizing and approving, among other things, (a) entry into that certain Asset Purchase Agreement, dated as of November 8, 2023, (as amended

<sup>1</sup> 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 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. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.

<sup>2</sup> Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion, the APA (as defined below) or the *Final 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, and (IV) Granting Related Relief* (Docket No. 226) (the “DIP Order”), as applicable.



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or modified from time to time, the “APA”),<sup>3</sup> among the Debtors and Celebration Bidco, LLC (including any Purchaser Designee, the “Purchaser”), a copy of which is annexed hereto as **Exhibit A**, (b) the proposed sale (the “Sale”) of substantially all of the Debtors’ assets as set forth in the APA (the “Purchased Assets”) free and clear of all Claims and Encumbrances (each as defined below), the Assumed Liabilities and Permitted Exceptions, pursuant to the terms of the APA, (c) assumption of Purchased Contracts of the Debtors and assignment of the Purchased Contracts to Purchaser, and (d) other related relief; and the Court having entered an order (Docket No. 174) (the “Bid Procedures Order”) approving the bid procedures (the “Bid Procedures”); and the Debtors having identified the bid by Purchaser as the highest or otherwise best bid for the Purchased Assets; and upon the *Declaration of Ajay Bijoor in Support of Debtors’ Emergency Motion for Approval of Bidding Procedures and Related Relief* (Docket No. 145) (the “Sale Declaration”); and the Court having conducted a hearing on the Motion on December 22, 2023 (the “Sale Hearing”), at which time all interested parties were offered an opportunity to be heard with respect to the Motion; and the Court having (i) reviewed and considered the Motion, all relief related thereto, the objections thereto (if any) and the evidence presented in support of the relief requested by the Debtors in the Motion at the Sale Hearing, and (ii) found that, after an extensive marketing and sale process by the Debtors, Purchaser has submitted the highest or otherwise best bid for the Purchased Assets; and that adequate and sufficient notice of the Bid Procedures, the APA, and all transactions contemplated thereunder and in this sale order (this “Sale Order”) were given pursuant to and consistent with the Bid Procedures Order; and that reasonable and adequate notice of the Motion and Bid Procedures Order having been provided to all persons required to be served in accordance with the Bankruptcy Code and the Bankruptcy Rules; and that all interested

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<sup>3</sup> The APA, along with any exhibits and schedules thereto, are hereby incorporated herein in their entirety by reference.

parties having been afforded an opportunity to be heard with respect to the Motion and all relief related thereto; and that the Court has jurisdiction to consider the Motion and approve the Sale; and upon the arguments and statements in support of the Motion presented at the Sale Hearing before the Court; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors, and other parties in interest; and it further appearing that the legal and factual bases set forth in the Motion and at the Sale Hearing establish just cause for the relief granted herein; and after due deliberation thereon; and good and sufficient cause appearing therefor;

THE COURT HEREBY MAKES THE FOLLOWING FINDINGS:<sup>4</sup>

A. **Jurisdiction and Venue**. This Court has jurisdiction to consider the Motion under 28 U.S.C. § 1334. This is a core proceeding under 28 U.S.C. § 157(b). Venue of these chapter 11 cases and the Motion in this District is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates**. The statutory bases for the relief sought in the Motion are sections 105(a), 363, and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 6007, 9007, 9008, and 9014, and Local Rules 2002-1 and 4002-1.

C. **Final Order**. This Sale Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale as contemplated by the APA. In the absence of a stay pending appeal, Purchaser, being a good faith purchaser under section 363(m) of the Bankruptcy Code, may close the sale contemplated by the APA at any time after the entry of this Sale Order and shall not be subject to

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<sup>4</sup> Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact, where appropriate. See Bankruptcy Rule 7052.

the stay provided by Bankruptcy Rules 6004(h) and 6006(d).

D. **Notice.** As evidenced by the certificates of service previously filed with the Court, proper, timely, adequate, and sufficient notice of the Motion, the APA, the Auction, the Sale Hearing, the Sale, and the transactions contemplated thereby has been provided in accordance with the Bid Procedures Order, sections 102(1), 105(a), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9008, and the Local Rules. The Debtors have complied with all obligations to provide notice of the Motion, the Auction, the APA, and the Sale Hearing as set forth in the Bid Procedures Order. The notices described above were good, sufficient, and appropriate under the circumstances, and no other or further notice of the Motion, the APA, the Auction, the Sale or the Sale Hearing is or shall be required. The disclosures made by the Debtors concerning the Motion, the APA, the Auction, the Sale and the Sale Hearing were good, complete, and adequate. The requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

E. In accordance with the Bid Procedures Order, the Debtors have filed with the Court and served the (i) *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 188) (the “Initial Cure Notice”), (ii) the *First Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 246) (the “First Supplemental Cure Notice”), (iii) the *Second Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 261) (the “Second Supplemental Cure Notice”) and (iv) the *Third Supplemental Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with Sale* (Docket No. 269) (the “Third

Supplemental Cure Notice” and the Initial Cure Notice, as amended, supplemented or otherwise modified by the First Supplemental Cure Notice, the Second Supplemental Cure Notice and the Third Supplemental Cure Notice, the “Cure Notice”) and any other supplemental notice of potential assumption, identifying the amount required to cure any and all defaults and actual pecuniary losses to the Contract Counterparties resulting from such defaults, including, but not limited to, all claims, demands, charges, rights to refunds, and monetary and non-monetary obligations that such Contract Counterparties can assert under the Purchased Contracts, whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate, relating to money now owing or owing in the future, arising under or out of, in connection with, or in any way relating to, the Purchased Contracts (the foregoing amounts as stated in the Cure Notice are collectively referred to as the “Cure Costs”) upon each Contract Counterparty. The service and provision of the Cure Notice was good, sufficient, and appropriate under the circumstances, and no further notice need be given in respect of assumption and assignment of the Purchased Contracts or establishing Cure Costs for any respective Purchased Contract. Contract Counterparties have had or will have, as applicable, an adequate opportunity to object to assumption and assignment of the applicable Purchased Contract and the Cure Costs set forth in the Cure Notice (including objections related to the adequate assurance of future performance and objections based on whether applicable law excuses the Contract Counterparty from accepting performance by, or rendering performance to, Purchaser for purposes of section 365(c)(1) of the Bankruptcy Code). Except as set forth in the Second Supplemental Cure Notice and the Third Supplemental Cure Notice, the deadline for a Contract Counterparty to file an objection to the stated Cure Costs in the Cure Notice as applicable (a “Cure Objection”) has expired and, to the extent any such party timely filed a Cure Objection, all such

Cure Objections have been resolved, withdrawn, overruled, or continued to a later hearing by agreement of the parties or order of the Court. To the extent that any Contract Counterparty (i) did not timely file a Cure Objection by the applicable objection deadline listed in the Cure Notice (the “Cure Objection Deadline”), such party shall be deemed to have consented to the (x) assumption and assignment of the Purchased Contracts and (y) proposed Cure Costs set forth on the Cure Notice.

F. **Corporate Authority.** The Debtors (i) upon entry of this Sale Order, have full corporate power and authority to execute, deliver, and perform their obligations under the APA and all other documents contemplated thereby and by this Sale Order, and the Sale of the Purchased Assets has been duly and validly authorized by all necessary corporate or similar action, (ii) upon entry of this Sale Order, have all of the corporate power and authority necessary to consummate the transactions contemplated by the APA, and (iii) have taken all corporate action necessary to authorize and approve the APA and the consummation of the transactions contemplated thereby. No consents or approvals, other than those expressly provided for herein or in the APA, are required for the Debtors to consummate such transactions.

G. The Debtors are the sole and lawful owners of the Purchased Assets. Subject to sections 363(f) and 365(a) of the Bankruptcy Code, the transfer of each of the Purchased Assets to Purchaser, in accordance with the APA and this Sale Order will be, as of the Closing Date, a legal, valid, binding and effective transfer of the Purchased Assets, which transfer vests or will vest Purchaser with all right, title, and interest of the Debtors to the Purchased Assets free and clear of all Claims and Encumbrances (other than Permitted Exceptions and Assumed Liabilities).

