

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION (the “**Applicant**”)

**MOTION RECORD
(Approval of the Stalking Horse APA,
Final Bidding Procedures, and Ancillary Matters)
Returnable February 22, 2023**

February 15, 2023

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TO: THE SERVICE LIST

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION (the “**Applicant**”)

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**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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MOTION RECORD

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TAB 1

Court File No.: CV-22-00691990-00CL

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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AND IN THE MATTER OF A PLAN OF COMPROMISE OR
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**NOTICE OF MOTION
(Approval of the Stalking Horse APA,
Final Bidding Procedures, and ancillary matters)
(Returnable February 22, 2023)**

The Applicant will make a motion before the Honourable Justice Osborne of the Ontario Superior Court of Justice (Commercial List) on February 22, 2023 at 2:00 p.m. or as soon after that time as the motion can be heard, at 330 University Avenue, Toronto, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard:

- ☐ In writing under subrule 37.12.1(1) because it is *(insert one of on consent, unopposed or made without notice)*;
- ☐ In writing as an opposed motion under subrule 37.12.1(4);
- ☐ In person;
- ☐ By telephone conference;
- ☒ By video conference.

at the following location:

Zoom meeting link, meeting ID and passcode to be created and posted to CaseLines by court staff

Please advise if you plan to attend the motion by emailing Nancy Thompson, at nancy.thompson@blakes.com.

THE MOTION IS FOR:

- (a) An Order substantially in the form attached at tab 3 of the Motion Record, among other things,
 - (i) authorizing the Applicant to enter into an agreement, *nunc pro tunc*, between Pigments Holdings, Inc. (the “**Stalking Horse Bidder**”) and the DCL Group dated as of December 21, 2022 (the “**Original Stalking Horse APA**”), as amended and restated pursuant to an amended and restated asset purchase agreement dated February 13, 2023 (the “**Stalking Horse APA**”), attached as Exhibit “**D**” to the affidavit of Scott Davido sworn February 15, 2023 (the “**Third Davido Affidavit**”) to acquire substantially all of the DCL Group’s assets inclusive of assets held by the Applicant (collectively, the “**Assets**”), and approving the Stalking Horse APA as a stalking horse bid;
 - (ii) deeming the Stalking Horse APA as a Qualified Bid for the purposes of the Final Bidding Procedures, as defined below;
 - (iii) approving the bidding procedures substantially in the form attached to the Order as **Schedule “A”** (the “**Final Bidding Procedures**”) to allow the Applicant, together with other members of the DCL Group, to solicit and identify bids in addition to the Stalking Horse APA for the purpose of selling substantially all of the Assets (such process, the “**Stalking Horse Process**”);
 - (iv) sealing the unredacted copy of the disclosure schedules to the Stalking Horse APA (the “**Confidential Exhibit**”); and
- (b) such further and other relief as this Honourable Court deems just.

THE GROUNDS FOR THE MOTION ARE:

1. On December 20, 2020, the Applicant filed for and obtained protection from its creditors under the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), pursuant to an order (the “**Initial Order**”) of the Honourable Madam Justice Conway (the “**CCAA Proceedings**”).

2. Pursuant to the Initial Order, Alvarez & Marsal Canada Inc. was appointed as Monitor of the Applicant (the “**Monitor**”).

3. The CCAA Proceedings were commenced in conjunction with a parallel proceeding commenced pursuant to Chapter 11 of the United States Bankruptcy Code, by way of a voluntary petition filed on December 20, 2022, in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”), by the Applicant’s U.S. based related parties:

- (a) H.I.G. Colors, Inc.;
- (b) H.I.G. Colors Holdings, Inc.;
- (c) DCL Holdings (USA), Inc. (formerly Lansco Holdings, Inc.);
- (d) DCL Corporation (USA) LLC (formerly Lansco Colors, LLC);
- (e) DCL Corporation (BP), LLC; and
- (f) Dominion Colour Corporation (USA)

(together with the Applicant, the “**DCL Group**”).

4. On December 29, 2022, the Initial Order was amended and restated (the “**Amended and Restated Initial Order**”) to, *inter alia*, authorize the Applicant to exercise certain restructuring powers and pursue all avenues of restructuring, selling, and/or reorganizing the business of the Applicant.

5. Since the granting of the Initial Order and the Amended and Restated Initial Order, the Applicant has been operating its business in accordance with the various orders issued by this Court and in consultation with the Monitor.

The Stalking Horse Sales Process

6. Prior to the commencement of the CCAA Proceedings, the Applicant explored a number of options for restructuring its business. These efforts included conducting an initial sales process to solicit interest in the Applicant's business (the "**Pre-Filing Marketing Process**").

7. As a result of the Pre-Filing Marketing Process, various parties submitted letters of intent, including a credit bid from its term loan lenders, which culminated in the execution of the Original Stalking Horse APA.

8. The parties have negotiated amendments to the Original Stalking Horse APA in the form of the Stalking Horse APA to reflect extensive discussions with the Committee of Unsecured Creditors and its counsel and financial advisor in responding to various inquiries and issues that have been raised in connection with the proposed relief sought.

9. The Applicant is now seeking approval to enter into the Stalking Horse APA which will act as the stalking horse bid and shall be subject to higher or otherwise better offers received as part of the Stalking Horse Sales Process.

10. The DCL Group is experiencing ongoing financial challenges. Although the DCL Group is actively managing those challenges, approval of the Stalking Horse APA will provide assurance and stability as it signals that the Applicant the DCL Group have secured a going concern solution to their financial challenges and are utilizing these cross-border proceedings to implement that solution.

11. The Stalking Horse APA is the highest and best initial offer received as part of the Pre-Filing Marketing Process and will be used as a floor to incentivize prospective bidders to submit further competitive offers for the Assets.

12. Should the Stalking Horse APA be ultimately designated as the Successful Bid (as defined in the Final Bidding Procedures), further approval will be sought from this Court to consummate the transactions contemplated thereunder.

The Final Bidding Procedures

13. The Applicant is also seeking approval of the proposed Final Bidding Procedures which will govern the solicitation of additional bids for the Assets.

14. Although extensive marketing efforts have continued since the commencement of these proceedings, the purpose of the proposed Final Bidding Procedures is to maximize value to the DCL Group's stakeholders by creating a process which:

- (a) creates a floor offer against which all future bids will be assessed (via the Stalking Horse APA);
- (b) will enable the Applicant to conduct an additional marketing process over and above the Pre-Filing Marketing Process which culminated in the Stalking Horse APA;
- (c) will provide prospective purchasers additional time to conduct due diligence; and
- (d) confirms and finalizes a sale and marketing process for the Assets, thus encouraging prospective purchasers to submit their highest and best offer for the Assets.

15. The proposed Final Bidding Procedures will allow for the efficient sale of the Assets, will help identify additional prospective purchasers, and will help produce the highest or otherwise best available recoveries to affected stakeholders.

16. The timeframe to complete the proposed Final Bidding Procedures is commercially reasonable and will provide prospective bidders with sufficient time to complete any due diligence required to identify and fully evaluate the Assets.

Sealing Order

17. The Stalking Horse APA disclosure schedule contains personal information about employees as well as commercially sensitive information relating to material contracts which have been redacted in the form of the Stalking Horse APA included in the Motion Record. The Applicant and/or its employees may be materially prejudiced, including in connection with negotiations with other potential bidders, if certain terms of the Confidential Exhibit containing unredacted version of the schedules are revealed, and accordingly, request that such Confidential Exhibit be sealed.

