

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

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In re:	:	Chapter 11
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STARRY GROUP HOLDINGS, INC., <i>et al.</i> , <sup>1</sup>	:	Case No. 23-10219 (KBO)
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Debtors.	:	(Jointly Administered)
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**BIDDING PROCEDURES FOR THE SALE OF  
THE DEBTORS' ASSETS OR REORGANIZED EQUITY**

On February 20, 2023 (the “**Petition Date**”), Starry Group Holdings, Inc. and its debtor affiliates (the “**Debtors**”) filed voluntary petitions under chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”) in the United States Bankruptcy Court for the District of Delaware (the “**Court**”) commencing the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”).

On February 20, 2023, the Debtors filed the *Motion of Debtors for Entry of Order (I)(A) Establishing Bidding Procedures for Sale of Substantially All Assets, (B) Scheduling Auction and Sale Hearing, and (C) Approving Form and Manner of Notice Thereof, (II) Approving Sale of Substantially All Assets Free and Clear of Liens, Claims, Encumbrances, and Other Interests, and (III) Granting Related Relief* [Docket No. 21] (the “**Bidding Procedures Motion**”).

On March 21, 2023, the Court entered an order [Docket No. 185] (the “**Bidding Procedures Order**”) granting the relief requested in the Bidding Procedures Motion, including approval of the Bidding Procedures (as defined below). A copy of the Bidding Procedures Order is available on the website maintained by the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC (“**KCC**”), at <http://www.kccllc.net/Starry>.

Set forth below are the bidding procedures approved by the Court (the “**Bidding Procedures**”) pursuant to which the Debtors are authorized to conduct a marketing process and auction (the “**Auction**”) for the sale (the “**Sale**”) of some or all of their assets (collectively, the “**Assets**”) or equity of the reorganized Debtors (the “**Reorganized Equity**”), as applicable, which may be effectuated through either a chapter 11 plan of reorganization or a sale pursuant to section 363 of the Bankruptcy Code. The Bidding Procedures provide interested

<sup>1</sup> The debtors in these cases, along with the last four digits of each debtor’s federal tax identification number, are: Starry Group Holdings, Inc. (9355); Starry, Inc. (9616); Connect Everyone LLC (5896); Starry Installation Corp. (7000); Starry (MA), Inc. (2010); Starry Spectrum LLC (N/A); Testco LLC (5226); Starry Spectrum Holdings LLC (9444); Widmo Holdings LLC (9208); Vibrant Composites Inc. (8431); Starry Foreign Holdings Inc. (3025); and Starry PR Inc. (1214). The debtors’ address is 38 Chauncy Street, Suite 200, Boston, Massachusetts 02111.



parties with the opportunity to qualify for and participate in the Auction and to submit Bids (as defined below) for the Assets or Reorganized Equity.

For the avoidance of doubt, the Debtors, in the exercise of their reasonable business judgment, in consultation with the Consultation Parties, may elect to exclude any Assets or Reorganized Equity from the Bidding Procedures and sell such Assets or Reorganized Equity, subject to Court approval, through any alternative sale method. Furthermore, the Debtors may determine in their discretion, upon consultation with the Consultation Parties, whether to proceed with a Sale of any Asset or of Reorganized Equity pursuant to the Bidding Procedures.

### **ASSETS AND REORGANIZED EQUITY FOR SALE**

The Debtors are offering the Assets and Reorganized Equity for sale, and Qualified Bidders (as defined below) may submit Bids for (a) all, substantially all, or any part that is less than all of the Assets or (b) all, substantially all, or any part that is less than all of the Reorganized Equity. For the avoidance of doubt, Qualified Bids (as defined below) may include Bids for less than all or substantially all of the Assets or Reorganized Equity, and the Debtors will consider separate proposed Bids for components of their business, in addition to Bids for their entire business. Any Successful Bid for Reorganized Equity will be effectuated through the Debtors' chapter 11 plan of reorganization, and any Successful Bid for Assets may be effectuated through a standalone 363 sale or under a plan, all as further set forth therein.

Except as otherwise provided in a purchase agreement (an "**Asset Purchase Agreement**") to be executed by a Successful Bidder (as defined below), all of the Debtors' rights, title, and interest in and to the Assets subject thereto will be sold free and clear of all liens, claims, encumbrances, and other interests (collectively, and as more fully set forth below, the "**Interests**")<sup>2</sup>

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<sup>2</sup> As used herein, Interests include all of the following, in each case, to the extent against or with respect to the Debtors, or in, on, or against, or with respect to any of the Assets: liens (as defined in section 101(37) of the Bankruptcy Code, and whether consensual, statutory, possessory, judicial, or otherwise), claims (as defined in section 101(5) of the Bankruptcy Code), debts (as defined in section 101(12) of the Bankruptcy Code), encumbrances, obligations, liabilities, demands, guarantees, actions, suits, deposits, credits, allowances, options, rights, restrictions, limitations, contractual commitments, rights, or interests of any kind or nature whatsoever, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, whether arising prior to or subsequent to the commencement of this chapter 11 case, and whether imposed by agreement, understanding, law, equity, or otherwise, including, but not limited to, (a) mortgages, deeds of trust, pledges, charges, security interests, hypothecations, encumbrances, easements, servitudes, leases, subleases, rights-of-way, encroachments, restrictive covenants, restrictions on transferability or other similar restrictions, rights of setoff (except for setoffs validly exercised before the Petition Date), rights of use or possession, subleases, leases, conditional sale arrangements, deferred purchase price obligations, or any similar rights; (b) all claims, including, without limitation, all rights or causes of action (whether in law or equity), proceedings, warranties, guarantees, indemnities, rights of recovery, setoff (except for setoffs validly exercised before the Petition Date), indemnity or contribution, obligations, demands, restrictions, indemnification claims, or liabilities relating to any act or omission of the Debtors or any other person, consent rights, options, contract rights, covenants, and interests of any kind or nature whatsoever (known or unknown, matured or unmatured, accrued, or contingent and regardless of whether currently exercisable), whether arising prior to or subsequent to the commencement of this chapter 11 case, and whether imposed by agreement, understanding, law, equity, or otherwise; (c) all debts, liabilities, obligations, contractual rights and claims, and labor, employment, and pension claims; (d) any rights that purport to give any party a right or option to effect any forfeiture, modification, right of first offer or first refusal, or

to the maximum extent permitted by sections 363 (and, if applicable and subject to plan confirmation, sections 1123 and 1141) of the Bankruptcy Code, with such Interests to attach to the proceeds of the sale of the Assets with the same validity and priority as such Interests applied against the Assets.