H. **Business Judgment.** The Debtors have articulated good and sufficient reasons for approval of the APA and the transactions to be consummated in connection therewith and

hereunder, and the relief requested in the Motion is in the best interests of the Debtors, their estates, their creditors and other parties in interest. The Debtors have demonstrated both (i) good, sufficient, and sound business purposes and justifications, and (ii) compelling circumstances for the Sale other than in the ordinary course of business, pursuant to section 363(b) of the Bankruptcy Code, outside of a plan of reorganization, in that, among other things, the immediate consummation of the Sale to Purchaser is necessary and appropriate to preserve and maximize the value of the Debtors' estates.

I. Given all of the circumstances of these chapter 11 cases and the adequacy and fair value of the Purchase Price, the proposed Sale constitutes a reasonable and sound exercise of the Debtors' business judgment.

J. The consummation of the Sale and the assumption and assignment of the Purchased Contracts are legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), and 365, and all of the applicable requirements of such sections have been complied with in respect of the Sale and the transactions contemplated thereby.

K. **Good Faith of Purchaser and Debtors.** The APA was negotiated, proposed, and entered into by the Debtors and Purchaser, their respective members of management and their respective boards of directors or equivalent governing bodies, officers, directors, employees, agents, professionals, and representatives, without collusion, in good faith, and as the result of arm's length bargaining positions and is substantively and procedurally fair to all parties. Purchaser is not an "insider" of any of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code. Neither any of the Debtors nor Purchaser has engaged in any conduct that would cause or permit the Sale or the APA to be avoided or subject to monetary damages under

section 363(n) of the Bankruptcy Code. Specifically, Purchaser has not acted in a collusive manner with any person and the Purchase Price was not controlled by any agreement among bidders. Purchaser is purchasing the Purchased Assets, in accordance with the APA, in good faith, and is a good faith purchaser within the meaning of sections 363(m) or 364(e) of the Bankruptcy Code and is therefore entitled to all of the protections afforded by such provision and otherwise has proceeded in good faith in all respects in connection with these chapter 11 cases. As demonstrated by (i) the Sale Declaration; (ii) any testimony and other evidence proffered or adduced at the hearing with respect to the approval of the Bid Procedures held on November 20, 2023 (the “Bid Procedures Hearing”) and the Sale Hearing; and (iii) the representations of counsel made on the record at the Bid Procedures Hearing and the Sale Hearing, substantial marketing efforts and a competitive sale process were conducted in accordance with the Bid Procedures Order and, among other things: (a) the Debtors and Purchaser complied with the provisions in the Bid Procedures Order; (b) Purchaser agreed to subject its bid to the Bid Procedures; (c) the Debtors and their investment banker, Robert W. Baird & Co. Incorporated (“Baird”), engaged in a robust and extensive marketing and sale process, including both prior to the Petition Date and through the postpetition sale process pursuant to the Bid Procedures Order and the Bid Procedures; and (d) all payments to be made by Purchaser in connection with the Sale have been disclosed.

L. The APA was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under the laws of the United States, any state, territory, possession, the District of Columbia, or any foreign jurisdiction. Neither the Debtors nor Purchaser is entering into the transactions contemplated by the APA fraudulently, including but not limited to, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims.



M. **Compliance with Prepetition Debt Documents.** The APA and the transactions contemplated thereunder, as well as the agreements and ancillary documents memorializing and effectuating the Sale and subject to this Sale Order are consistent with, and in compliance with the Prepetition Debt Documents, except as any non-compliance is excused by the Bankruptcy Code and any applicable non-bankruptcy law.

N. **Highest or Otherwise Best Offer.** The Debtors conducted the Sale in accordance with, and have otherwise complied in all material respects with, the Bid Procedures Order. The Bid Procedures afforded a full, fair, and reasonable opportunity for any person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. The Bid Procedures were duly noticed and the Sale was conducted in a non-collusive, fair, and good-faith manner, and a reasonable opportunity was given to any interested party to make a higher or otherwise better offer for the Purchased Assets. The APA constitutes the highest or otherwise best offer for the Purchased Assets and will provide a greater recovery for the Debtors' estates than would be provided by any other available alternative. The Debtors' determination that the APA constitutes the highest or otherwise best offer for the Purchased Assets is a valid and sound exercise of their fiduciary duties and constitutes a valid and sound exercise of the Debtors' business judgment.

O. **Consideration.** The consideration provided by Purchaser pursuant to the APA and this Sale Order (a) was negotiated at arm's-length, (b) is fair and reasonable, (c) is the highest or otherwise best offer for the Purchased Assets, and (d) constitutes reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Voidable Transactions Act (formerly the Uniform Fraudulent Transfer Act), Uniform Fraudulent Conveyance Act, and section 548 of the Bankruptcy Code) under the laws of the United States, any state, territory, possession, the District of Columbia, or any foreign jurisdiction. No other person or entity or group of entities

has offered to purchase the Purchased Assets for greater economic value to the Debtors' estates than Purchaser.

**P. Purchaser, DIP Noteholders, Prepetition 1L Noteholders and Secured Claims.**

Purchaser is a Delaware limited liability company that was formed on behalf of the DIP Noteholders and Prepetition 1L Noteholders (collectively, the "Noteholders"). Pursuant to the terms of the DIP Order, the Noteholders—together with the DIP Notes Trustee and Prepetition 1L Trustee (collectively the "Trustees")—are secured creditors of the Debtors, holding allowed claims in the amount of the DIP Notes Obligations and Prepetition 1L Obligations secured by valid, binding, perfected, and enforceable first-priority security interests in and liens (as defined in section 101(37) of the Bankruptcy Code) against each of the Debtors, their estates and the property of their estates (which first-priority security and liens are held by the Trustees) and the Trustees, on behalf of the Noteholders, have the right under sections 363(b) and 363(k) of the Bankruptcy Code and pursuant to the DIP Order to credit bid the amounts of the DIP Notes Obligations and Prepetition 1L Obligations.

**Q. Purchase Price and Credit Bid.** Pursuant to the APA, Purchaser agreed to provide, as consideration for the Purchased Assets, the Purchase Price, which consists of (i) a credit bid of all outstanding amounts of the DIP Notes Obligations and the Prepetition 1L Obligations (such amounts, collectively, the "Credit Bid Claim" and, the amount of such Credit Bid Claim, the "Credit Bid Consideration"), (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 Purchaser with the prior written consent of the DIP ABL Lender; (iii) a minimum cash payment sufficient to fund the wind-down of the Debtors' estates; and (iv) the assumption of the Assumed Liabilities.

**R.** Pursuant to the Bidding Procedures, the DIP Notes Documents, the DIP Order, the

Prepetition 1L Notes Documents, and sections 363(b) and 363(k) of the Bankruptcy Code and other applicable law, certain Noteholders are authorized to direct the Trustees to credit bid the Credit Bid Consideration pursuant to a written direction to the Trustees. No additional or further evidence is necessary to demonstrate that Purchaser is able to include the Credit Bid Consideration as consideration for the Sale pursuant to the APA, and such inclusion of the Credit Bid Consideration is a valid and proper offer pursuant to sections 363(b) and 363(k) Bankruptcy Code and applicable law. There is no cause to limit the amount of the Credit Bid Consideration pursuant to section 363(k) of the Bankruptcy Code.