Other Grounds

18. The provisions of the CCAA, the *Courts of Justice Act*, R.S.O. 1990, c. C.43, and the statutory, inherent and equitable jurisdiction of this Honourable Court;

19. Rules 2.03, 3.02, 16 and 37.01 of the *Rules of Civil Procedure*, R.R.O. 1990 Reg. 194, as amended; and

20. Such further grounds, acts, regulations and rules as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the motion hearing:

- (a) the Third Davido Affidavit and the exhibits thereto, including the Confidential Exhibit;
 - (b) the second report of the Monitor and the appendices attached thereto, to be filed;
- and

- (c) such further and other materials as counsel may advise and this Honourable Court may permit.

February 15, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL Corporation
Applicant

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

Proceeding commenced at Toronto

NOTICE OF MOTION
(Approval of the Stalking Horse APA,
Final Bidding Procedures, and ancillary matters)

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TAB 2

Court File No. CV-22-00691990-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
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IN THE MATTER OF THE *COMPANIES' CREDITORS
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AFFIDAVIT OF SCOTT DAVIDO
(Sworn February 15, 2023)

I, **Scott Davido**, of New York City, in the State of New York, United States of America,
MAKE OATH AND SAY AS FOLLOWS:

I. INTRODUCTION

1. I am a Senior Managing Director at Ankura Consulting Group, LLC ("**Ankura**"). I have over 30 years of experience in senior executive management and financial/restructuring advisory roles and specialize in turnaround and restructuring initiatives, streamlining operations, implementing efficient financial controls, negotiating with creditors and equity investors, and advising management and boards of directors in financial distress and turnaround situations. I have also managed numerous in-court and out-of-court restructuring efforts, including those with multi-jurisdictional elements.

2. Ankura was engaged by the Applicant and certain affiliates to provide restructuring advisory services beginning in August 2022. I have been serving as a financial advisor to the Applicant and other members of the DCL Group (as defined below) since that time. On

November 16, 2022, I was appointed by the Applicant and other members of the DCL Group to serve as the Chief Restructuring Officer (“**CRO**”) for the DCL Group. As CRO, I am familiar with the Applicant’s business, day-to-day operations, and financial affairs. I perform my duties out of (i) the Applicant’s corporate headquarters at 1 Concorde Gate, Suite 608, Toronto, Ontario (the “**Head Office**”) and (ii) Ankura’s office located in New York, New York in the United States. On December 20, 2022, I was formally appointed by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) as CRO of the Applicant.

3. This Affidavit provides background information with respect to:

- (a) the status of (i) the proceedings commenced by the Applicant pursuant to the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) and (ii) the Chapter 11 Proceedings commenced by DCL US (as such terms are defined below);
- (b) the Applicant’s activities since the issuance of the Amended and Restated Initial Order (as defined below);
- (c) a motion seeking the issuance of an Order to, among other things:
 - (i) authorize the Applicant to enter into an agreement between Pigments Holdings, Inc. (the “**Stalking Horse Bidder**”), an affiliate of the Applicant’s term loan lenders (the “**Term Loan Lenders**”), and the DCL Group dated as of December 21, 2022 (the “**Original Stalking Horse APA**”) as amended and restated pursuant to an amended and restated asset purchase agreement dated as of February 13, 2023 (the “**Stalking Horse APA**”) to acquire substantially all of the DCL Group’s assets, inclusive of assets held by the Applicant (collectively the “**Assets**”), and approve the Stalking Horse APA as a stalking horse bid;

- (ii) approve bidding procedures (the “**Final Bidding Procedures**”) to allow the Applicant, together with other members of the DCL Group, to solicit and identify bids in addition to the Stalking Horse APA for the sale of substantially all of the Assets (such process, the “**Stalking Horse Sales Process**”); and
- (iii) seal the unredacted copy of the schedules to the Stalking Horse APA attached as Confidential Exhibit “1” hereto.

4. In making this Affidavit, I have had discussions with members of the Applicant’s senior management and the Applicant’s professional advisors and have relied, in part, on information and materials that the Applicant’s personnel and advisors have gathered, prepared, verified, and provided to me.

5. Accordingly, I have knowledge of the matters deposed to in this Affidavit. Where this affidavit is not based on my direct personal knowledge, it is based on information and belief, and I believe such information to be true.

6. Unless otherwise stated, all monetary amounts contained in this Affidavit are expressed in USD.

II. STATUS OF THE CCAA AND CHAPTER 11 PROCEEDINGS

(i) CCAA Proceedings

7. The Applicant is in the business of the supply of colour pigments and dispersions for the coatings, plastics and ink industries. Over the last two years, the Applicant’s manufacturing business has experienced declining revenues and increased operating expenses due to a combination of (i) supply chain and workforce staffing challenges; (ii) increasing input costs,

including a steep increase in energy prices resulting from, among several factors, the ongoing Russia-Ukraine conflict; (iii) lack of accessible liquidity; and (iv) volatile fluctuations in currency exchange rates. These challenges (together with company-specific business challenges) have resulted in deteriorating financial performance.

8. Additional background on the Applicant's business and the necessity for these CCAA proceedings is set out in detail in my affidavit sworn December 20, 2022 (the "**Initial Affidavit**") and my affidavit sworn December 23, 2022 (the "**Second Davido Affidavit**").

9. Copies of the Initial Affidavit and the Second Davido Affidavit, without exhibits, are attached hereto as Exhibit "**A**" and "**B**" respectively.

10. As is further described in the Second Davido Affidavit, the Applicant sought and obtained protection under the CCAA on December 20, 2022 (the "**Filing Date**") pursuant to an initial order granted by this Court (the "**Initial Order**").

11. Alvarez & Marsal Canada Inc. was appointed as the court-appointed monitor (the "**Monitor**").

12. On December 29, 2022, the Applicant sought and obtained an amended and restated Initial Order (the "**Amended and Restated Initial Order**") from the Court.

13. The Amended and Restated Initial Order, among other things: (a) extended the initial stay of proceedings until March 17, 2023 (the "**Stay Extension Date**"); (b) approved the Final DIP ABL Credit Agreement; (c) approved the Intercompany Agreements; (d) granted the Intercompany Charge; (e) granted the Related Party DIP Charge; (f) authorized the payment to Critical Suppliers of certain amounts owing to them prior to the Filing Date, subject to the DIP Budget and Monitor approval; (g) approved the retention of TM Capital Corp. ("**TM Capital**") as investment banker; (h) increased the Administration Charge from \$175,000 to \$1,100,000; (i)

increased the Director's Charge from CAD \$1,000,000 to CAD \$1,700,000; and (j) granted standard restructuring powers to the Applicant. Capitalized terms set out above have the meaning ascribed to them in the Second Davido Affidavit.

(ii) Chapter 11 Proceedings

14. The Applicant's US based affiliates ("**DCL US**", and together with the Applicant, the "**DCL Group**") commenced parallel proceedings in the United States pursuant to chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**"), by way of voluntary petitions filed in the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") on December 20, 2022.