Notwithstanding the foregoing, but subject to the stipulations, terms, and conditions of the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, (VI) Scheduling a Final Hearing and (VII) Granting Related Relief* [Docket No. 72] (and any final order related thereto, the “**DIP Order**”), the Debtors and each of the Consultation Parties reserve the right to contest the validity, nature, extent, or priority of or seek to set aside or avoid any and all Interests under applicable law. For the avoidance of doubt, the Debtors will retain all rights to the Assets that are not sold pursuant to a Bid accepted by the Debtors pursuant to these Bidding Procedures and approved by the Court.

### **SUBMISSIONS TO THE DEBTORS**

All submissions to the Debtors required or permitted to be made under the Bidding Procedures must be directed to each of the following persons or entities unless otherwise provided (the “**Bid Notice Parties**”): (a) the Debtors; (b) counsel to the Debtors, (i) Latham & Watkins LLP, (1) 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Jeffrey E. Bjork (jeff.bjork@lw.com), Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com) and (2) 330

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consents, or termination of the Debtors’ or the purchaser’s interest in the Assets, or any similar rights; (e) any rights under labor or employment agreements; (f) any rights under pension, multiemployer plan (as such term is defined in section 3(37) or section 4001(a)(3) of the Employment Retirement Income Security Act of 1974 (as amended, “**ERISA**”)), health or welfare, compensation or other employee benefit plans, agreements, practices, and programs, including, without limitation, any pension plans of the Debtors or any multiemployer plan to which the Debtors have at any time contributed to or had any liability or potential liability; (g) any other employee claims related to worker’s compensation, occupation disease, or unemployment or temporary disability, including, without limitation, claims that might otherwise arise under or pursuant to (i) ERISA, (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 Age Discrimination and Employment Act of 1967 and the Age Discrimination in Employment Act, each as amended, (vii) the Americans with Disabilities Act of 1990, (viii) the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, including, without limitation, the requirements of Part 6 of Subtitle B of Title I of ERISA and Section 4980B of the Internal Revenue Code of any similar state law, (ix) state discrimination laws, (x) state unemployment compensation laws or any other similar state laws, (xi) any other state or federal benefits or claims relating to any employment with the Debtors or any of their predecessors, or (xii) the WARN Act (29 U.S.C. §§ 2101, *et seq.*) or any state or other laws of similar effect; (h) any bulk sales or similar law; (i) any tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended, and any taxes arising under or out of, in connection with, or in any way relating to the operation of the Assets or business of the Debtors before the closing of a Sale; (j) any unexpired and executory contract or unexpired lease to which the Debtors are a party that is not assumed; (k) any other excluded liabilities under the Asset Purchase Agreement; and (l) Interests arising under or in connection with any acts, or failures to act, of the Debtors or any of their predecessors, affiliates, or subsidiaries, including, but not limited to, Interests arising under any doctrines of successor liability (to the greatest extent permitted by applicable law), or transferee or vicarious liability, violation of the Securities Act of 1933, the Securities Exchange Act of 1934, or other applicable securities laws or regulations, breach of fiduciary duty, or aiding or abetting breach of fiduciary duty, or any similar theories under applicable law or otherwise.

North Wabash Avenue, Suite 2800, Chicago, Illinois 60611 (Attn: Jason B. Gott (jason.gott@lw.com)), and (ii) Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); and (c) PJT Partners LP, 280 Park Avenue, New York, New York 10017 (Attn: Wei Wen (wei.wen@pjtpartners.com)).

### **CONSULTATION PARTIES**

The “**Consultation Parties**” are: (a) the official committee of unsecured creditors appointed in the Chapter 11 Cases (the “**Creditors’ Committee**”), (b) the DIP Agent (as defined in the DIP Order), and (c) the Prepetition Agent (as defined in the DIP Order). If the DIP Agent, Prepetition Agent, or any member of the Creditors’ Committee submits a Bid (as defined below) with respect to any particular Assets, it will no longer be, or receive information as, a Consultation Party as to such Assets while it is participating as an active Bidder (as defined below).

Throughout the sale process, the Debtors and their advisors will consult with the Consultation Parties as provided for in these Bidding Procedures, or as is otherwise necessary or appropriate, as determined in the Debtors’ business judgment.

Notwithstanding the foregoing, the Debtors will not consult with or provide copies of any bids or other confidential information with respect to particular Assets to any Consultation Party or any insider or affiliate of the Debtors if such party is an active Bidder for such Assets at the applicable time. For the avoidance of doubt, if the DIP Agent or Prepetition Agent submits a bid for any Assets and thereby ceases to be a Consultation Party with respect to such Assets (for the avoidance of doubt, the DIP Agent and Prepetition Agent will be Consultation Parties unless and until they submit a bid for any Assets), upon written notice by the DIP Agent and Prepetition Agent (which may be via email) to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a Bidder for such Assets, the DIP Agent’s and Prepetition Agent’s rights as a Consultation Party will be restored with respect to such Assets. If a member of the Creditors’ Committee submits a Qualified Bid for the Assets, the Creditors’ Committee will maintain its consultation rights as a Consultation Party; *provided* that the Creditors’ Committee excludes the bidding Creditors’ Committee member from any discussions or deliberations regarding a transaction involving the relevant Assets, and will not provide any confidential information regarding the Assets or otherwise involving the Sale Process to such bidding Creditors’ Committee member; provided further that, upon written notice by such Creditors’ Committee member (which may be via email) to the Debtors, or express confirmation on the record during the Auction, of its withdrawal as a Bidder for the Debtors’ assets, such Creditors’ Committee member’s rights as a Consultation Party (as a Creditors’ Committee member) will be restored.