S. **No Successor Liability.** By virtue of the consummation of the Sale: (i) Purchaser is not a continuation of the Debtors and their respective estates, there is not substantial continuity between Purchaser and the Debtors, and there is no continuity of enterprise between the Debtors and Purchaser; (ii) Purchaser is not holding itself out to the public as a continuation of the Debtors or their respective estates; (iii) the transactions do not amount to a consolidation, merger, or *de facto* merger of Purchaser and the Debtors and/or the Debtors' estates; and (iv) except as provided in the APA Purchaser is not a successor or assignee of the Debtors or their estates for any purpose, including, but not limited to, under any federal, state or local statute or common law, or revenue, pension, ERISA, tax, privacy, labor, employment, environmental, escheat or unclaimed property laws, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or under any products liability law or doctrine with respect to the Debtors' liability under such law, rule or regulation or doctrine or common law, or under any product warranty liability law or doctrine with respect to the Debtors' liability under such law, rule, regulation or doctrine, and Purchaser and its affiliates shall have no liability or obligation under the Workers Adjustment and Retraining Act (the "WARN Act"), 929 U.S.C. §§ 210 et seq.,

or the Comprehensive Environmental Response Compensation and Liability Act and shall not be deemed to be a “successor employer” for purposes of the Internal Revenue Code of 1986, Title VII of the Civil Rights Act of 1964, as amended, the Age Discrimination in Employment Act, the Americans with Disability Act, the Family Medical Leave Act, the National Labor Relations Act, the Labor Management Relations Act, the Older Workers Benefit Protection Act, the Equal Pay Act, the Civil Rights Act of 1866 (42 U.S.C. 1981), the Employee Retirement Income Security Act, the Multiemployer Pension Protection Act, the Pension Protection Act, and/or the Fair Labor Standards Act. Except for the Assumed Liabilities, (i) the transfer of the Purchased Assets to Purchaser, and (ii) the assumption and assignment to Purchaser of the Purchased Contracts, do not and will not subject Purchaser to any liability whatsoever with respect to the operation of the Debtors’ businesses before the Closing Date or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, the District of Columbia, or any foreign jurisdiction, based on, in whole or in part, directly or indirectly, any theory of law or equity, including, without limitation, any theory of antitrust or successor or transferee liability. For the avoidance of doubt, the Purchased Assets shall include all leasehold or possessory interests, or other rights to use or occupy all or any portion of the same, of the Debtors in any real property, and all rights, title, interest and entitlement of the Debtors arising from or thereunder.

T. **Free and Clear.** The Debtors may sell the Purchased Assets free and clear of any (i) debts arising under, relating to, or in connection with any act of the Debtors or claims (including all “claims” as defined in section 101(5) of the Bankruptcy Code), liabilities, obligations, demands, guaranties, options, rights, contractual commitments, restrictions, restrictive covenants, covenants not to compete, rights to refunds, escheat obligations, interests, and matters of any kind and nature, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether

imposed by agreement, applicable law, equity, or otherwise (including, without limitation, rights with respect to claims and Encumbrances (x) that purport to give to any party a right of setoff or recoupment against, or a right or option to effect any forfeiture, modification, profit sharing interest, right of first refusal, purchase or repurchase right or option, or termination of, any of the Debtors' or Purchaser's interests in the Purchased Assets, or any similar rights, (y) in respect of taxes owed on behalf of, or otherwise payable, by the Debtors, including, but not limited to, sales, income, use, or any other type of tax, or (z) in respect of restrictions, rights of first refusal, charges, or interests of any kind or nature, if any, including, without limitation, any restriction of use, voting, transfer, receipt of income, or other exercise of any attributes of ownership) relating to, accruing, or arising any time prior to the Closing Date (all items listed in this clause (i), collectively, "Claims"), or (ii) liens, defenses (including rights of setoff and recoupment), and interests, in each case, in, on, or related to the Purchased Assets, including security interests of whatever kind or nature, mortgages, conditional sales or title retention agreements, pledges, purchase options, rights of first refusal or offer, deeds of trust, hypothecations, mechanics' and materialman's liens, rights of way, assignments, preferences, debts, easements, charges, suits, licenses, options, rights of recovery, judgments, orders and decrees of any court or foreign or domestic governmental entity, taxes (including foreign, state, and local taxes), covenants, put options, title defects, or other survey defects of any kind, indentures, instruments, leases, options, off-sets, causes of action, contract rights, any restriction on or transfer or other assignment, as security or otherwise, of or relating to use, quiet enjoyment, voting, transfer, receipt of income or exercise of any other attribute of ownership, in each case to the fullest extent of the law, in each case, of any kind or nature in, on, or related to the Purchased Assets, known or unknown, whether prepetition or postpetition, secured or unsecured, choate or inchoate, filed or unfiled, scheduled or

unscheduled, perfected or unperfected, liquidated or unliquidated, noticed or unnoticed, recorded or unrecorded, contingent or non-contingent, material or non-material, statutory or non-statutory, matured or unmatured, legal or equitable, including any and all such liabilities, causes of action, contract rights and claims arising out of the Debtors' continued operations following the Closing Date (all items listed in this clause (ii), collectively, "Encumbrances"), other than, in each case of clause (i) and (ii) above, the Assumed Liabilities and Permitted Exceptions.

U. Purchaser would not have entered into the APA and would not consummate the transactions contemplated thereby if the Sale to Purchaser and the assumption of any Assumed Liabilities by Purchaser were not free and clear of all Claims and Encumbrances other than the Assumed Liabilities and Permitted Exceptions.

V. The Debtors may sell the Purchased Assets free and clear of any Claims or Encumbrances of any kind or nature whatsoever (other than the Assumed Liabilities and Permitted Exceptions) because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied. Each entity with an Encumbrance in the Purchased Assets to be transferred on the Closing Date: (i) has, subject to the terms and conditions of this Sale Order, consented to the Sale or is deemed to have consented to the Sale; (ii) could be compelled in a legal or equitable proceeding to accept money satisfaction of such Encumbrance; or (iii) otherwise falls within the provisions of section 363(f) of the Bankruptcy Code. Those holders of such Encumbrances who did not object, or withdrew their objections to the Motion, are deemed, subject to the terms of this Sale Order, to have consented pursuant to section 363(f)(2) of the Bankruptcy Code. All holders of Claims and Encumbrances (other than the Assumed Liabilities and Permitted Exceptions) are adequately protected by having their Encumbrances attach to the sale proceeds received by the Debtors (if any) that are ultimately attributable to the

property against or in which such Encumbrances are asserted, subject to the terms of such Encumbrances, with the same validity, force, and effect, and in the same order of priority, which such Encumbrances now have against the Purchased Assets or their sale proceeds (if any) subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto.

W. The sale, conveyance, assignment and transfer of any personally identifiable information pursuant to the terms of the APA and this Sale Order complies with the terms of the Debtors' policy regarding the transfer of such personally identifiable information as of the Petition Date and, as a result, consummation of the Sale is permitted, to the extent applicable, pursuant to Section 363(b)(1)(A) of the Bankruptcy Code. Accordingly, appointment of a consumer privacy ombudsman in accordance with sections 363(b)(1) or 332 of the Bankruptcy Code is not required with respect to the Sale.

X. **Cure/Adequate Assurance.** The assumption and assignment of the Purchased Contracts pursuant to the terms of this Sale Order is integral to the APA and is in the best interests of the Debtors and their estates, their creditors, and all other parties in interest, is integral to the Sale and the transactions contemplated pursuant to the APA, and represents a reasonable exercise of sound and prudent business judgment by the Debtors. Payment of the Cure Costs by Purchaser shall (i) to the extent necessary, cure or provide adequate assurance of cure, within the meaning of sections 365(b)(1)(A) and 365(f)(2)(A) of the Bankruptcy Code, and (ii) to the extent necessary, provide compensation or adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from a default prior to the date hereof with respect to the Purchased Contracts, within the meaning of sections 365(b)(1)(B) and 365(f)(2)(A) of the Bankruptcy Code. Purchaser's financial wherewithal to consummate the transactions contemplated by the APA

demonstrating Purchaser's ability to perform the obligations under the Purchased Contracts after the Closing Date shall constitute adequate assurance of future performance within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable), and 365(f)(2)(B) of the Bankruptcy Code.

Y. No objections to the assumption and assignment of any of the Purchased Contracts by Purchaser in accordance with the APA have been filed. To the extent that any Contract Counterparty failed or fails to timely object to the proposed Cure Costs, such Contract Counterparty is deemed to have consented to such Cure Costs and the assumption and assignment of its respective Purchased Contract(s) to Purchaser in accordance with the APA.