15. At the first day hearing held on December 22, 2022, the US Bankruptcy Court made various first day orders to facilitate the Chapter 11 Proceedings (the "**First Day Orders**"). The US Bankruptcy Court initially scheduled a second day hearing (the "**Second Day Hearing**") for January 19, 2023, for the purpose of considering whether to grant final orders with respect to First Day Orders granted on December 22, 2022, among other matters. The Second Day Hearing was subsequently adjourned to February 8, 2023, then further adjourned to February 15, 2023, and then further adjourned to February 21, 2023. Certain orders, more administrative in nature, such as orders dealing with the retention of select professionals, including my retention as CRO, have already been entered by the US Bankruptcy Court, without the need for a hearing, as they were either uncontested or any informal comments were incorporated.

16. More substantive matters such as the motion seeking the entry of the "Final DIP Order" remain scheduled to be heard at the Second Day Hearing. The motion seeking approval of the Stalking Horse Sales Process is also scheduled to be heard at the Second Day Hearing.

17. For clarity, the Applicant and DCL US are seeking approval of substantially the same Stalking Horse Sales Process, before this Court and the US Bankruptcy Court, respectively, as required under the Stalking Horse APA and the Final DIP ABL Credit Agreement.

18. On December 30, 2022, the US Trustee appointed the Committee of Unsecured Creditors (the “UCC”), consisting of 7 creditors of DCL US. The DCL Group and its advisors have been in extensive discussions with the UCC and its counsel and financial advisor and have been responding to various inquiries and issues that have been raised by the UCC in connection with the proposed relief being sought by DCL US at the Second Day Hearing.

19. Efforts to resolve those issues on a consensual basis have been successful and are reflected in (i) amendments to the Original Stalking Horse APA resulting in the Stalking Horse APA; (ii) amendments to the proposed form of bidding procedures in connection with the Stalking Horse Sale Process attached as Exhibit “F” to the Second Davido Affidavit (the “**Prior Bidding Procedures**”); (iii) amendments to the Final DIP ABL Credit Agreement approved by this Court as part of the Amended and Restated Initial Order; and (iv) revisions to, or withdrawals of, certain other relief that was to be sought by DCL US in the Chapter 11 Proceedings (collectively, the “**Global Settlement**”).

20. A status hearing was held before the US Bankruptcy Court on February 8, 2023, to apprise the US Bankruptcy Court of the progress that has been made.

21. Court filings with respect to the Chapter 11 Proceedings may be found at a website hosted by Kroll Restructuring Information at: cases.ra.kroll.com/DCL/.

III. THE APPLICANT’S ACTIVITIES

22. Since the granting of the Amended and Restated Initial Order, the DCL Group has and continues to operate in accordance with the various orders issued by this Court and the US

Bankruptcy Court. Set out below is an update regarding the Applicant's activities since the granting of the Amended and Restated Initial Order.

(i) Cash Management Update

23. The Applicant's cash management system is described at paragraphs 56 to 62 in the Initial Affidavit (the "**Cash Management System**"). The Cash Management System was approved by paragraph 6 of the Amended and Restated Initial Order. Paragraph 6 of the Amended and Restated Initial Order also authorizes the Applicant, with the consent of the DIP Agent (as defined below) and the Monitor, to replace the Cash Management System with another "substantially similar central cash management system." The Applicant, with the consent of the Monitor and the DIP Agent, have made certain modifications to the Cash Management System. The Applicant is of the view that the amended Cash Management System described below (the "**Amended Cash Management System**") is substantially similar to the Cash Management System described in the Initial Affidavit and I understand that the Monitor and the DIP Agent concur in that view.

24. Prior to the commencement of the CCAA proceedings, the agent under the Applicant's existing working capital lending facility, Wells Fargo Bank, N.A. (in such capacity, the "**Pre-Filing ABL Agent**"), had sought to initiate control over certain of the DCL Group's bank accounts, including certain of the Applicant's bank accounts with HSBC Bank Canada ("**HSBC Canada**"), to ensure that cash deposits were applied against the loans. In that regard, pursuant to an activation notice issued to HSBC Canada (the "**Initial Activation Notice**") on December 7, 2022, the Pre-Filing ABL Agent sought to obtain control over 12 of the Applicant's bank accounts at HSBC Canada (collectively, the "**Blocked Accounts**").

25. The Initial Activation Notice included directions to HSBC Canada to perform cash sweeps of the Blocked Accounts into accounts designated by the Pre-Filing ABL Agent (the “**Wells Fargo Accounts**”). The Initial Activation Notice was amended multiple times to exclude certain of the Applicant’s accounts from the Initial Activation Notice pursuant to discussions between the Applicant and the Pre-Filing ABL Agent.

26. Wells Fargo Bank, N.A., also serves as agent under the Final DIP ABL Credit Agreement (in such capacity, the “**DIP Agent**”). After commencement of the CCAA proceedings, the cash sweeps, when effected, would be applied against any outstanding borrowings under the DIP Facility (as defined in the Initial Affidavit) and thus create availability under the DIP Facility, subject to the applicable borrowing base formula. Due to various logistical issues, after the CCAA filing, the Applicant remained unable to access any of the Blocked Accounts, as well as two additional accounts at HSBC Canada. Moreover, notwithstanding the Initial Activation Notice, no cash sweeps were actually effected until the arrangements described below were implemented.

27. After discussions between the Applicant and Pre-Filing ABL Agent/DIP Agent as to the frequency and limitations of the cash sweeps, it was determined that the agreed upon cash sweeps would be more efficiently effectuated through direct transfers of cash by the Applicant from the Applicant’s active Blocked Accounts to the Wells Fargo Accounts, rather than by HSBC Canada.

28. Accordingly, the Applicant has worked with the Pre-Filing ABL Agent/DIP Agent to remove all active Blocked Accounts from the Initial Activation Notice. Those arrangements have been replaced with a letter agreement between the Pre-Filing ABL Agent/DIP Agent and the Applicant, whereby the Applicant would itself transfer specified account balances from

certain of the Blocked Accounts to the Wells Fargo Accounts. As a result, the Applicant has regained control over all active Blocked Accounts and will be implementing cash transfers to the Wells Fargo Accounts pursuant to such letter agreement.

29. I understand the Monitor has been consulted throughout the process and consents to the Amended Cash Management System and will comment on same in the second report of the Monitor to be provided in connection with this motion (such report, including any supplement thereto, the “**Second Report**”).

30. After the initial implementation of the Amended Cash Management System, the parties concluded that amendments to the Amended Cash Management System were required to better align the Amended Cash Management System with the Applicant’s accounting system and the DIP Credit Agreement to ensure, among other things, that receipts received in collection accounts are properly allocated and applied against the appropriate US or Canadian DIP loans. The Applicant is working closely with the DIP agent and the Monitor to enter into an amended and restated agreement to govern the bank accounts and application of funds.

(ii) Critical Suppliers

31. The DCL Group, including the Applicant, have started initiating agreements with Critical Suppliers for the continued supply of goods and services, on applicable trade terms, during these proceedings. I understand the Monitor will provide information regarding amounts paid to Critical Suppliers in the Second Report.

(iii) Employees

32. The DCL Group has and continues to actively engage with employees. Further, the Applicant has communicated with employees regarding the proposed sales process, and the

impact, if any, on the employees' future employment. Moreover, service of all court materials has been provided to the Teamsters Chemical, Energy and Allied Workers (Local Union NO. 1979) (the "**Teamsters**"), which is the collective bargaining agent for approximately 75 to 77 unionized workers.

33. Since the commencement of the CCAA proceedings, the Applicant has implemented several changes to the complement of its employees including in connection with the closure of the Ajax Plant and the contemplated treatment of Ajax based employees under the Stalking Horse APA as discussed below.