### **KEY DATES**

The key dates for the sale process are as follows, each of which may be extended by the Debtors in consultation with the Consultation Parties (subject to the terms of the DIP Order):

Event	Proposed Date
Sale Objection Deadline <sup>3</sup>	March 7, 2023 <sup>4</sup> at 4:00 p.m. (prevailing Eastern Time)
Bid Deadline	April 20, 2023 at 4:00 p.m. (prevailing Eastern Time)
Commencement of Auction (if necessary)	April 24, 2023 at 10:00 a.m. (prevailing Eastern Time)
Deadline to file Notice of Successful Bidder <sup>5</sup>	By 4:00 p.m. (prevailing Eastern Time) as soon as reasonably practicable after closing the Auction, if any, and in any event not less than 24 hours following closing the Auction
Subsequent Sale Objection Deadline	April 28, 2023 at 4:00 p.m. (prevailing Eastern Time)
Sale Hearing	May 3, 2023 at 1:00 p.m. (prevailing Eastern Time)

### **POTENTIAL BIDDERS AND QUALIFIED BIDDERS**

To participate in the bidding process and otherwise be considered for any purpose under the Bidding Procedures, a party interested in consummating a Sale (a “**Potential Bidder**”) must submit to the Debtors and each of their advisors the following documents and information demonstrating the party’s financial capability to consummate a Sale (unless the Debtors, in their business judgment and in consultation with the Consultation Parties, choose to waive any of the following requirements for any Potential Bidder):

- a. a statement and other factual support demonstrating, to the Debtors’ satisfaction, that the Potential Bidder has a bona fide interest in purchasing any or all of the Assets or Reorganized Equity and is likely to be able to submit a Qualified Bid by the Bid Deadline (as defined below);
- b. a description of any connections or relationships between (i) the Potential Bidder and its officers, directors, affiliates and related persons, on the one hand, and (ii) the Debtors or their officers, directors, affiliates or related persons and their primary creditors as identified by the Debtors, on the other;

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<sup>3</sup> The Sale Objection Deadline applies to all objections to the sale of the Assets or Reorganized Equity, with the exception of objections to specific terms of the Sale or specific provisions of the Asset Purchase Agreement or the Sale Order that could not have been raised based on the Motion and objections related to the identity of the Successful Bidder(s) or conduct of the Auction, which must be filed by the Subsequent Sale Objection Deadline.

<sup>4</sup> The Sale Objection Deadline was extended to March 21, 2023 for the U.S. Trustee and the Creditors’ Committee.

<sup>5</sup> In the event that an Auction is not held because the Debtors receive only one Qualified Bid, then the Debtors will file a notice no later 4:00 p.m. (prevailing Eastern Time) on April 24, 2023. In the event that the Auction is not held because the Debtors do not receive a Qualified Bid, the Debtors will file a notice no later 4:00 p.m. (prevailing Eastern Time) on April 24, 2023.

- c. identification of the Potential Bidder and any principals and representatives thereof who are authorized to appear and act on such Potential Bidder's behalf for all purposes regarding the contemplated Sale; and
- d. (i) the most current audited and latest unaudited financial statements (the "**Financials**") of the Potential Bidder; or (ii) if the Potential Bidder is an entity formed for the purpose of acquiring the Assets or Reorganized Equity, (1) Financials of the Potential Bidder's equity holder(s) or such other form of financial disclosure as is acceptable to the Debtors and their advisors and (2) a written commitment acceptable to the Debtors and their advisors of the Potential Bidder's equity holder(s) to be responsible for the Potential Bidder's obligations in connection with the applicable Sale.

The Debtors, in consultation with their advisors and the Consultation Parties, will determine and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a Bid (such Potential Bidder, a "**Qualified Bidder**"). Notwithstanding anything else set forth herein, the DIP Agent and the Prepetition Agent will be deemed Qualified Bidders, and they may submit a credit bid for any Assets at any time before or during the Auction, as provided below and subject to section 363(k) of the Bankruptcy Code.

### **DUE DILIGENCE**

Subject to the terms of these Bidding Procedures, the Debtors, with their advisors, will allow Qualified Bidders to access standard and customary diligence materials (the "**Diligence Materials**"), including as necessary to allow Qualified Bidders to submit a Qualified Bid and to seek and obtain financing commitments.

Only Qualified Bidders will be eligible to receive Diligence Materials and access non-public information regarding the Debtors. The Debtors will provide the Diligence Materials to each Qualified Bidder upon receiving such a request in writing, as soon as reasonably practicable after such request.

The Debtors reserve the right to require that Qualified Bidders enter into confidentiality agreements with the Debtors in order to obtain Diligence Materials, and to withhold any Diligence Materials that the Debtors determine are business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. In addition, the Debtors may decline to provide Diligence Materials to Qualified Bidders who, at such time and in the Debtors' reasonable business judgment and after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Qualified Bidder intends in good faith, or has the capacity, to consummate a Sale.

To the extent the Debtors withhold Diligence Materials from a Qualified Bidder, the Debtors will notify the Consultation Parties of the identity of any such Qualified Bidder and the Diligence Materials that were withheld. Neither the Debtors nor their representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Qualified Bidder. The Debtors may, in the exercise of their reasonable business judgment and

in consultation with the Consultation Parties, extend a Qualified Bidder's time to conduct due diligence after the Bid Deadline until the Auction.

Each Potential Bidder and Qualified Bidder must comply with all reasonable requests with respect to information and due diligence access by the Debtors or their advisors regarding such Potential Bidder or Qualified Bidder and its contemplated Sale.

Each Qualified Bidder submitting a Bid (a "**Bidder**") will comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of the Bidder to consummate a Sale. Failure by a Bidder to comply with requests for additional information and due diligence access may be a basis for the Debtors, in consultation with the Consultation Parties, to determine that such Bidder is no longer a Qualified Bidder or that a Bid made by such Bidder is not a Qualified Bid.

**All requests for Diligence Materials must be directed to Ms. Wei Wen at PJT Partners, Inc., 280 Park Avenue, New York, New York 10017; (212) 364-3544; wei.wen@pjtpartners.com.**

### **NO COMMUNICATIONS AMONG BIDDERS WITHOUT CONSENT**

There will be no communications between or among Potential Bidders and/or Qualified Bidders unless the Debtors' advisors have authorized such communication in writing. The Debtors reserve the right, in their reasonable business judgment and following consultation with the Consultation Parties, to disqualify any Potential Bidders or Qualified Bidders that have communications between or amongst themselves without the prior authorization of the Debtors' advisors. For the avoidance of doubt, the joining of Bids between Potential Bidders or Qualified Bidders is permitted; *provided* that, if any Potential Bidders or Acceptable Bidders are interested in joining Bids, the Debtors' advisors and the Consultation Parties will facilitate the communications between such parties and the potential joining of Bids.