Z. **Compelling Circumstances for Immediate Sale; Time is of the Essence.** To maximize the value of the Purchased Assets, it is essential that the transactions contemplated by the APA, including, without limitation, the Sale and the assumption and assignment of the Purchased Contracts occur within the milestones set forth in the APA. Time is of the essence in consummating the transactions contemplated by the APA, including, without limitation, the Sale and the assumption and assignment of the Purchased Contracts. There is no just reason for delay in the implementation of this Sale Order.

AA. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the APA and this Sale Order, including, without limitation, the Sale and the assumption and assignment of the Purchased Contracts prior to, and outside of, a chapter 11 plan because, among other things, the Debtors' estates will suffer irreparable harm if the relief requested in the Motion is not granted on an expedited basis. The transactions contemplated by the APA and this Sale Order, including, without limitation, the Sale and the assumption and



assignment of the Purchased Contracts neither impermissibly restructure the rights of the Debtors' creditors nor impermissibly dictate the terms of a chapter 11 plan for the Debtors, and, therefore, do not constitute a *sub rosa* plan.

NOW, THEREFORE, IT IS ORDERED THAT:

1. Omitted.

2. No **Objections Filed**. No objections to the entry of this Sale Order or the relief granted herein and requested in the Motion have been filed.

3. **Approval**. The APA, and all other agreements, documents, and instruments deliverable thereunder or attached thereto or referenced therein (collectively, the "Transaction Documents"), and all of the terms and conditions thereof, including the credit bid pursuant to section 363(k) of the Bankruptcy Code in the amount of the Credit Bid Consideration, are hereby approved in all respects subject to the terms hereof. Pursuant to sections 363(b) and 363(f) of the Bankruptcy Code, the Debtors are hereby authorized to (a) execute any Transaction Document or any additional instruments or documents that may be reasonably necessary or appropriate to implement the APA, the Sale and the transactions contemplated thereby, (b) consummate the Sale in accordance with the terms and conditions of the APA, and the instruments to the APA contemplated thereby, and (c) execute and deliver, perform under, consummate, implement, and

close fully the transactions contemplated by the APA, including the assumption and assignment to Purchaser (in accordance with the APA) of the Purchased Contracts, together with all additional instruments and documents that may be reasonably necessary or desirable to implement the APA, the Sale and this Sale Order. Purchaser and the Trustees shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the APA or any other Sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence and the other provisions of this Sale Order; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

4. This Sale Order shall be binding in all respects upon the Debtors, their estates, all creditors of, and holders of equity interests in, the Debtors, any holders of Claims, Encumbrances or other interests in, against, or on all or any portion of the Purchased Assets (whether known or unknown), Purchaser, and all successors and assigns of Purchaser, the Purchased Assets, and any trustees, if any, subsequently appointed in these chapter 11 cases or upon a conversion to chapter 7 under the Bankruptcy Code of the these chapter 11 cases. This Sale Order and the APA shall inure to the benefit of the Debtors, their estates and creditors, Purchaser, and the respective successors and assigns of each of the foregoing.

5. Each and every federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA or the Transaction Documents.

6. **Transfer of Purchased Assets Free and Clear of Claims and Encumbrances.**

Pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code, the Debtors are authorized to transfer the Purchased Assets to Purchaser in accordance with the APA, and such transfer shall constitute a legal, valid, binding, and effective transfer of such Purchased Assets and shall vest Purchaser with title in and to the Purchased Assets and Purchaser shall take such title free and clear of all Claims, Encumbrances and other interests of any kind or nature whatsoever (other than the Assumed Liabilities and Permitted Exceptions), including, but not limited to, successor or successor-in-interest liability and Claims in respect of the Excluded Liabilities, with all such Claims, Encumbrances and other interests to attach to the cash proceeds received by the Debtors (if any) that are ultimately attributable to the property against or in which such Claims, Encumbrances and other interests are asserted, subject to the terms of such Claims, Encumbrances and other interests with the same validity, force, and effect, and in the same order of priority, which such Claims, Encumbrances and other interests now have against the Purchased Assets or their proceeds, if any, subject to any rights, claims, and defenses the Debtors or their estates, as applicable, may possess with respect thereto; *provided that* pursuant to and in accordance with the APA and this Sale Order, the Debtors shall retain the Excluded Assets, which shall remain subject to Claims and Encumbrances; *provided further that* the funds deposited in Professional Fees Escrow Account shall not be subject to any Claims or Encumbrances. The Trustees shall not take, or be deemed to take, title to, possession of or ownership of any of the Purchased Assets.

7. Unless otherwise expressly included in the definition of “Assumed Liabilities” or “Permitted Exceptions” in the APA, Purchaser and the Trustees shall not be responsible for any Claims, Encumbrances or other interests, including, without limitation, in respect of the following:

(a) any labor or employment agreements; (b) any mortgages, deeds of trust, and security interests;

(c) any pension, welfare, compensation, or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plan of the Debtors; (d) any other employee, worker's compensation, occupational disease, or unemployment or temporary disability related claim, including, without limitation, claims that might otherwise arise under or pursuant to (i) the Employee Retirement Income Security Act, as amended, (ii) the Fair Labor Standards Act, (iii) Title VII of the Civil Rights Act of 1964, (iv) the Federal Rehabilitation Act of 1973, (v) the National Labor Relations Act, (vi) the WARN Act, (vii) the Age Discrimination in Employment Act, as amended, (viii) the Americans with Disabilities Act, (ix) the Family Medical Leave Act, (x) the Labor Management Relations Act, (xi) the Multiemployer Pension Protection Act, (xii) the Pension Protection Act, (xiii) the Consolidated Omnibus Budget Reconciliation Act of 1985, (xiv) the Comprehensive Environmental Response Compensation and Liability Act, (xv) state discrimination laws, (xvi) state unemployment compensation laws or any other similar state laws, or (xvii) any other state or federal benefits or claims relating to any employment with the Debtors or any of its respective predecessors; (e) any bulk sales or similar law; (f) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, or any state or local tax laws; (g) any escheat or unclaimed property laws; (h) to the extent not included in the foregoing, any of the Excluded Liabilities under the APA; and (j) all other Claims, Encumbrances or other interests arising in any way in connection with any agreements, acts, or failures to act, of any of the Sellers or any of the Sellers' predecessors or affiliates, whether known or unknown, contingent or otherwise, whether arising prior to or subsequent to the commencement of these chapter 11 cases, and whether imposed by agreement, understanding, law, equity or otherwise, including, without limitation, Claims otherwise arising under federal or state tax laws or doctrines; and (k) any theories of successor or transferee liability.

8. All persons and entities that are in unauthorized possession of some or all of the Purchased Assets on the Closing Date are directed to surrender possession of such Purchased Assets to Purchaser in accordance with the APA on the Closing Date or at such time thereafter as Purchaser may request. On the Closing Date, each of the Debtors' creditors is authorized and directed to execute such documents and take all other actions as may be reasonably necessary to release its Claims, Encumbrances or other interests in the Purchased Assets (other than the Assumed Liabilities and Permitted Exceptions), if any, as such Claims, Encumbrances or other interests may have been recorded or may otherwise exist.

9. If any person or entity that has filed statements or other documents or agreements evidencing Claims or Encumbrances (other than the Assumed Liabilities and Permitted Exceptions) on, against, or in, all or any portion of the Purchased Assets (other than statements or documents with respect to the Assumed Liabilities) shall not have delivered to the Debtors prior to the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of liens and easements, and any other documents necessary for the purpose of documenting the release of such Claims, Encumbrances, or other interests that the person or entity has or may assert with respect to all or any portion of the Purchased Assets, the Debtors and Purchaser are hereby authorized, to execute and file such statements, instruments, releases, and other documents on behalf of such person or entity with respect to the Purchased Assets and otherwise seek relief from the Court pursuant to this Sale Order, if necessary.

10. The Trustees are hereby authorized, empowered and directed to take any action and enter into any documentation necessary to implement the Sale, or any related transactions and ancillary agreements, for Closing to occur and to allow the Sale to be consummated. Without

limiting the indemnification and other exculpatory provisions under the DIP Notes Documents or Prepetition Debt Documents, the Trustees shall have no liability in connection with the transactions contemplated or authorized under this Sale Order, and no party shall have recourse against the Trustees.