(iv) Pensions and other Registered Savings Plans

34. As described in the Initial Affidavit, the Applicant is the sponsor and administrator of, among others, two registered defined pension plans: the Salaried DB Plan and the Hourly DB Plan (as such terms are defined in the Initial Affidavit) (collectively, the "**DB Plans**") and two registered defined contribution plans: the Salaried DC Plan and the Hourly DC Plan (as such terms are defined in the Initial Affidavit) (collectively, the "**DC Plans**" and together with the DB Plans, the "**Registered Pension Plans**"). In connection with the Stalking Horse APA, the Applicant obtained updated actuarial calculations of the DB Plans as of December 31, 2022 and updated financial statements for the DC Plans as of December 31, 2022, from its pension actuarial consultant, AON.

(a) Defined Benefit Plans

35. Based on updated actuarial calculations, as of December 31, 2022, the market value of invested assets totaled approximately CAD\$40.39 million and the Salaried DB Plan was in a surplus position in the amount of approximately CAD\$3.49 million, showing a modest increase of approximately CAD\$79,000 from the surplus calculated as of December 31, 2021.

36. Based on an updated actuarial report, as of December 31, 2022, the market value of invested assets totaled approximately CAD\$16.16 million and the Hourly DB Plan was in a surplus position in the amount of approximately CAD\$1.56 million, showing a modest increase of approximately CAD\$56,000 from the surplus calculated as of December 31, 2021.

(b) Defined Contribution Plans

37. Based on updated financial statements, as of December 31, 2022, the market value of invested assets for the Salaried DC Plan totaled approximately CAD\$1.7 million, showing a modest increase of approximately CAD\$100,000 from December 31, 2021.

38. Based on updated financial statements, as of December 31, 2022, the market value of invested assets for the Hourly DC Plan totaled approximately CAD\$878,000, showing a modest increase of approximately CAD\$23,000 from December 31, 2021.

39. No update was obtained for the legacy Monteith Plan (as defined in the Initial Affidavit) as that plan is closed and the assets are in the process of being transferred to the Salaried DC Plan and Hourly DC Plan, as applicable, pending approval from the Financial Services Regulatory Authority of Ontario.

(c) Deferred Profit Sharing Plan

40. In addition to the Registered Pension Plans, I am advised that the Applicant also has a defined contribution registered savings arrangement in the form of a deferred profit-sharing plan (the “**DPSP**”). The DPSP was not mentioned in the Initial Affidavit, as I was not aware of the DPSP at that time. There are only 14 employees that participate in the DPSP.

41. The assets of the DPSP are held with Canada Life and as at December 31, 2022, the DPSP had an aggregate asset value of CAD\$427,634.50.

42. There is a registered retirement savings plan (the “**DPSP RRSP**”) that is linked to the DPSP. The DPSP RRSP has 4 participants and net assets being held by Canada Life as at December 31, 2022 of \$238,648.42.

(v) *Customers*

43. With respect to the DCL Group’s customers, the DCL Group has been communicating with certain customers regarding the CCAA and Chapter 11 Proceedings and in particular customers with consignment arrangements with the DCL Group. These consignment arrangements allow customers to hold DCL Group inventory at customer-controlled facilities and allow those customers to draw down on that inventory as needed. Discussions about the impact, if any, on these customers as a result of the CCAA and Chapter 11 Proceedings are ongoing.

(vi) *Collections of Accounts Receivable and Final DIP ABL Credit Agreement Amendment*

44. The DCL Group has faced certain challenges regarding the collection of accounts receivable, as is often the case following the commencement of formal restructuring proceedings. The DCL Group is actively managing and addressing these challenges, some of which are due to timing variances, and continues to work closely and constructively with its customers. Further, the DCL Group is successfully managing its disbursements and its expenses, which to date are less than forecast.

45. The DCL Group’s collection challenges, however, have led to the occurrence of “Events of Default” under the Final DIP ABL Credit Agreement as the DCL Group has been unable to maintain aggregate sale receipts of at least 80% of the aggregate amount provided for in the DIP Budget for the applicable reporting periods. The DCL Group has requested a waiver of the Events of Default from the DIP Agent and DIP Lenders (as defined in the Initial Affidavit),

which will be implemented by way of an amending agreement, which would also update certain schedules to the Final DIP ABL Credit Agreement (the “**DIP Amendment**”).

46. Pursuant to the Global Settlement, the DCL Group anticipates obtaining the DIP Amendment coincident with the entry of the Final DIP Order in the Chapter 11 Proceedings, which is anticipated to occur at the Second Day Hearing currently scheduled to take place on February 21, 2023.

47. In connection with the requested DIP Amendment, the DCL Group has submitted an updated DIP Budget (the “**Updated DIP Budget**”). The Updated DIP Budget is to be incorporated into the amended Final DIP ABL Credit Agreement pursuant to the DIP Amendment and as part of the Global Settlement.

48. I understand that paragraph 35 of the Amended and Restated Initial Order allows the Applicant to enter into the anticipated DIP Amendment with the consent of the Monitor. Once available, the executed DIP Amendment and accompanying Updated DIP Budget will be served on the Service List and filed with this Court either by the Monitor or the Applicant. Subject to the DIP Amendment being in the anticipated form, I understand the Monitor is prepared to provide the requisite consent.

(vii) Scheduled Holiday Shutdown and Restarts

49. As described in the Initial Affidavit, the Applicant has three manufacturing facilities, the Ajax Plant, the New Toronto Plant and the Mississauga Plant (each as defined in the Initial Affidavit). In addition, the Applicant operates a distribution centre which is adjacent to the Ajax Plant (the “**Ajax Distribution Centre**”).

50. All three plants underwent regularly scheduled shutdowns over the holiday season. The Mississauga Plant was shut down between December 23, 2022, and January 3, 2023, in

accordance with existing practice. The New Toronto Plant had an extended shut down that started on December 19, 2022 and went until January 6, 2023. The Ajax Plant commenced its shut down as planned on December 23, 2022; however, the Ajax Plant did not fully restart as scheduled on January 3, 2023 due to an equipment malfunction and a lack of raw materials. As a result, only one of four operating lines were running at the Ajax Plant at the beginning of 2023 as attempts remain underway to repair the damaged equipment. As a result, approximately 20 unionized employees were not recalled to work at the Ajax Plant and were placed on temporary lay-off.

(viii) Shut Down of Ajax Plant and Temporary Layoffs

51. A raw material known as litharge is needed to complete the finished goods inventory at the Ajax Plant. Litharge is not easily sourced. The existing supplier located in Indiana in the United States is owed in excess of \$1 million in pre-filing arrears. The Applicant was not able to negotiate continued supply of inventory from this supplier on economic terms and the Applicant has faced challenges locating an alternate source of long-term supply of litharge for the Ajax Plant on economic terms.

52. On Tuesday, February 7, 2023, all 24 remaining unionized employees and 2 salaried non-unionized employees primarily employed at the Ajax Plant were given temporary layoff notices effective end of the day on Friday, February 10, 2023. The remaining 15 salaried employees primarily employed at the Ajax Plant were advised they were to be temporarily redeployed at the Applicant's other facilities the following week.

53. During the week of February 6, 2023, remaining raw materials were used to complete the manufacture of finished goods and the Ajax Plant was idled in a safe and secure condition (i.e., the same condition it is placed in during the annual holiday shutdown) on February 10, 2023.