### **BID REQUIREMENTS**

To be eligible to participate in the Auction, each offer, solicitation, or proposal to acquire Assets or Reorganized Equity (each, a "**Bid**") other than a Qualified Credit Bid (as defined below) must be (a) made by a Qualified Bidder, (b) received by the Bid Notice Parties before the Bid Deadline or such other date as may be agreed to by the Debtors, after consulting with the Consultation Parties, and (c) reasonably determined by the Debtors, in consultation with the Consultation Parties, to satisfy each of the following conditions (unless otherwise agreed by the Debtor, in consultation with the Consultation Parties):

- a. **Proposed Sale.** Each Bid must clearly propose a Sale for some or all of the Assets and/or the Reorganized Equity, or any combination thereof. Each Bid must specify which of such Assets or Reorganized Equity are to be included in or excluded from the proposed Sale.
- b. **Purchase Price.** Each Bid must set forth the purchase price (the "**Purchase Price**") to be paid for the Assets and/or Reorganized Equity, as applicable, denominated in United States dollars. Upon the request of the Debtors, a Bid must specify how the

Purchase Price is to be allocated among the Assets or Reorganized Equity that is the subject of the Bid. The value of the Purchase Price included in a Bid for all of the Assets or all of the Reorganized Equity must equal at least \$170,000,000 (the “**Minimum Qualified Bid**”), unless the DIP Agent and the Prepetition Agent agree in writing to a lower amount. To the extent a Bidder wishes to submit a Bid for less than all the Assets or Reorganized Equity, the Debtors, in consultation with the Consultation Parties, will engage in good faith with such Bidder to determine, with the consent of the DIP Agent and the Prepetition Agent, a minimum bid threshold to make such Bid a Qualified Bid. To the extent the Bid exceeds the Minimum Qualified Bid, any excess amounts may include non-cash consideration; *provided*, that the form and valuation of such non-cash consideration is reasonably acceptable to the DIP Agent and Prepetition Agent (the “**Approved Non-Cash Consideration**”).

- b. Good Faith Deposit. Each Bid must be accompanied by a cash deposit in the amount of 10% of the Purchase Price into an escrow account to be identified and established by the Debtors, except as may be otherwise agreed by the Debtors, in consultation with the Consultation Parties (the “**Good Faith Deposit**”).
- c. Executed Agreement. Each Bid must include an executed asset purchase agreement, including exhibits, schedules, and ancillary agreements related thereto and any other material documents integral to such Bid, signed by an authorized representative of such Qualified Bidder, pursuant to which the Qualified Bidder proposes to effectuate a Sale (an “**Alternative Asset Purchase Agreement**”). Each Bid for the Assets must also include a redlined copy of the Alternative Asset Purchase Agreement marked against a form asset purchase agreement to be provided to Qualified Bidders by counsel to the Debtors (the “**Form Asset Purchase Agreement**”) to show all changes requested by the Qualified Bidder (including the inclusion of the Purchase Price).
- d. Designation of Assigned Contracts and Leases. Each Bid must identify any and all executory contracts and unexpired leases (collectively, “**Contracts**”) of the Debtors that the Qualified Bidder wishes to be assumed and assigned to the Qualified Bidder at closing pursuant to a Sale, subject to modification as set forth in the Alternative Asset Purchase Agreement. Each Bid must confirm that the Qualified Bidder will be responsible for any cure costs associated with such assumption, and include a good faith estimate of such cure costs (which estimate may be provided by the Debtors).
- e. Adequate Assurances. Each Bidder must make a representation that it will be able to provide adequate assurance of future performance under any Contracts to be assumed and assigned under section 365 of the Bankruptcy Code, as well as written evidence that the Debtors, in consultation with the Consultation Parties, believes to be sufficient to demonstrate the foregoing, which must include audited and unaudited financial statements, tax returns, bank account statements, and a description of the business to be conducted at the premises, and such other documentation as the Debtors may request.



- f. Designation of Assumed Liabilities. Each Bid must identify all liabilities that the Qualified Bidder proposes to assume, which will be valued by the Debtors in their business judgment, in consultation with the Consultation Parties.
- g. Corporate Authority. Each Bid must include written evidence reasonably acceptable to the Debtors, in consultation with the Consultation Parties, demonstrating appropriate corporate authorization to consummate the proposed Sale; *provided* that, if the Qualified Bidder is an entity specially formed for the purpose of effectuating the Sale, then the Qualified Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Sale by the equity holder(s) of such Qualified Bidder.
- h. Disclosure of Identity of Qualified Bidder. Each Bid must fully disclose the identity of each entity that will be bidding for or purchasing the Assets or Reorganized Equity or otherwise participating in connection with such Bid, and the complete terms of any such participation, including any agreements, arrangements, or understandings concerning a collaborative or joint Bid or any other combination concerning the proposed Bid. Each Bid must include a binding representation by the Qualified Bidder (including all persons comprising such Qualified Bidder, if a collaborative or joint Bid) that it has not engaged in collusion with any other Bidder or other party regarding the sale of the Assets or Reorganized Equity.
- i. Proof of Financial Ability to Perform. Each Bid must include written evidence that the Debtors may reasonably conclude, in consultation with their advisors and the Consultation Parties, that the Qualified Bidder has demonstrated the necessary financial ability to close the Sale and comply with its obligations thereunder, including future satisfaction of all obligations under the Alternative Asset Purchase Agreement and all liabilities to be assumed. Such information must include the following: (i) contact names and telephone numbers for verification of financing sources; (ii) evidence of the Qualified Bidder's internal resources and, if applicable, proof of unconditional fully executed and effective financing commitments from one or more reputable sources in an aggregate amount equal to the Purchase Price of such Bid; (iii) a description of the Qualified Bidder's pro forma capital structure; and (iv) any other financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors demonstrating that such Qualified Bidder has the ability to close the proposed Sale.
- j. Regulatory and Third Party Approvals. Each Bid must set forth each regulatory and third-party approval, if any, required for the Qualified Bidder to consummate the Sale, and the time period within which the Qualified Bidder expects to receive such regulatory and third-party approvals, and the Debtors, in consultation with the Consultation Parties, may consider in evaluating the Bid the timing and likelihood of such approvals, and any actions the Qualified Bidder will need to take to ensure receipt of such approval(s) as promptly as possible. Each Bid must contain the affirmative representation of the Qualified Bidder that the Qualified Bidder understands and agrees that the Qualified Bidder will cooperate with the Debtors and the Consultation Parties (at the Qualified Bidder's cost) in negotiations with

any such third parties. In the event that any Qualified Bidder is, or any holder of an ownership interest in a Qualified Bidder is, a “Foreign Person” requiring the approval of the Committee on Foreign Investment in the United States, or if the transfer of any assets (including the transfer of any license to use electromagnetic spectrum) would otherwise be subject to additional scrutiny or reasonably anticipated delays by any regulatory agency or other governmental authority whose consent is necessary for the transfer of Assets, the Qualified Bidder must bear the costs incurred in connection with the preparation, filing, and prosecution of any submission before any regulatory agency or other governmental authority (including, without limitation, any filing fees and legal fees incurred by Debtors related to such regulatory approval process) and must include additional consideration sufficient to support the continued operations of the Debtors during the regulatory approval process.