11. On the Closing Date, this Sale Order shall be construed and shall constitute for any and all purposes a full and complete general assignment, conveyance, and transfer to Purchaser of the Debtors' interests in the Purchased Assets. This Sale Order is and shall be effective as a determination that, on the Closing Date, all Claims, Encumbrances or other interest of any kind or nature whatsoever existing as to the Purchased Assets prior to the Closing Date (other than the Assumed Liabilities and Permitted Exceptions), shall have been unconditionally released, discharged, and terminated, and that the conveyances described herein have been effected. This Sale Order shall be binding upon and govern the acts of all persons and entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office, or contract, to accept, file, register, or otherwise record or release any documents or instruments, or who may be required to report or insure any title or state of title in or to any lease, and each of the foregoing persons and entities is hereby directed to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the transactions contemplated by the APA. A certified copy of this Sale Order may be filed with the appropriate clerk and/or recorded with the recorder to act to cancel any Claims, Encumbrances and other interests of record (other than the Assumed Liabilities and Permitted Exceptions).

12. **Prohibition of Actions Against Purchaser.** Purchaser shall not assume any liability or other obligation of the Debtors arising under or related to any of the Purchased Assets, including, but not limited to, any liability for any Claims or Encumbrances (other than the Assumed Liabilities and Permitted Exceptions), whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, with respect to the Debtors or any obligations of the Debtors, including, but not limited to, liabilities on account of any taxes arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of the Debtors' business prior to the Closing Date, the transfer of the Purchased Assets to Purchaser in accordance with the APA, or as a result of any Debtor's status as a member of a consolidated, combined, or unitary tax group.

13. Except with respect to the Assumed Liabilities, or as otherwise expressly provided for in this Sale Order or the APA, all persons and entities, including, but not limited to, all debt holders, equity security holders, governmental, tax, and regulatory authorities, lenders, trade creditors, litigation claimants, and other creditors, holding Claims, Encumbrances or other interests of any kind or nature whatsoever against or in all or any portion of the Purchased Assets (whether legal or equitable, secured or unsecured, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, senior or subordinate) arising under or out of, in connection with, or in any way relating to the Debtors, the Purchased Assets, the operation of the Debtors' businesses prior to the Closing Date, the transfer of the Purchased Assets to Purchaser in accordance with the APA, or as a result of any Debtor's status as a member of a consolidated, combined or unitary tax group, are hereby forever barred, estopped, and permanently enjoined from asserting against Purchaser, its successors or assigns, its property or the Purchased Assets or such persons' or entities' Claims or Encumbrances in, on, or to the Purchased Assets, including, without limitation,

the following actions: (a) commencing or continuing in any manner any action or other proceeding against Purchaser, its successors, assets, or properties; (b) enforcing, attaching, collecting, or recovering, in any manner, any judgment, award, decree, or order against Purchaser, its successors, or their assets or properties; (c) creating, perfecting, or enforcing any Claim, Encumbrance, or other interest against Purchaser, its successors, their assets, or their properties; (d) asserting any setoff, right of subrogation, or recoupment of any kind against any obligation due Purchaser or its successors; (e) commencing or continuing any action, in any manner or place, that does not comply or is inconsistent with the provisions of this Sale Order or other orders of the Court, or the agreements or actions contemplated or taken in respect thereof; or (f) revoking, terminating, or failing or refusing to transfer or renew any license, permit, or authorization to operate any of the Purchased Assets or conduct any of the businesses operated with the Purchased Assets.

14. To the greatest extent available under applicable law, Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Purchased Assets to the extent transferred in the APA, and all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to Purchaser as of the Closing Date.

15. Pursuant to the terms of the APA, Purchaser and the Debtors shall use their reasonable efforts (as provided in the APA) to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary under applicable Law to consummate and make effective the transactions contemplated by the APA, including, without limitation, with respect to any and all Permits. If any Permit is not obtained prior to the Closing, then, until the earlier of such time as (a) such Permit is obtained by Debtors, (b) Purchaser separately obtains any such Permit



(sufficient to conduct the business of the Debtors in the ordinary course of business) and (c) the closing of these chapter 11 cases, Debtors shall continue to use reasonable best efforts to obtain such Permit, and Purchaser shall reasonably cooperate with the Debtors, at Purchaser's sole cost and expense, subject to any approval of this Court that may be required, and the Debtors shall enter into an arrangement to operate the aspect of the business covered by the Permit reasonably acceptable to Purchaser as set forth in the APA. Upon obtaining the relevant Permit, the Debtors shall promptly sell, convey, assign, transfer and deliver to Purchaser such Permit for no additional consideration.

16. No governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the Purchased Assets on account of the filing or pendency of these chapter 11 cases or the consummation of the Sale to the extent that any such action by a governmental unit or any representative thereof would violate section 525 of the Bankruptcy Code.

17. All persons and entities are hereby forever prohibited and enjoined from taking any action that would adversely affect or interfere with the ability of the Debtors to sell and transfer the Purchased Assets to Purchaser in accordance with the terms of the APA and this Sale Order.

18. Purchaser has given substantial consideration under the APA and this Sale Order for the benefit of the Debtors, their estates, and their creditors. The consideration given by Purchaser shall constitute valid and valuable consideration for the releases of any potential Claims and Encumbrances pursuant to this Sale Order, which releases shall be deemed to have been given in favor of Purchaser by all holders of Claims, Encumbrances or liens against or interests in, any of the Debtors or any of the Purchased Assets, other than the Assumed Liabilities and Permitted

Exceptions. The consideration provided by Purchaser for the Purchased Assets under the APA is fair and reasonable and may not be avoided under section 363(n) of the Bankruptcy Code.

19. None of Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by any of the Debtors or any of their estates, predecessors, successors or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the APA and the entry into and consummation of the sale of the Purchased Assets, except as expressly provided in the APA and this Sale Order.

20. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions with the Debtors that are approved by this Sale Order, including, without limitation, the APA and the Sale.

21. **DIP Notes Facility and Prepetition 1L Notes.** Upon the Closing, the DIP Notes Facility shall be discharged and deemed satisfied in full and the DIP Notes Secured Parties shall be deemed to have released all claims and liens against the Debtors (the “DIP Notes Release”). The DIP Notes Secured Parties are authorized and directed to take any such actions as may be reasonably requested by the Debtors or any post-confirmation fiduciary to evidence the release of such security interests, liens and pledges, including the execution, delivery and filing or recording of such releases as may be requested by the Debtors, Purchaser, or any post-confirmation fiduciary or as may be required in order to terminate any related financing statements, mortgages, mechanic’s liens, or *lis pendens*. The Debtors and any post-confirmation fiduciary shall be authorized and directed to execute and file such statements, instruments, or releases on behalf of the DIP Notes Secured Parties with respect to the DIP Notes Release, and Purchaser shall be authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once

filed, registered or otherwise recorded, shall constitute conclusive evidence of the DIP Notes Release.

22. Upon the Closing, the Prepetition 1L Notes shall be discharged and deemed satisfied in full and the Prepetition 1L Noteholders and the Prepetition 1L Trustee shall be deemed to have released all claims and liens against the Debtors (the “Prepetition 1L Notes Release”). The Prepetition 1L Noteholders and the Prepetition 1L Trustee are authorized and directed to take any such actions as may be reasonably requested by the Debtors or any post-confirmation fiduciary to evidence the release of such security interests, liens and pledges, including the execution, delivery and filing or recording of such releases as may be requested by the Debtors, Purchaser or any post-confirmation fiduciary or as may be required in order to terminate any related financing statements, mortgages, mechanic’s liens, or *lis pendens*. The Debtors or any post-confirmation fiduciary shall be authorized and directed to execute and file such statements, instruments, or releases on behalf of the Prepetition 1L Noteholders and the Prepetition 1L Trustee with respect to the Prepetition 1L Notes Release, and Purchaser shall be authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the Prepetition 1L Notes Release. Notwithstanding anything to the contrary herein or in the DIP Order, all reasonable and documented fees, expenses, and costs of the Prepetition 1L Trustee and its counsel that are due and payable in accordance with the terms of the Prepetition 1L Notes Indenture shall be paid in full upon Closing, or as soon as reasonably practicable thereafter.