54. On Monday, February 13, 2023, the Ajax employees were advised that manufacturing at the Ajax Plant would be discontinued. There are many reasons for the Ajax Plant manufacturing discontinuance: (i) the overall competitive environment for the products produced at the Ajax Plant; (ii) regulatory challenges in producing lead chromates, which represent most of the Ajax Plant's sales volume; (iii) a systemic and consistent decline in demand for products composed of lead chromates (the principal products produced at the Ajax Plant); (iv) the DCL Group's relatively high raw materials, production, and logistics costs versus those of its lead chromate competitors; (v) the North American location of the Ajax Plant, given that main markets for lead chromates are in Asia, the Middle East, Africa, and Latin America, where most of the DCL Group's competitors for these products are located; and (vi) the Ajax Plant's financial challenges, operating at a net loss recently, with difficult prospects for regaining profitability.

55. Through completion of the sale process, the affected employees will remain on temporary layoff. It is possible that a bidder successful in acquiring the DCL Group's assets may wish to restart operations at the Ajax Plant. Voluntary outplacement services have been made available for temporary laid off employees that wish to pursue alternative employment.

56. I understand that the discontinuance of manufacturing operations at the Ajax Plant is permitted under paragraph 12(a) of the Amended and Restated Initial Order which authorizes the Applicant to "permanently or temporarily cease, downsize or shut down any of the Applicant's Business or operations..."

(ix) *Intercompany Agreements*

57. In preparation for the commencement of these proceedings and as a condition of the DIP Financing (as defined in the Initial Affidavit), the Applicant and its US based affiliate DCL USA LLC (as defined in the Initial Affidavit) formalized intercompany arrangements anticipated to be

on-going between members of the DCL Group, including the Applicant, into two intercompany agreements: (i) an intercompany agreement between the Applicant and DCL USA LLC (the “**US/Canada Intercompany Agreement**”); and (ii) an intercompany agreement between the Applicant, DCL USA LLC and the European Subsidiaries (as defined in the Initial Affidavit) (the “**European Intercompany Agreement**”, together with the US/Canada Intercompany Agreement, the “**Intercompany Agreements**”).

58. The Intercompany Agreements, which were approved by the Amended and Restated Initial Order, provide that DCL USA LLC will provide funding to the Applicant, which funding the Applicant will then use, in part, to pay invoices of a supplier to the Applicant’s Dutch subsidiary DCL NL (as defined in the Initial Affidavit). Although the Intercompany Agreements refer to a single supplier, there are in fact two such suppliers paid by the Applicant. Accordingly, minor amendments were required to be made to the Intercompany Agreements. I understand that such minor amendments are permitted by paragraph 39 of the Amended and Restated Initial Order with the consent of the Monitor and the DIP Lender, which have been obtained. The amendments to the Intercompany Agreements were executed on February 3, 2023.

IV. THE STALKING HORSE SALES PROCESS

59. As described in the Second Davido Affidavit, following the granting of the Initial Order and the commencement of the Chapter 11 Proceedings, the DCL Group selected a Stalking Horse Bidder and entered into the Original Stalking Horse APA with a nominee of the Term Loan Lenders.

60. A copy of the Original Stalking Horse APA (without schedules) was attached as Exhibit “F” to the Second Davido Affidavit which was served on the Service List on December 23, 2022. By way of e-mail sent by the Applicant’s counsel on January 25, 2023 to the Service List,

advance notice was provided of the initial February 10, 2023 hearing date for this motion and copies of the Original Stalking Horse APA and the Prior Bidding Procedures which had been attached to the Second Davido Affidavit were attached. On February 8, 2023, an additional email notice was sent advising of the February 21, 2023 hearing date. A copy of the e-mail chain (without attachments) is attached hereto as Exhibit “C”.

A. The Marketing Process

61. As set out in the Initial Affidavit, prior to entering into the Original Stalking Horse APA, the DCL Group conducted a marketing process for the sale of the Assets.

62. In September 2022, the DCL Group engaged TM Capital, an established investment banking firm with significant expertise in marketing and selling companies in the specialty chemicals space, to assist the DCL Group in evaluating various strategic options to generate a recovery for the DCL Group’s stakeholders.

63. As noted above, the appointment of TM Capital to act as the exclusive investment banker to the Applicant was subsequently approved by this Court pursuant to the Amended and Restated Initial Order.

64. Based on that strategic options analysis, the DCL Group determined that marketing the business for sale would ultimately generate the best recovery for stakeholders.

65. A marketing process was immediately undertaken and, in September 2022, TM Capital:

- (a) developed a list of strategic parties that would potentially be interested in purchasing the DCL Group;

- (b) prepared a confidential information memorandum (the “**CIM**”) and virtual data room (the “**VDR**”) containing information about the DCL Group, its business, and the sale opportunity generally; and
 - (c) invited potential bidders to conduct due diligence with respect to the opportunity, which included: (i) allowing the bidders to review the CIM and the VDR, and (ii) extending invitations to qualified parties to meet with the management of the DCL Group;
- (collectively, the “**Pre-Filing Marketing Process**”).

66. All potential bidders were asked to submit indications of interest via letters of intent (“**LOI**”) by no later than November 30, 2022 (the “**LOI Submission Deadline**”). Various parties submitted LOI’s prior to the LOI Submission Deadline and one party submitted an LOI shortly thereafter. I understand the Monitor has reviewed the LOIs.

67. In addition, the DCL Group also obtained a credit bid from the Term Lenders (as defined in the Initial Affidavit) which, through extensive negotiations, culminated in the execution of the Original Stalking Horse APA, on December 22, 2022.

B. The Stalking Horse APA

68. The parties have negotiated amendments to the Original Stalking Horse APA in the form of the Stalking Horse APA to (a) reflect the Global Settlement; (b) clarify the mechanics for funding of the Designated Amount (as defined in the Stalking Horse APA); (c) update the disclosure schedules; and (d) make certain other technical amendments to the Original Stalking Horse APA. A copy of the Stalking Horse APA (with lightly redacted Schedules) and a blackline to the Original Stalking Horse APA (without Schedules) are attached hereto as Exhibits “**D**” and “**E**” respectively.

69. Some of the information contained in the schedules to the Stalking Horse APA is personal information about employees as well as commercially sensitive information relating to material contracts. This information is redacted in the version attached as Exhibit “D” hereto, however, an unredacted copy will be provided to the Court and is attached hereto as Confidential Exhibit “1”. A sealing order is requested for the unredacted version of the Stalking Horse APA schedules, however, the Applicant is prepared to provide the unredacted schedules to any party that executes a confidentiality agreement in accordance with the Final Bidding Procedures. This information is also subject to the terms of the existing confidentiality agreements between the DCL Group and other potential bidders in the Stalking Horse Sales Process and must be kept confidential by such bidders in accordance with the terms of such agreements and used only for the purposes set forth therein. The DCL Group would be hindered in enforcing such confidentiality obligations and restrictions on use to the extent such information was publicly filed in these CCAA proceedings.

(i) Purpose of Stalking Horse APA

70. The DCL Group is proactively addressing economic challenges that it is facing, including by engaging in constructive dialogue with its stakeholders to resolve a variety of outstanding issues and conserving cash through prudent management of disbursements. In the face of those challenges, however, the need to signal confidence and certainty to the market becomes all the more pronounced. Entering into a stalking horse bid with a sophisticated purchaser that is familiar with the business and operations of the DCL Group signals that needed confidence.