- k. Contact Information and Affiliates. Each Bid must provide the identity and contact information for the Qualified Bidder and full disclosure of any parent companies of the Qualified Bidder.
- l. Contingencies. No Bid may be conditioned on obtaining or the sufficiency of financing or any internal approval, on the outcome or review of due diligence, or otherwise subject to contingencies more burdensome than those set forth in the Form Asset Purchase Agreement. All conditions to completion of the Sale must be set forth in the Alternative Asset Purchase Agreement.
- m. Irrevocable. Each Bid must be irrevocable until the Good Faith Deposit has been returned in accordance with the provisions hereof, *provided* that, if such Bid is accepted as the Successful Bid or the Backup Bid (as defined below), such Bid will continue to remain irrevocable through the Outside Backup Date (as defined below).
- n. Compliance with Diligence Requests. The Qualified Bidder submitting a Bid must have complied with reasonable requests for additional information and due diligence access requested by the Debtors to the reasonable satisfaction of the Debtors, in consultation with the Consultation Parties.
- o. As-Is, Where-Is. Each Bid must include the following representations and warranties: (i) expressly state that the Qualified Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors’ businesses and the Assets prior to submitting its Bid; and (ii) a statement that the Qualified Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets, if applicable, in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors’ business or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Qualified Bidder’s proposed asset purchase agreement ultimately accepted and executed by the Debtors.

- p. Termination Fees. No Bid will entitle the Qualified Bidder to any expense reimbursement, break-up fee, or similar type of payment in connection with the Bid. For the avoidance of doubt, no Qualified Bidder will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
- q. Consent to Jurisdiction. Each Bid will state that the Qualified Bidder consents to the jurisdiction of the Court.
- r. Bid Deadline. Each Bid must be transmitted via email (in .pdf or similar format) so as to be actually received on or before 4:00 p.m. (prevailing Eastern Time) on April 20, 2023 (the “**Bid Deadline**”) by the Bid Notice Parties. The Debtors will deliver copies of all Bids received to the Consultation Parties within 24 hours of receipt (except in the event that the DIP Agent or the Prepetition Agent has submitted a Qualified Credit Bid, then to the Creditors’ Committee only).

A Bid received from a Qualified Bidder that (a) meets the above requirements, as determined by the Debtors in their reasonable business judgment after consultation with the Consultation Parties, and (b) if selected as the Successful Bid (or Back-Up Bid, as applicable), is reasonably likely to be consummated no later than July 20, 2023 (the “**Applicable Outside Date**”), will constitute a “**Qualified Bid**”; *provided that*, if the Debtors receive a Bid that is not a Qualified Bid, the Debtors may provide the Qualified Bidder with the opportunity to remedy any deficiencies before the Auction in order to render such Bid a Qualified Bid; *provided, further*, that for the avoidance of doubt, if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access requested by the Debtors to the satisfaction of the Debtors, the Debtors may, after consulting with the Consultation Parties, disqualify any Qualified Bidder and Qualified Bid and such Qualified Bidder will not be entitled to attend or participate in the Auction. The Debtors may also waive or modify any of the above requirements in the exercise of their reasonable business judgment after consultation with the Consultation Parties; *provided that* the consent of the DIP Agent and the Prepetition Agent is required to waive or extend the Applicable Outside Date; *provided further*, that the Debtors may only waive or modify terms subject to the consent of the DIP Agent and Prepetition Agent with the consent of the DIP Agent and Prepetition Agent.

By submitting a Bid, each Bidder is agreeing, and will be deemed to have agreed, to abide by and honor the terms of the Bidding Procedures and to refrain from (A) submitting a Bid after conclusion of the Auction (if any) or (B) seeking to reopen the Auction (if any) once closed.

The Debtors, in consultation with the Consultation Parties, may accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Assets or Reorganized Equity that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid. The Debtors, in consultation with the Consultation Parties, may also permit otherwise Qualified Bidders who submitted Bids by the Bid Deadline for a material portion of the Assets but who were not identified as a component of a single Qualified Bid consisting of multiple Bids, to

participate in the Auction and to submit higher or otherwise better bids that in subsequent rounds of bidding may be considered, together with other Bids for non-overlapping material portions of the Assets, as part of such a single Qualifying Bid.

### **RIGHT TO CREDIT BID**

Any Qualified Bidder (including the DIP Agent and the Prepetition Agent) that has a valid and perfected lien on any Assets of the Debtors' estates will be entitled to credit bid all or a portion of the face value of such secured party's claims against the Debtors toward the Purchase Price specified in such Qualified Bidder's Bid. Notwithstanding anything to the contrary herein, each of the DIP Agent and the Prepetition Agent will be deemed to be a Qualified Bidder and, subject to section 363(k) of the Bankruptcy Code and to such party's compliance with the Bidding Procedures, may submit a credit bid of all or any portion of the aggregate amount of their respective secured claims, including any postpetition financing claims, pursuant to section 363(k) at any time during the Auction, and any such credit bid will be considered a Qualified Bid (such a Qualified Bid, a "**Qualified Credit Bid**"), unless otherwise ordered by the Court for cause. Further, (a) no good faith deposit will be required in connection with a Qualified Credit Bid, and (b) the Qualified Credit Bid will not serve as a Backup Bid without the written consent of the DIP Agent and the Prepetition Agent. For the avoidance of doubt, any of the prepetition or postpetition obligations that are credit bid as part of a Qualified Credit Bid will be treated as cash consideration at the face amount of such obligations for the purposes of calculating whether such Qualified Credit Bid is the Prevailing Highest Bid (as defined below). If a Qualified Credit Bid is the Successful Bid, unless the DIP Agent and the Prepetition Agent elect to consummate a Sale pursuant to Section 363 of the Bankruptcy Code, the Debtors will reorganize pursuant to a chapter 11 plan in a manner consistent with the Restructuring Support Agreement (as defined in the DIP Order). For the avoidance of doubt, a Qualified Credit Bid may be submitted separately by the DIP Agent or the Prepetition Agent, or jointly by both the DIP Agent and the Prepetition Agent.