23. The Debtors are authorized to take any and all actions that are necessary to establish a registration process pursuant to which the Prepetition 1L Noteholders will register their positions with respect to the Prepetition 1L Notes (the “Registration Process”) for the purpose of effectuating

the pro rata distributions of equity in Purchaser on account of the Noteholders' beneficial ownership of the DIP Notes and Prepetition 1L Notes (the "Distributions").

24. Following the conclusion of the Registration Process and Closing, the Debtors shall submit the Prepetition 1L Notes for cancellation through the Depository Trust Company ("DTC"). Notwithstanding any policies, practices, or procedures of DTC or any other applicable clearing system (collectively the "Depository"), the Depository and all other applicable clearing systems shall cooperate with and take all actions reasonably requested by Debtors or the Trustees to facilitate Distributions to the Noteholders without requiring that such Distributions be characterized as repayments of principal or interest. The Trustees and the Debtors shall not (i) be required to provide indemnification or other security to the Depository in connection with any such Distributions to the Noteholders through the facilities of the Depository or (ii) incur any liability whatsoever on account of any such Distributions. The record date to establish the holders of the DIP Notes and Prepetition 1L Notes receiving Distributions shall be December 22, 2023.

25. **DIP ABL Facility.** In accordance with the APA, the DIP Order, and the DIP ABL Agreement, upon the Closing, all amounts outstanding under the DIP ABL Facility shall be indefeasibly paid in full in cash with the proceeds of the Closing Date Cash Payment and all commitments to lend or provide other financial accommodations thereunder shall be terminated other than Debtors' existing "Bank Product Agreements" as defined in the DIP Order, except to the extent any such amounts and commitments are expressly assumed by Purchaser with the separate written consent of the DIP ABL Agent. Upon the occurrence of such repayment or assumption, the DIP ABL Lender and the DIP ABL Agent shall be deemed to have released all claims and liens other than (i) claims arising under existing Bank Product Agreements (which will, subject to Debtors' compliance with their terms, not be terminated by Wells Fargo Bank, N.A.

(“WFB”) until the earliest of (a) 180 days after the Closing, (b) confirmation of a plan of liquidation, (c) dismissal of these cases, or (d) conversion of these cases to chapter 7; *provided that* WFB may terminate such Bank Product Agreements in accordance with their terms at the end of such period without further relief from the Court), (ii) claims arising under the provisions of the DIP ABL Agreement that expressly survive termination thereof) and (iii) liens securing “Bank Product Obligations” against the Debtors (the “DIP ABL Release”). To memorialize the foregoing and the satisfaction of the DIP Notes Obligations and the Prepetition 1L Obligations and address any related matters, the Debtors, the Trustees and DIP ABL Agent may execute and deliver payoff letters at the Closing that is consistent with the foregoing and may include releases consistent with paragraph G.(xvi) of the DIP Order. The DIP ABL Lender and the DIP ABL Agent are authorized and directed to take any such actions as may be requested by the Debtors or any post-confirmation fiduciary to evidence the release of such security interests, liens and pledges, including the execution, delivery and filing or recording of such releases as may be requested by the Debtors, Purchaser or any post-confirmation fiduciary or as may be required in order to terminate any related financing statements, mortgages, mechanic's liens, or lis pendens. The Debtors or any post-confirmation fiduciary shall be authorized and directed to execute and file such statements, instruments, or releases on behalf of the DIP ABL Lender and the DIP ABL Agent with respect to the DIP ABL Release, and Purchaser shall be authorized to file, register, or otherwise record a certified copy of this Sale Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the DIP ABL Release; provided that if the DIP ABL Facility is assumed by Purchaser with the separate prior written consent of the DIP ABL Agent, the DIP ABL Facility shall remain in full force and effect with respect to Purchaser or its designees.

26. **Assumption and Assignment of Purchased Contracts.** The Debtors are hereby authorized, in accordance with sections 105(a) and 365 of the Bankruptcy Code, to (a) assume and assign to Purchaser, in accordance with the APA, effective upon the Closing Date, the Purchased Contracts free and clear of all Claims and Encumbrances and other interests of any kind or nature whatsoever (other than the Assumed Liabilities and Permitted Exceptions) and (b) execute and deliver to Purchaser such documents or other instruments as Purchaser deems may be reasonably necessary to assign and transfer the Purchased Contracts and the Assumed Liabilities to Purchaser in accordance with the APA. Purchaser shall provide the Debtors with access to books and records regarding the Purchased Assets and Assumed Liabilities in accordance with section 8.1 of the APA.

27. With respect to the Purchased Contracts: (a) each Purchased Contract is an executory contract or unexpired lease under section 365 of the Bankruptcy Code; (b) the Debtors may assume each of the Purchased Contracts in accordance with section 365 of the Bankruptcy Code; (c) the Debtors may assign each Purchased Contract in accordance with sections 363 and 365 of the Bankruptcy Code, and any provisions in any Purchased Contract that prohibit or condition the assignment of such Purchased Contract or allow the party to such Purchased Contract to terminate, recapture, impose any penalty, condition, renewal, or extension, or modify any term or condition upon the assignment of such Purchased Contract, constitute unenforceable anti-assignment provisions which are void and of no force and effect; (d) all other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Debtors and assignment to Purchaser of each Purchased Contract, in accordance with the APA, have been satisfied; (e) the Purchased Contracts shall be transferred and assigned to, and following the Closing Date, remain in full force and effect for the benefit of, Purchaser in accordance with the

APA, notwithstanding any provision in any such Purchased Contract (including those of the type described in sections 365(b)(2) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer and, pursuant to section 365(k) of the Bankruptcy Code, and the Debtors shall be relieved from any further liability with respect to the Purchased Contracts after such assignment to and assumption by Purchaser in accordance with the APA; (f) upon the Closing Date, in accordance with sections 363 and 365 of the Bankruptcy Code, Purchaser shall be fully and irrevocably vested in all right, title, and interest of each Purchased Contract; and (g) upon the Closing Date, all actions arising under section 547 of the Bankruptcy Code, or any analogous provision arising under applicable state law, against Contract Counterparties to each Purchased Contract shall be deemed waived, released and extinguished.

28. All defaults or other obligations of the Debtors under the Purchased Contracts arising or accruing prior to the date of the Cure Notice (without giving effect to any acceleration clauses or any default provisions of the kind specified in section 365(b)(2) of the Bankruptcy Code) shall be cured on the Closing Date or promptly thereafter by payment of the Cure Costs in accordance with the APA. To the extent that any Contract Counterparty did not or does not object to its Cure Costs by the Cure Objection Deadline, such Contract Counterparty is deemed to have consented to such Cure Costs and the assumption and assignment of its respective Purchased Contract(s) to Purchaser in accordance with the APA.

29. Unless otherwise represented by the Debtors in a separate pleading, in open court at the Sale Hearing, or pursuant to a contract or lease amendment entered into by the Debtors, Purchaser, and the appropriate contract or lessor counterparty (any such amendment being deemed approved by this Sale Order), the Cure Notice reflects the sole amounts necessary under section 365(b) of the Bankruptcy Code to cure all monetary defaults under the Purchased Contracts, and

no other amounts, are or shall be due in connection with the assumption by the Debtors and the assignment to Purchaser of the Purchased Contracts in accordance with the APA.