71. The Stalking Horse APA provides assurance to the marketplace that the Stalking Horse Bidder sees value in the DCL Group’s business. This engenders stability. Stability enhances value that will accrue to the DCL Group’s stakeholders as a whole, including employees,

suppliers and customers. In short, the Stalking Horse APA demonstrates that the Applicant and the other members of the DCL Group have secured a going concern solution to their financial challenges and are utilizing these cross-border restructuring proceedings to implement that solution or potentially identify a solution with even greater value to stakeholders as a whole.

(ii) Key Terms

72. Consistent with other stalking horse processes undertaken in insolvency proceedings in Canada and the United States, the Stalking Horse APA is intended to act as a floor offer against which all future bids received will be assessed.

73. A non-exhaustive description of the key terms of the Stalking Horse APA is set out below (capitalized terms not otherwise defined have the meaning ascribed to them in the Stalking Horse APA):

Term	Description
Purchase Price	<p>The purchase price for all the assets to be acquired by the Stalking Horse Bidder (the “Purchased Assets”) is composed of: (i) a credit bid of \$45,000,000, on a dollar-for-dollar basis; (ii) a cash amount sufficient to repay the DIP Facility, including any outstanding amounts under the pre-filing/petition ABL Obligations (as defined in the Final DIP ABL Credit Agreement) and certain other pre-filing/petition payments; (iii) an amount to be funded by the Stalking Horse Bidder in respect of the Additional Cash Consideration; and (iv) the assumption of certain assumed liabilities as more fully described below.</p> <p>The Term Loan Lenders, through the Stalking Horse Bidder, will be entitled to increase the credit bid component of their purchase price up to the full amount of the term loan obligations, up to three Business Days prior to the Bid Deadline, the principal of which is approximately \$90,500,000 (as is more fully described in the Initial Affidavit).</p>
Allocation of Purchase Price	No allocation of the Purchase Price as among US Purchased Assets or Canadian Purchased Assets is contained in the Stalking Horse APA. Pursuant to the Final Bidding Procedures, the Stalking Horse Bidder or any other bidder can be required to allocate the Purchase Price as

	among the Canadian and US Purchased Assets if the bidding exceeds the total secured indebtedness owed to the Term Lenders.
Purchased Assets	The Purchased Assets are all or substantially all of the assets of the DCL Group, except for certain Excluded Assets. Such Purchased Assets include the shares of the Applicant's European Subsidiaries. The obligations owing by such subsidiaries would be assumed by operation of law.
Assumed Liabilities	<p>The Stalking Horse Bidder will assume various liabilities of the DCL Group, including but not limited to:</p> <ul style="list-style-type: none"> i. liabilities relating to or arising under purchased contracts (including cure costs), permits, and intellectual property; ii. liabilities owing to vendors who provided goods and/or services to the DCL Group in the ordinary course of business after the Filing Date; iii. all taxes other than Income Taxes; iv. liabilities for wages and salaries, vacation pay, and other consideration owing to employees along with the associated payroll taxes since the last payroll period before Closing; v. claims of customers occurring in the ordinary course of business arising after the Filing Date; vi. all liabilities in respect of Transferred Employees accruing from and after the Closing Date; vii. all liabilities under any Assumed Benefit Plan with respect to any Transferred Employee and all liabilities under the Canadian Pension Plans that are assumed by the Stalking Horse Bidder; and viii. all environmental liabilities relating to any purchased real property or leased property purchased as part of the Stalking Horse APA.
Excluded Liabilities	The Stalking Horse Bidder is not responsible for any Liabilities of the DCL Group other than the Assumed Liabilities, including: (i) any Liabilities related to any Excluded Assets; (ii) Excluded Employee Liabilities; (iii) all liabilities related to taxes other than Assumed Tax Liabilities; and (iv) tort liabilities of any member of the DCL Group.
Excluded Assets	In addition to various standard or customary assets which are ordinarily excluded as part of a stalking horse bid, the Stalking Horse APA also excludes Excluded Cash (discussed below).
Excluded Employees	"Excluded Employees" comprise the employees primarily employed at the Designated Location. The Designated Location in the Stalking

	Horse APA is the Ajax Plant. Employees at the Ajax Distribution Centre are <u>not</u> Excluded Employees. If the Stalking Horse Bidder is the successful bidder, at Closing all employees primarily employed at the Ajax Plant who are currently on temporary layoff will be placed on permanent/indefinite layoff (in the case of unionized employees) or terminated (in the case of salaried non-unionized employees).
Excluded Cash	Excluded Cash means all cash on hand at the Closing, including cash drawn under the DIP Facility.
Required Amount	Required Amount means an amount equal to Professional Fees and Expenses, plus the Designated Amount, plus the CCAA Cash Pool.
CCAA Cash Pool	The CCAA Cash Pool is cash in the amount of \$750,000 to be used for the benefit of the Applicant's estate, including any costs of administration of the CCAA proceedings.
Designated Amount	The Designated Amount is \$2,000,000, which will be utilized by the Applicant and DCL US to conduct an orderly wind-down of the DCL Group after the Closing, with \$575,000 of such amount to be delivered to the Monitor, on behalf of the Applicant. Any excess funds from the Applicant's portion will be transferred to the CCAA Cash Pool.
Funding of Required Amount	The Required Amount is first to be funded by Excluded Cash. In the event that Excluded Cash is insufficient to fund the Designated Amount and the CCAA Cash Pool, the Stalking Horse Bidder is required to fund such amounts as the "Additional Cash Consideration", which is capped at \$2,750,000.
Trust	Certain claims that DCL US may have against officers, directors, equity holders and other insiders (the " Representatives ") of DCL US are being transferred to a litigation trust as part of the Global Settlement, for the benefit of certain unsecured creditors of DCL US as identified in the trust agreement governing the Trust. Any such analogous claims that the Applicant may have against Representatives of the Applicant will not be assigned to the Trust and will instead be assigned to the Stalking Horse Bidder and released.
Bid Protections	None – no break fee or expense reimbursement.
Treatment of Employees	The Stalking Horse Bidder will offer employment to all employees, except the Excluded Employees, with a base salary, hourly wage, commission, or incentive opportunity, as applicable, no less favourable than currently provided. In addition, the Stalking Horse Bidder will offer retirement or welfare benefits (except any defined benefit pension, retiree medical and defined compensation benefits) comparable to those currently provided by the DCL Group. The

	Stalking Horse Bidder will comply with the terms and conditions of the collective bargaining agreement for all Transferred Employees who are covered by such agreement.
Conditions to Closing	<p>Conditions to Closing in favour of the Stalking Horse Bidder include: (i) the issuance of a sale approval order by this Court and the US Bankruptcy Court; (ii) no acceleration of the DIP Facility; (iii) no Material Adverse Effect; (iv) as of Closing, the Designated Amount shall not have been greater than the amount set forth in the definition of Designated Amount (as discussed above); (v) any required consents as set out in Schedule 9.2(d) of the Stalking Horse APA, which include consents in connection with real property leases, shall have been provided unless assignment is effected by way of Court order; (vi) availability under the DIP Facility, based on the borrowing base for the week prior to the week in which Closing is to occur, shall not have been less than \$469,000; and (vii) other standard conditions to closing of transactions of this nature.</p> <p>Conditions to Closing in favour of the DCL Group include: (i) issuance of a sale approval order by this Court and the US Bankruptcy Court; (ii) receipt of Excluded Cash and Additional Cash Consideration (which includes the CCAA Cash Pool) (as discussed above); and (iii) other standard conditions to closing of transactions of this nature.</p>
Closing Date	In accordance with the Final Bidding Procedures, the transaction shall close no later than March 17, 2023, which corresponds with the Stay Extension Date.