### **AUCTION**

If one or more Qualified Bids is received by the Bid Deadline, the Debtors may conduct an Auction to determine the highest or otherwise best Qualified Bid or combination of Qualified Bids. The Debtors will have the right, in consultation with the Consultation Parties, to adjourn or cancel the Auction at any time either by delivering notice of such adjournment or cancellation to all Qualified Bidders or announcing such adjournment or cancellation on the record before the Court or on the record at the Auction(s); *provided further*, that the Debtors will have the right to conduct any number of Auctions on such date to accommodate Qualified Bids for certain, but less than all, of the Assets and/or Reorganized Equity if the Debtors determine, in consultation with the Consultation Parties, that such process would be in the best interest of the Debtors' estates. The Debtors will confirm to all Qualified Bidders that submitted Qualified Bids the time and place of the Auction and any adjournments thereof.

The Qualified Bid or combination of Bids selected by the Debtors, in consultation with the Consultation Parties, as the highest or best Bid or combination of Bids following the Bid Deadline, and before the start of the Auction, will be identified to all other Qualified Bidders at or before the start of the Auction (the "**Baseline Bid**"). The Debtors will provide copies of the documents supporting the Baseline Bid to all Qualified Bidders and the Consultation Parties as soon as

practicable after the Bid Deadline and in any event no later than one business day before the commencement of the Auction. The Debtors' determination of which Qualified Bid constitutes the Baseline Bid will take into account any factors the Debtors, in their business judgment and in consultation with the Consultation Parties, deem relevant to the value of the Qualified Bid to the Debtors' estates.

If the Debtors, in consultation with the Consultation Parties, determine that they have received no Qualified Bids, then the Auction will not occur. If the Debtors make such a determination, the Debtors will file a notice with the Court within one business day of making such determination.

### **AUCTION PROCEDURES**

The Auction, if necessary, will take place beginning on **April 24, 2023 at 10:00 a.m. (prevailing Eastern Time)** by videoconference or such other remote communication as determined by the Debtors. If the form of remote communication by which the Auction will be conducted is changed from that which is described in the notice of auction, the Debtors will file a revised notice at least 24 hours before the Auction indicating such change, and will serve the same on all Qualified Bidders and any creditors that have made a request for such service to Debtor's counsel at least two business days before the Auction. The Auction will be conducted according to the following procedures, which procedures will be subject to modification by the Debtors as the Debtors, in consultation with the Consultation Parties, deem necessary to better promote the goals of the Auction and to comply with their fiduciary obligations. For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, may adopt any procedures for the Auction that the Debtors believe, in the exercise of their reasonable business judgment, will maximize value, including, but not limited to, conducting separate Auctions for discrete pools of Assets and/or Reorganized Equity.

#### ***Participation***

Only Qualified Bidders that have submitted Qualified Bids, the DIP Agent, the Prepetition Agent, the DIP Lenders, the Creditors' Committee, any party in interest that requests permission in advance in writing, and each of their respective advisors, as applicable, will be entitled to attend the Auction. Only Qualified Bidders that have submitted Qualified Bids, the DIP Agent, and the Prepetition Agent, and such other parties as determined by the Debtors, in consultation with the Consultation Parties, will be entitled to make any Bids at the Auction. Qualified Bidders must appear at the Auction, or through a duly-authorized representative, unless otherwise agreed by the Debtors in consultation with the Consultation Parties. Each Qualified Bidder must have at least one individual representative with authority to bind the Qualified Bidder attend the Auction.

#### ***Debtors Will Conduct Auction***

The Debtors and their advisors will direct and preside over the Auction in consultation with the Consultation Parties. The Auction will be fairly and evenly administered, and not intended to cause any participating Qualified Bidder to be disadvantaged in any material way with respect to the process as compared to any other participating Qualified Bidder. All participating Qualified Bidders will be entitled to be present for all bidding with the understanding that the true identity

of each bidder (*i.e.*, the principals submitting each bid) will be fully disclosed to all other participating Qualified Bidders and that all material terms of each Qualified Bid will be fully disclosed to all other bidders throughout the entire Auction. Each Bid by a Qualified Bidder at the Auction, if not inconsistent with the provisions of these Bidding Procedures, will be deemed to constitute a Qualified Bid.

The Debtors, in consultation with the Consultation Parties, will conduct the Auction in the manner they reasonably determine will result in the highest or otherwise best Qualified Bid or combination of Bids. In addition, at the start of the Auction, the Debtors will describe the terms of the Baseline Bid. Each Qualified Bidder participating in the Auction must confirm that it (a) has not engaged in any collusion with respect to the bidding or sale of any of the Assets or Reorganized Equity described herein, (b) reviewed, understands, and accepts the Bidding Procedures, and (c) consents to the core jurisdiction of the Court (as described more fully below). The Auction will be transcribed and all Qualified Bids will be made and confirmed on the record.

### ***Terms of Overbids***

An “**Overbid**” is any Bid made at the Auction after the Debtors’ announcement of the Baseline Bid. Any Overbid for purposes of the Auction must comply with the following conditions:

- a. **Initial Bid.** At the commencement of the Auction, the Debtors will announce the Baseline Bid for the applicable Assets and/or Reorganized Equity.
- b. **Minimum Bid Increments.** Any Overbid after and above the Baseline Bid will be made in increments in an amount to be announced at the Auction. In order to maximize value, the Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the minimum incremental Bids (or in valuing such Bids) at any time during the Auction. Additional consideration in excess of the amount set forth in the respective Baseline Bid may include cash or non-cash consideration; *provided, however*, that (i) the value for such non-cash consideration will be determined by the Debtors, in consultation with the Consultation Parties, in their reasonable business judgment, and (ii) such non-cash consideration is in a form that is reasonably acceptable to the DIP Agent and Prepetition Agent. For the avoidance of doubt, the DIP Agent and Prepetition Agent are deemed to have accepted the form and valuation of Approved Non-Cash Consideration.
- c. **Overbid Alterations.** An applicable Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable to the Debtors’ estates than any prior Bid or Overbid, as determined in the Debtors’ reasonable business judgment, in consultation with the Consultation Parties, but will otherwise comply with the terms of these Bidding Procedures. Any Overbid must comply with the conditions for a Qualified Bid.
- d. **Announcing Highest Bid.** Following the initial round of bidding, the Debtors will, after consulting with the Consultation Parties, announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Baseline Bid for

the applicable Assets and/or Reorganized Equity, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid for the applicable Assets and/or Reorganized Equity (the “**Prevailing Highest Bid**”). The Debtors will describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid as well as the value attributable by the Debtors to such Prevailing Highest Bid.