30. Upon the Debtors' assignment of the Purchased Contracts to Purchaser under the provisions of this Sale Order and any additional orders of this Court and payment of any Cure Costs by the Debtors, no default shall exist under any Purchased Contract, and no Contract Counterparty to any Purchased Contract shall be permitted (a) to declare a default by Purchaser under such Purchased Contract, or exercise any remedy or take any action with respect to an alleged default, or (b) otherwise take action against Purchaser as a result of Debtors' financial condition, bankruptcy, or failure to perform any of their obligations under the relevant Purchased Contract. Each non-Debtor party to a Purchased Contract hereby is also forever barred, estopped, and permanently enjoined from (i) asserting against the Debtors or Purchaser, or the property of any of them, any default or claim arising out of any indemnity obligation or warranties for acts or occurrences arising prior to or existing as of the Closing, including those constituting Excluded Liabilities or, against Purchaser, any counterclaim, defense, setoff, recoupment, or any other Claim asserted or assertable against the Debtors, and (ii) imposing or charging against Purchaser any rent accelerations, assignment fees, increases, or any other fees as a result of the Debtors' assumption and assignment to Purchaser of any Purchased Contract in accordance with the APA. The validity of such assumption and assignment of each Purchased Contract shall not be affected by any dispute between the Debtors and any non-Debtors party to a Purchased Contract relating to such contract's respective Cure Costs, provided that Purchaser, in accordance with the terms of the APA, shall be responsible to pay any Cure Costs ultimately determined by the Court.

31. Except as provided in the APA or this Sale Order, after the Closing Date, the Debtors and their estates and or any post-confirmation fiduciary shall have no further liabilities or



obligations with respect to any Assumed Liabilities, and all holders of Claims, Encumbrances and other interests are forever barred and estopped from asserting such Encumbrances, Claims and other interests against the Debtors, their successors or assigns, their property, or their assets or estates with respect to such Assumed Liabilities. The failure of the Debtors or Purchaser to enforce at any time one or more terms or conditions of any Purchased Contract shall not be a waiver of such terms or conditions, or of the Debtors' and Purchaser's rights to enforce every term and condition of the Purchased Contracts.

32. Notwithstanding anything herein to the contrary and subject to the APA, prior to the Closing Date, Purchaser may, pursuant to the procedures set forth in the APA, (a) request that the Debtors add any Contract to the list of Purchased Contracts at any time prior to five (5) Business Days prior to the Closing Date (or such other date that the Debtors and Purchaser may agree), and any such Contract that the Debtors agree to add to such list will be deemed to be a Purchased Contract, and (b) remove any Contract from the list of Purchased Contracts at any time prior to three (3) Business Days prior to the Closing Date (or such other date that the Debtors and Purchaser may agree), and thereby exclude such Contract from the list of Purchased Contracts. Automatically upon the elimination of any Contract as a Purchased Contract, such Contract will constitute an Excluded Asset and will not be assigned to Purchaser, and no Liabilities arising thereunder or relating thereto shall be assumed by Purchaser. The Debtors shall provide Purchaser with a list of the Purchased Contracts in accordance with the terms of the APA.

33. Purchaser has demonstrated adequate assurance of future performance under the relevant Purchased Contracts within the meaning of sections 365(b)(1)(C), 365(b)(3) (to the extent applicable), and 365(f)(2)(B) of the Bankruptcy Code.

34. **Anagram-Party City Contracts.** Consistent with the Second Supplemental Cure Notice, the Debtors have provided notice, in accordance with the Bid Procedures, that the Debtors may assume and assign the Anagram-Party City Contracts (as defined in the Second Supplemental Cure Notice). Party City has provided notice of rejection of the Anagram-Party City Contracts in its chapter 11 cases. *See Notice of Rejection of Certain Executory Contracts and/or Unexpired Leases*, Case No. 23-90005 (MI) (Docket No. 1207) (the “Anagram Contract Rejection Notice”).

35. If the Debtors and Party City agree to amend some or all of the Anagram-Party City Contracts, (i) the Debtors, with Party City’s prior written consent: (a) shall file a notice of such amendment with the Court and (b) are authorized to amend, assume, and assign some or all of the Anagram-Party City Contracts provided that such amendments shall be effective upon such assignment and (ii) Party City, with the Debtors’ prior written consent, shall: (a) file a notice of such amendment with the Court in its chapter 11 cases, which may include notice that the Debtors shall be deemed “Released Parties” and “Releasing Parties” as those terms are defined in Party City’s chapter 11 plan and (b) file a revised proposed order in the Party City chapter 11 cases providing for the amendment and assumption (rather than the rejection) of some or all of the Anagram Party-City Contracts, in each case, without violating the automatic stay applicable to the Debtors. Absent the filing of such notices in accordance with this paragraph, nothing in this Order shall be deemed to provide for the assumption of the Anagram-Party City Contracts.

36. The Debtors may at any time seek to assume and assign some or all of Anagram-Party City Contracts by providing Party City with no less than fifteen (15) days’ notice, and an opportunity to object to, the assumption and assignment of any Anagram-Party City Contract. Party City may at any time seek to schedule the Anagram Contract Rejection Notice for hearing in its chapter 11 cases by providing the Debtors with no less than fifteen (15) days’ notice and an opportunity to object, provided that such scheduling shall not violate the automatic stay applicable in these chapter 11 cases; *provided that* the right to schedule the Anagram Contract

Rejection Notice without violating the automatic stay applicable in these chapter 11 cases shall not be deemed a finding or determination as to whether the rejection of any Anagram-Party City Contract itself violates such automatic stay, and all parties' rights related thereto are fully reserved. All parties' rights with respect to the Anagram-Party City Contracts, including the assumption or rejection thereof, are fully reserved in these chapter 11 cases and the Party City chapter 11 cases.

37. **Disney License Agreements.** (i) Contract #2200029669, dated January 1, 2022, between Disney Consumer Products, Inc. and Anagram International, Inc., and (ii) Contract #2345687059, dated January 1, 2023, between Disney Consumer Products Latin America, Inc. (together with Disney Computer Products, Inc., "Disney") and Anagram International, Inc. ((i) and (ii), together, the "Disney License Agreements") shall not be deemed Purchased Contracts at Closing unless Disney and the Debtors consent. Following Closing, Purchaser shall be deemed to be the licensee under the Disney License Agreements, in accordance with the terms thereof, through and including January 22, 2024 or such other date mutually agreed upon by Purchaser and Disney (the "Outside Date"). If, prior to the Outside Date, the Debtors or Purchaser, as applicable, and Disney agree to amend the Disney License Agreements, the Disney License Agreements shall be deemed assumed and assigned as Purchased Contracts. If Purchaser and Disney do not agree to amend the Disney License Agreements by the Outside Date, (i) Purchaser shall remain the licensee thereunder, in accordance with the terms thereof, until April 23, 2024 (the "Termination Date"), upon which Purchaser's status as licensee thereunder shall terminate entirely, and the Disney License Agreements shall be deemed terminated in their entirety, with no entitlement to a sell-off period or any further extension, and (ii) the Disney License Agreements shall not be deemed Purchased Contracts. Other than the Disney License Agreements, there are no active

agreements between The Walt Disney Company and its affiliates, on the one hand, and the Debtors, on the other hand, and no such agreements will be deemed Purchased Contracts.

38. **Notice of Closing and Amendment of Case Caption.** Within five (5) Business Days of the occurrence of the Closing, the Debtors shall file and serve a notice of same (the “Notice of Sale Closing and Effective Date of Amendment of Case Caption”). Upon the filing of the Notice of Sale Closing and Effective Date of Amendment of Case Caption, the Debtors’ case caption for subsequent pleadings shall be amended to be in the form as set forth on such notice.

39. The Debtors are authorized to change their names without further notice, hearing or order of the Court and without any further action of the respective Debtors or their stockholders.

40. **Good Faith.** The transactions contemplated by the APA are undertaken by Purchaser without collusion and in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale shall not affect the validity of the Sale (including the assumption and assignment of the Purchased Contracts) with Purchaser, unless such authorization is duly stayed pending such appeal. Purchaser is a good faith purchaser of the Purchased Assets, and is entitled to all of the benefits and protections afforded by section 363(m) of the Bankruptcy Code.

41. **Failure to Specify Provisions.** The failure specifically to include any particular provisions of the APA in this Sale Order shall not diminish or impair the effectiveness of such provisions, it being the intent of the Court that the APA be authorized and approved in its entirety; *provided, however*, that this Sale Order shall govern if there is any inconsistency between the APA (including all ancillary documents executed in connection therewith) and this Sale Order. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent. To

the extent that this Sale Order is inconsistent with any prior order or pleading with respect to the Motion in these chapter 11 cases, the terms of this Sale Order shall control.