74. The Monitor, in consultation with the Applicant and the purchaser, has estimated that the purchase price under the Stalking Horse APA will be in the range of approximately \$166.2 million to \$170.9 million, subject to the assumptions, qualifications and discussions set out in the Second Report.

(iii) *Stalking Horse APA – Executive Summary*

75. The DCL Group and the Applicant are experiencing ongoing financial challenges. Although the DCL Group is actively managing those challenges, approval of the Stalking Horse APA will provide needed stability and demonstrate a vote of confidence to the marketplace and

its stakeholders, including employees, customers, suppliers, and UCC, that a going concern solution has been secured.

76. Although the Stalking Horse APA is in the form of a credit bid, a cash pool of \$750,000, will be provided by the Stalking Horse Bidder for the benefit of the Applicant's estate, including costs of administration of the CCAA proceedings. The Administration Charge will continue to attach to the CCAA Cash Pool after Closing. In addition, \$575,000 of the Designated Amount has been allocated to the Monitor on behalf of the Applicant to conduct an orderly wind-down of the Applicant after Closing, and any remaining amounts following such wind-down will be transferred to the CCAA Cash Pool.

77. The DCL Group has concluded that the Stalking Horse APA is the highest and best initial offer received as part of the Pre-Filing Marketing Process, which was conducted by TM Capital.

78. The Stalking Horse Bidder has conducted extensive due diligence and has reviewed the VDR, the CIM, spoken with officers of the DCL Group and the DCL Group's financial and legal advisors. There is no due diligence condition or financing condition remaining in the Stalking Horse APA.

79. The DCL Group has determined that the Stalking Horse APA, which will be used as a floor for all future bids, will incentivize prospective bidders to submit further competitive offers for the Assets, including bidders who may be willing to continue operations at the Ajax Plant on a going concern basis.

80. The Stalking Horse APA is supported by the Pre-Filing ABL Agent/DIP Agent.

81. The Stalking Horse APA contains no break fee or expense reimbursement fee.

82. The Monitor has been in communication with TM Capital. I understand that approval of the Stalking Horse APA as a stalking horse bid is supported by the Monitor and the Monitor will provide further commentary on the Stalking Horse APA in the Second Report.

83. As a result, the Applicant believes that the approval of the Stalking Horse APA as a stalking horse bid – which will remain subject to higher or better offers in accordance with the Final Bidding Procedures described more fully below – will help maximize value for the Assets and will ultimately help maximize potential recoveries for the DCL Group’s various stakeholders.

V. THE FINAL BIDDING PROCEDURES

84. As described above, the Applicant is seeking the issuance of an Order to, in part, approve the Final Bidding Procedures to allow the DCL Group to solicit additional bids to the Stalking Horse APA for the sale of the Assets. An initial draft of the proposed Bidding Procedures requested to be approved by this Court was included at Tab 8 of the Application Record seeking the Initial Order. This was prior to the identification of the Stalking Horse Bidder. Following identification of the Stalking Horse Bidder, a revised form of bidding procedures as filed by DCL US in the Chapter 11 Proceeding – the Prior Bidding Procedures – was attached as Exhibit “F” to the Second Davido Affidavit. The proposed Final Bidding Procedures, reflecting the Global Settlement and certain clean up changes, is attached hereto as Exhibit “F”. The Applicant seeks approval of the Final Bidding Procedures. A blackline of the proposed Final Bidding Procedures to Prior Bidding Procedures is attached hereto as Exhibit “G”.

85. During the period from the commencement of these CCAA proceedings, TM Capital has continued to actively market the Assets, including outreach to over 150 potential bidders, and TM Capital and the DCL Group management team have continued to meet with potential

bidders. A number of parties have expressed an interest in the DCL Group and TM Capital, and the DCL Group management team continues to work with them to provide increased diligence access, management meetings and facility tours as the parties move toward the Qualified Bid deadline in the proposed Final Bidding Procedures of March 10, 2023. Potential bidders have been provided with copies of the Original Stalking Horse APA and the Prior Bidding Procedures, and the schedules to the Original Stalking Horse APA are posted in the VDR. Going forward, potential bidders will be provided with copies of the Stalking Horse APA and the Final Bidding Procedures.

86. Although TM Capital's marketing efforts have continued since the Filing Date, the objective of the Final Bidding Procedures is to maximize value to the DCL Group's stakeholders by formalizing a process which:

- (a) creates a floor offer against which all future bids will be assessed (via the Stalking Horse APA);
- (b) will enable the Applicant to conduct an additional marketing process over and above the Pre-Filing Marketing Process which culminated in the Stalking Horse APA;
- (c) will provide prospective purchasers additional time to conduct due diligence; and
- (d) confirms and finalizes a sale and marketing process for the Assets, thus encouraging prospective purchasers to submit their highest and best offer for the Assets.

87. A non-exhaustive description of the key terms of the Final Bidding Procedures is described below (capitalized terms not defined herein have the meaning ascribed to them in the Final Bidding Procedures):

Term	Description
Key Dates	<p>March 10, 2023 - The Bid Deadline. Bids and deposits are due by this date.</p> <p>March 12, 2023 - Qualified Bidders are to be: (a) identified and notified in writing that their bids are qualified; and (b) provided a schedule setting out the highest or otherwise best fully binding offer or offers for the Assets.</p> <p>March 13, 2023 - An auction will be completed (if necessary), allowing Qualified Bidders to compete to make the highest or otherwise best offer for the Assets or any portion thereof.</p> <p>March 16, 2023 - Anticipated date for hearings to be conducted in the United States and in Canada for the purpose of approving the sale of the Assets to the successful bidder(s).</p> <p>March 17, 2023 - Closing of the successful bid.</p>
Consultation Parties	In the exercise of their discretion under the Final Bidding Procedures, the DCL Group must consult with the Consultation Parties, being the Monitor, the Pre-Filing ABL Agent/DIP Agent and the UCC.
Potential Bidder Requirements	<p>Potential bidders:</p> <ul style="list-style-type: none"> (i) will be obligated to sign a confidentiality agreement; (ii) must show that they have the financial wherewithal to consummate a transaction; (iii) must provide a written commitment from the equity holder (if any) of the potential bidder acknowledging that it will be bound by the Final Bidding Procedures; and (iv) must show other evidence, as may reasonably be requested, to evaluate a bidder's fitness to participate in the Final Bidding Procedures process.
Qualified Bid Requirements	Potential bidders must submit a bid that meets specific criteria to be considered qualified. These criteria include, among other items,