- e. Consideration of Overbids. The Debtors reserve the right, in their reasonable business judgment, and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things: (a) facilitate discussions among the Debtors and any Qualified Bidders; (b) allow Qualified Bidders to consider how they wish to proceed; (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, and in consultation with the Consultation Parties, may require, including that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount; and (d) to provide the Debtors with an opportunity to consider how to value each Overbid in consultation with the Consultation Parties.

### ***Additional Procedures***

The Debtors, after consulting with the Consultation Parties, may announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction.

### ***Consent to Jurisdiction and Authority as Condition to Bidding***

All Qualified Bidders will be deemed to have (a) consented to the core jurisdiction of the Court to enter an order or orders, which will be binding in all respects, in any way related to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Auction, the Asset Purchase Agreement, any Alternative Asset Purchase Agreement, or the construction and enforcement of documents relating to any Sale, (b) waived any right to a jury trial in connection with any disputes relating to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Auction, the Asset Purchase Agreement, any Alternative Asset Purchase Agreement, or the construction and enforcement of documents relating to any Sale, and (c) consented to the entry of a final order or judgment in any way related to the Debtors, the Chapter 11 Cases, the Bidding Procedures, the Auction, the Asset Purchase Agreement, any Alternative Asset Purchase Agreement, or the construction and enforcement of documents relating to any Sale if it is determined that the Court would lack Article III jurisdiction to enter such final order or judgment absent the consent of the parties.

### ***Sale Will Be As Is/Where Is***

Except as expressly provided in the Asset Purchase Agreement approved by the order approving the Sale (the “**Sale Order**”), the Assets, Reorganized Equity, or any other assets of the Debtors sold pursuant to the Bidding Procedures, will be conveyed at the closing of a Sale with a Successful Bidder in their then-present condition, “AS IS, WHERE IS, WITH ALL FAULTS,

AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED.” Consistent with representations and warranties made in the Bid, the Successful Bidder will have (a) had an opportunity to conduct any and all due diligence regarding the Debtors’ business and the Assets and Reorganized Equity before submitting its Bid; and (b) relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets, if applicable, in making its Bid and will have not relied on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors’ businesses or the Assets or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Successful Bidder’s proposed asset purchase agreement ultimately accepted and executed by the Debtors.

### ***Closing the Auction***

The Auction may continue until the Debtors, in their reasonable business judgment, and in consultation with the Consultation Parties, subject to the express consent of the DIP Agent and Prepetition Agent (subject to “Consultation Parties” section hereof), select the highest or otherwise best Qualified Bid or combination of Bids at the Auction (such Bid, the “**Successful Bid**,” and the Qualified Bidder submitting such Successful Bid, the “**Successful Bidder**”). The Successful Bid may consist of a single Qualified Bid or multiple Bids. The determination of what constitutes the Successful Bid will take into account any factors the Debtors, in consultation with the Consultation Parties, reasonably deems relevant to the value of the Qualified Bid to the Debtors’ estates.

If no Qualified Bid is submitted by a Qualified Bidder by the Bid Deadline or all Qualified Bids that have been submitted have been withdrawn after the Bid Deadline, then the Debtors will cancel the Auction. Unless otherwise required pursuant to the Debtors’ fiduciary duties, no Bids will be accepted or considered by the Debtors after the conclusion of the Auction.

By 4:00 p.m. (prevailing Eastern Time) on the calendar day that is as soon as reasonably practicable after the Auction is completed, the Debtors will announce the Successful Bid, Successful Bidder, and Backup Bid and will file with the Court, but not serve, a notice of the Successful Bid (“**Notice of Successful Bidder**”), Successful Bidder, Backup Bid, and, in the case of Successful Bids for the Assets, the Sale Hearing. At that same time, the Debtors will serve notice of the same by fax, email, or (if neither is available) overnight courier to all creditors or Contract counterparties that made a request for such service to Debtor’s counsel at least two business days before the Auction. To the extent the Successful Bid was for the Reorganized Equity, approval of the Sale to such Successful Bidder will be sought at the confirmation hearing for the Debtors’ plan of reorganization.

The Debtors’ presentation of a particular Qualified Bid to the Court does not constitute the Debtors’ acceptance of the Bid.

### ***Backup Bidder***

Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder(s) with the next highest or otherwise best Bid or combination of Bids at the Auction, as determined by the Debtors, in the exercise of their reasonable business



judgment, and after consulting with the Consultation Parties, subject to the express consent of the DIP Agent and Prepetition Agent (subject to the “Consultation Parties” section hereof), will be designated as the backup bidder (the “**Backup Bidder**”). The Backup Bidder will be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, the Backup Bidder’s final Overbid) (the “**Backup Bid**”) open and irrevocable until the date (the “**Outside Backup Date**”) that is the earlier of (a) the date that is 30 calendar days after the date of entry of the Sale Order, or (b) the closing date of the Sale with the Successful Bidder.

Following the Sale Hearing and entry of the Sale Order, if the Successful Bidder fails to consummate an approved Sale, the Backup Bidder will be deemed to be the Successful Bidder, and the Backup Bid the Successful Bid, and the Debtors will be authorized, but not required, without further order of the Court, to consummate the Sale with the Backup Bidder. In such case of a breach or failure to perform on the part of the Successful Bidder (including any Backup Bidder designated as a Successful Bidder), the defaulting Successful Bidder’s deposit will be forfeited to the Debtors. The Debtors, on their behalf and on behalf of their estates, specifically reserve the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Backup Bidder designated as a Successful Bidder but excluding the Prepetition Agent and DIP Agent) in accordance with the terms of the Bidding Procedures.

### **SALE HEARING**

The Sale Hearing will be conducted by the Court on **May 3, 2023 at 1:00 p.m. (prevailing Eastern Time)** and may be adjourned or rescheduled, in consultation with the Consultation Parties, by an announcement of the adjourned date at the Sale Hearing or by the filing of a hearing agenda. At the Sale Hearing, the Debtors will seek Court approval of the Successful Bid(s) and the Backup Bid(s). Unless the Court orders otherwise, the Sale Hearing will be an evidentiary hearing on matters relating to the Sale and there will be no further bidding at the Sale Hearing. In the event that the Successful Bidder(s) cannot or refuses to consummate the Sale because of the breach or failure on the part of the Successful Bidder(s), the Backup Bidder(s) will be deemed the new Successful Bidder(s) and the Debtors will be authorized, but not required, to close with the Backup Bidder on the Backup Bid without further order of the Court.