42. **Non-Material Modifications.** The APA, the Transaction Documents and any related agreements, documents, or other instruments may be modified, amended, or supplemented by the parties thereto, in a writing signed by such parties, and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment or supplement does not have a material adverse effect on the Debtors' estates.

43. **Amounts Payable by Debtors.** Any amounts payable by any Debtor to Purchaser under the agreements or any of the documents delivered by any Debtor in connection with the APA or this Sale Order shall be paid in the manner provided in the APA and the Bid Procedures Order, without further order of this Court.

44. **Professional Fees to be Held in Escrow.** On the Closing Date, the Debtors shall fund the Professional Fees Escrow Account with an additional amount necessary to cause the balance therein to equal: (i) the aggregate Professional Fees that have accrued to Professional Persons as of the Closing Date, including any success or transaction fee that becomes due and owing to the Debtors' advisors in connection with the Sale, *plus* (ii) the Wind-Down Amount. On the Closing Date, the Debtors shall fund a segregated account (the "DIP Professional Fees Account") and, together with the Professional Fees Escrow Account, the "Fee Accounts") with the aggregate of (i) the DIP ABL Professional Fees and ABL Adequate Protection Fees and Expenses, (ii) the DIP Notes Professional Fees and 1L Adequate Protection Fees and Expenses, (iii) the 2L Adequate Protection Fees and Expenses ((i) through (iii) collectively, the "DIP Professional Fees") that have accrued but not yet been approved in accordance with Paragraph 20 of the DIP Order (as applicable), in each case, prior to the Closing. Funds in the Professional Fees Escrow Account

shall be used solely to pay the Professional Fees upon entry of an order of the Bankruptcy Court allowing such Professional Fees which funds shall have the priority of the Carve-Out and shall otherwise remain subject to the terms of the DIP Order. Funds in the DIP Professional Fees Account shall be solely used to pay the DIP Professional Fees, in accordance with the DIP Order, including the review procedures set forth in paragraph 20 thereof, and shall otherwise remain subject to the terms of the DIP Order. In accordance with the APA, the cash held in the Professional Fees Escrow Account and the DIP Professional Fees Account shall be an “Excluded Asset” and shall not be sold, assigned or transferred to Purchaser under the APA. The funds held in the Fee Accounts shall not be subject to disgorgement, avoidance or clawback by any party including, without limitation, Purchaser, the DIP Notes Secured Parties, the DIP ABL Secured Parties, any of the Debtors’ successors or assigns, any post-confirmation fiduciary, or any trustee appointed in these chapter 11 cases or upon the conversion of any of such cases to cases under chapter 7 of the Bankruptcy Code. For the avoidance of doubt, no Claims or Encumbrances shall attach to the funds in the Fee Accounts. Upon payment in full of the Professional Fees and the DIP Professional Fees, any funds remaining in the Professional Fees Escrow Account or the DIP Professional Fees Account, as applicable, shall be paid to the Debtors or any post-confirmation fiduciary without any further order or approval. Notwithstanding anything to the contrary in the DIP Order, the Debtors shall not be required to pay as adequate protection any DIP Professional Fees that accrue after the Closing, except as may be agreed by the Debtors. Upon the Closing, subject to the funding of the Fee Accounts on or before the Closing of the amounts of Professional Fees and the DIP Professional Fees required by this paragraph, all obligations of the DIP Notes Secured Parties, DIP ABL Secured Parties, Prepetition Secured

Parties and their respective collateral or Representatives in respect of funding the Carve-Out will be and shall be deemed to be fully satisfied.

45. **Other Provisions.** Nothing in the APA or this Sale Order shall be deemed to amend, modify, or limit the rights and claims of the DIP Notes Secured Parties, DIP ABL Secured Parties, the Prepetition Term Agents, or the Prepetition Secured Parties pursuant to the DIP Order, the DIP Notes Documents, the DIP ABL Documents, or the Prepetition Debt Documents, or in respect of the DIP Obligations or the Prepetition Secured Obligations, or the liens, security interests, or claims of the DIP Notes Secured Parties, DIP ABL Secured Parties, and Prepetition Secured Parties, until the Closing Date and only to the extent permitted and as contemplated by the Sale Order, APA, and the transactions contemplated thereunder.

46. To the extent that the Debtors receive any of the Purchased Assets (including, for the avoidance of doubt, any receivables) following the Closing, such Purchased Assets (i) shall be held in trust by the Debtors for the exclusive benefit of Purchaser, (ii) shall not constitute property of the Debtors' estates, and (iii) shall be transferred to Purchaser as soon as reasonably practicable. To the extent that Purchaser receives any of the Excluded Assets following the Closing, such Excluded Assets (i) shall be held in trust by Purchaser for the exclusive benefit of the Debtors' estates, (ii) shall not constitute Purchaser's property, and (iii) shall be transferred to the Debtors' estates as soon as reasonably practicable.

47. **Subsequent Plan Provisions.** Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or any order confirming any such plan or in any other order in these chapter 11 cases (including any order entered after any conversion of any of these cases to a case under chapter 7 of the Bankruptcy Code) or any related proceeding subsequent to entry of this Sale Order shall alter, conflict with, or derogate from, the provisions of the APA or this Sale Order.

48. **Survival.** The terms and provisions of this Sale Order and the terms and provisions of the APA and any actions taken pursuant hereto or thereto as of the date of the entry of the Sale Order shall survive the entry of any order that may be entered, including, without limitation, converting the Debtors' cases from chapter 11 to chapter 7 or dismissing the Debtors' cases, and the terms and provisions of the APA, as well as the rights and interests granted pursuant to this Sale Order and the APA shall continue in these or any superseding cases and shall be binding upon the Debtors and all other parties and their respective successors and permitted assigns, including any trustee, examiner, party, entity, or other fiduciary hereafter appointed as a legal representative of the Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

49. **No Stay of Order.** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d), and pursuant to Bankruptcy Rules 7062 and 9014, this Sale Order shall not be stayed for fourteen (14) days after the entry hereof, but shall be effective and enforceable immediately upon issuance hereof. Time is of the essence in closing the transactions referenced herein, and the Debtors and Purchaser intend to close the Sale as soon as practicable.

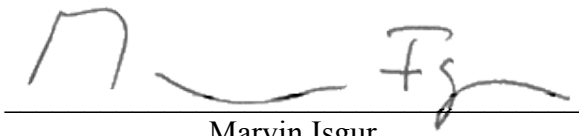
50. **Calculation of Time.** All time periods set forth in this Sale Order shall be calculated in accordance with Bankruptcy Rule 9006.

51. **Further Assurances.** From time to time, as and when requested by any party and to the extent contemplated by the APA, each party shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the transactions contemplated by the APA, including such actions as may be necessary to vest, perfect, or confirm, of record or otherwise, in Purchaser its right, title, and interest in and to the Purchased Assets.



52. **Retention of Jurisdiction.** This Court retains jurisdiction, pursuant to its statutory powers under 28 U.S.C. § 157(b)(2), to, among other things, interpret, implement, and enforce the terms and provisions of this Sale Order and the APA, all amendments thereto, and any waivers and consents thereunder, and each of the agreements executed in connection therewith to which any Debtor is a party or which has been assigned by the Debtors to Purchaser in accordance with the APA, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale, including, but not limited to, retaining jurisdiction to (a) interpret, implement, and enforce the provisions of this Sale Order and the APA, (b) adjudicate any and all disputes concerning or relating in any way to the Sale, (c) protect Purchaser against any Claims, Encumbrances or other interests in the Debtors or the Purchased Assets of any kind or nature whatsoever, attaching to the proceeds of the Sale, and (d) enter any orders under section 363 and 365 of the Bankruptcy Code with respect to the Purchased Contracts.

Signed: December 22, 2023



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Marvin Isgur  
United States Bankruptcy Judge

**EXHIBIT A**

**Asset Purchase Agreement**

***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**

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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]*