The Debtors will sell the Assets or Reorganized Equity, as applicable, to the Successful Bidder(s) only upon the approval of its Successful Bid by the Court after the Sale Hearing. The Debtors’ presentation of a particular Qualified Bid to the Court for approval does not constitute the Debtors’ acceptance of the Bid. The Debtors will be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing. Unless otherwise agreed by the Debtors, the DIP Agent, and the Prepetition Agent, all conditions to closing of the Sale, other than regulatory approval by the Federal Communications Commission (“**FCC**”), must be satisfied on or before the day that is 15 calendar days after entry of the Sale Order, and FCC approval must be received on or before the day that is 90 calendar days after entry of the Sale Order.

Parties to the Chapter 11 Cases may file objections to (a) the Sale of Assets or Reorganized Equity, as applicable, any of the relief requested in the Bidding Procedures Motion, and entry of the Sale Order (each, a “**Sale Objection**”), or (b)(i) the specific terms of the Sale or specific provisions of the Asset Purchase Agreement or the Sale Order that could not have been raised based on the Bidding Procedures Motion alone, (ii) the conduct of the Auction, or (iii) the identity

of the Successful Bidder(s) (other than with respect to executory contracts or unexpired leases) (each, a “**Subsequent Sale Objection**”). All such objections must (a) be in writing and specify the nature of such objection, (b) comply with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules and all orders of the Court entered in the Chapter 11 Cases, (c) be filed with the Court, (i) in the case of a Sale Objection, by March 7, 2023<sup>6</sup> at 4:00 p.m. (prevailing Eastern Time) (the “**Sale Objection Deadline**”), or (ii) in the case of a Subsequent Sale Objection, by 4:00 p.m. (prevailing Eastern Time) on April 28, 2023 (the “**Subsequent Sale Objection Deadline**”); *provided* that, in the event that a Qualified Credit Bid submitted by the DIP Agent and/or Prepetition Agent becomes the Successful Bid at the Auction, then (x) the Sale Hearing will automatically be adjourned to after the Challenge Period Termination Date (as defined in the DIP Order), and (y) the Subsequent Sale Objection Deadline will automatically be extended solely for the Creditors’ Committee to five days before such adjourned Sale Hearing date, and (d) be served upon the following parties (collectively, the “**Objection Notice Parties**”): (a) counsel to the Debtors, Latham & Watkins LLP, (i) 355 South Grand Avenue, Suite 100, Los Angeles, California 90071 (Attn: Jeffrey E. Bjork (jeff.bjork@lw.com), Ted A. Dillman (ted.dillman@lw.com), Jeffrey T. Mispagel (jeffrey.mispagel@lw.com), and Nicholas J. Messana (nicholas.messana@lw.com)) and (ii) 330 North Wabash Avenue, Suite 2800, Chicago, Illinois 60611 (Attn: Jason B. Gott (jason.gott@lw.com)); (b) co-counsel to the Debtors, Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Kara Hammond Coyle (kcoyle@ycst.com), Joseph M. Mulvihill (jmulvihill@ycst.com), and Timothy R. Powell (tpowell@ycst.com)); (c) counsel to the DIP Agent and the Prepetition Agent, Sheppard, Mullin, Richter & Hampton LLP, (i) 333 South Hope Street, 43<sup>rd</sup> Floor, Los Angeles, California 90071 (Attn: Kyle J. Matthews (KMatthews@sheppardmullin.com)) and (ii) 321 North Clark Street, 32<sup>nd</sup> Floor, Chicago, Illinois 60654 (Attn: Justin Bernbrock (JBernbrock@sheppardmullin.com), (Bryan V. Uelk (BUelk@sheppardmullin.com) and Catherine Jun (CJun@sheppardmullin.com)); (d) co-counsel to the DIP Agent and the Prepetition Agent, Potter Anderson & Corroon LLP, Hercules Plaza, 1313 North Market Street, 6th Floor, P.O. Box 951, Wilmington, Delaware, 19801, Attn: L. Katherine Good (kgood@potteranderson.com); (e) counsel to the Creditors’ Committee; (f) the Office of the United States Trustee for the District of Delaware (the “**U.S. Trustee**”), 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 (Attn: Benjamin Hackman (Benjamin.A.Hackman@usdoj.gov)); and (g) any Successful Bidders.

### **RETURN OF GOOD FAITH DEPOSITS**

The Good Faith Deposits of all Qualified Bidders will be held in one or more escrow accounts by the Debtors, but will not become property of the Debtors’ estate, or subject to the claims, liens, security interests, or encumbrances of the Debtors’ creditors, unless and until such amounts are actually released to the Debtors as provided herein, absent further Court order. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder will be returned to such Qualified Bidder no later than five business days after entry of the Sale Order. The Good Faith Deposit of any Backup Bidder will be returned to such Backup Bidder on the date that is the earlier of 72 hours after (a) the closing of the Sale with the Successful Bidder, and (b) the Outside Backup Date.

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<sup>6</sup> The Sale Objection Deadline was extended to March 21, 2023 for the U.S. Trustee and the Creditors’ Committee.

## **COMMISSIONS**

The Debtors will be under no obligation to pay any commissions, fees, or expenses to any Bidder's agent, advisor, or broker. All commissions, fees, or expenses for any such agents, advisors, or brokers may be paid by Bidders at such Bidder's discretion. In no case will any commissions, fees, or expenses for any Bidder's agent, advisor, or broker be deducted from any proceeds derived from any Sale of the Assets or Reorganized Equity.

## **RESERVATION OF RIGHTS OF DEBTORS**

The Debtors reserve the right, as it may reasonably determine to be in the best interest of their estates, in consultation with the Consultation Parties, to: (a) determine which Bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) determine which Qualified Bid is the highest or otherwise best Bid or combination of Bids and which is the next highest or otherwise best Bid or combination of Bids; (d) reject any Bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, (iii) contrary to the best interests of the Debtors and their estates, or (iv) subject to any financing contingency or otherwise not fully financed; (e) waive terms and conditions set forth herein with respect to all potential Bidders; (f) impose additional terms and conditions with respect to Potential Bidders; (g) with the consent of the DIP Agent and the Prepetition Agent, extend the deadlines set forth herein; (h) continue or cancel the Auction or Sale Hearing in open court without further notice; and (i) modify the Bidding Procedures and implement additional procedural rules that the Debtors determine, in their reasonable business judgment, and in consultation with the Consultation Parties, will better promote the goals of the bidding process.

## **FIDUCIARY OUT**

Nothing in these Bidding Procedures will require the Debtors to take any action, or refrain from taking any action, with respect to these Bidding Procedures to the extent the Debtors determine that taking such action, or refraining from taking such action, as applicable, is required or appropriate to comply with applicable law or their fiduciary obligations.