	<ul style="list-style-type: none"> (i) stating which assets will be purchased and which liabilities are to be assumed; (ii) setting out the purchase price to be paid for the assets, including identifying any cash or non-cash components of the purchase price; (iii) meeting a minimum bid price, which is equal to the purchase price described in the Stalking Horse APA plus \$2,250,000¹; (iv) providing an asset purchase agreement with a redline comparing that agreement to the Stalking Horse APA; (v) identifying how certain employee obligations of the DCL Group are to be treated, including the treatment of collective bargaining agreements and multi-employer pension plans; (vi) acknowledging the as-is where-is nature of the transaction; and (vii) acknowledging that the bid is irrevocable unless and until a higher bid is accepted.
Deposit	Each bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors.
Modifications	The Final Bidding Procedures may be modified, in the DCL Group's reasonable business judgment, after consulting with various key stakeholders, including the Monitor, in a manner that will best promote the goals of the bidding process. The Final Bidding Procedures may also be modified to include terms and conditions which are consistent with customary terms or conditions typically associated with the sale of assets of this nature.
The Auction	The auction (if necessary) shall commence and continue until there is only one bid or aggregated bid for the Assets which produces the highest or otherwise best bid. The baseline bid at the auction shall be the highest or otherwise best qualified bid for the Assets (the " Baseline Bid ") as submitted by a Qualified Bidder prior to the commencement of the Auction. Bids over and above the Baseline Bid (i.e., overbids) will be accepted in rounds and

¹ The Minimum Overbid (as defined in the Final Bidding Procedures) has been increased to \$2,250,000 from \$250,000 to reflect the Transaction Fee, as provided for in the TM Engagement Letter, that will become payable to TM Capital upon closing of the sale, if the Stalking Horse Bidder is not the successful bidder.

	each round shall increase the total consideration payable for the Assets by an incremental amount that is not less than \$250,000 over and above bids submitted in prior rounds.
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88. Given the timeframe, transparency, and commercially reasonable nature of the proposed Final Bidding Procedures, the Applicant believes that the proposed process will allow for the expeditious and efficient sale of the Assets, will help the DCL Group identify additional prospective purchasers, and will help produce the highest or otherwise best available recoveries to affected stakeholders.

89. The Applicant further believes that the timeframe to complete the proposed Final Bidding Procedures is commercially reasonable and will provide prospective bidders with sufficient time to complete any due diligence required to identify and fully evaluate the Assets.

90. I understand the Monitor supports approval of the proposed Final Bidding Procedures and will provide further commentary on the proposed Final Bidding Procedures in the Second Report.

VI. CONCLUSION

91. Since the granting of the Initial Order the Applicant has acted in good faith and with due diligence to, among other things, stabilize the business, apprise its stakeholders of these CCAA proceedings and advance its restructuring efforts, in coordination with the broader DCL Group.

92. With the benefit of the relief described in this Affidavit, namely an Order approving the Stalking Horse APA and the proposed Final Bidding Procedures, the Applicant, with the assistance of the Monitor, will be able to continue pursuing its restructuring objectives for the benefit of a broad cross-section of the Applicant's stakeholders.

- 30 -

93. I swear this affidavit in support of the Applicant's motion for the relief as described above and in furtherance of the CCAA proceedings generally and for no other purpose.

SWORN remotely by Scott Davido, of the City)
 of New York, in the State of New York, before)
 me at the City of Brampton, in the Regional)
 Municipality of Peel, this 15th day of February,)
 2023, in accordance with O. Reg. 431/20,)
 Administering Oaths or Declaration Remotely.)



A commissioner for taking affidavits, etc.




Scott Davido

Nancy Ann Thompson, a Commissioner, etc.,
 Province of Ontario, for Blake, Cassels & Graydon LLP,
 Barristers and Solicitors. Expires July 13, 2024.

This is **Exhibit "A"** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

Court File No.

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION (the “**Applicant**”)

AFFIDAVIT OF SCOTT DAVIDO
(Sworn December 20, 2022)

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Court File No.

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION (the “**Applicant**”)

AFFIDAVIT OF SCOTT DAVIDO

(Sworn December 20, 2022)

I, Scott Davido, of New York City, in the State of New York, United States of America,
MAKE OATH AND SAY AS FOLLOWS:

I. Introduction

1. I am a Senior Managing Director at Ankura Consulting Group, LLC (“**Ankura**”). I have over 30 years of experience in senior executive management and financial/restructuring advisory roles and specialize in turnaround and restructuring initiatives, streamlining operations, implementing efficient financial controls, negotiating with creditors and equity investors, and advising management and boards of directors in financial distress and turnaround situations. I have also managed numerous in-court and out-of-court restructuring efforts, including those with multi-jurisdictional elements.

2. Ankura was engaged by DCL Corporation (the “**Applicant**”) and certain affiliates to provide restructuring advisory services beginning in August, 2022. I have been serving as a financial advisor to the Applicant and other members of the DCL Group (as defined below) since

that time. On November 16, 2022, I was appointed by the Applicant and other members of the DCL Group to serve as the Chief Restructuring Officer (“**CRO**”) for the DCL Group. As CRO, I am familiar with the Applicant’s business, day-to-day operations, and financial affairs. I perform my duties out of (i) the Applicant’s corporate headquarters at 1 Concorde Gate, Suite 608, Toronto, Ontario (the “**DCL Head Office**”), and (ii) Ankura’s office located in New York, New York in the United States.

3. In making this affidavit (the “**Affidavit**”), I have had discussions with current and former members of the Applicant’s senior management and the Applicant’s professional advisors and have relied, in part, on information and materials that the Applicant’s personnel and advisors have gathered, prepared, verified, and provided to me.

4. Accordingly, I have knowledge of the matters deposed to in this Affidavit. Where this Affidavit is not based on my direct personal knowledge, it is based on information and belief, and I verily believe such information to be true.

5. Over the last two years, the Applicant’s manufacturing business has experienced declining revenues and increased operating expenses due to a combination of (i) supply chain and workforce staffing challenges, (ii) increasing input costs, including a steep increase in energy prices resulting from, among several factors, the ongoing Russia-Ukraine conflict, (iii) lack of accessible liquidity, and (iv) volatile fluctuations in currency exchange rates. These challenges (together with company-specific business challenges) have resulted in deteriorating financial performance.

6. The Applicant requires relief under the *Companies’ Creditors Arrangement Act* (Canada) (“**CCAA**”) to stabilize its business and implement a court-supervised sale process for a going concern sale or restructuring of the Applicant’s business and assets in coordination with other

members of the DCL Group. The Applicant is of the view that seeking protection under the CCAA is in the best interest of its broad cross section of stakeholders, including creditors, employees, pensioners, suppliers and customers.

A. Nature of Application and Overview of Relief Sought

7. This application made under the CCAA (the “**Application**”) is brought in conjunction with a parallel proceeding commenced pursuant to chapter 11 of the United States Bankruptcy Code (the “**Chapter 11 Proceedings**”), by way of a voluntary petition filed on December 20, 2022, in the United States Bankruptcy Court for the District of Delaware (the “**U.S. Bankruptcy Court**”), by the Applicant’s U.S. based related parties:

- (a) H.I.G. Colors, Inc. (“**Colors**”);
- (b) H.I.G. Colors Holdings, Inc. (“**Holdings**”);
- (c) DCL Holdings (USA), Inc. (“**DCL Holdings**”) (formerly Lansco Holdings, Inc.);
- (d) DCL Corporation (USA) LLC (“**DCL USA LLC**”) (formerly Lansco Colors, LLC);
- (e) DCL Corporation (BP), LLC (“**DCL BP**”); and
- (f) Dominion Colour Corporation (USA) (“**DCC USA**”)

(collectively, “**DCL US**” and together with the Applicant and the Applicant’s other subsidiaries, the “**DCL Group**”).

8. This Application is filed in support of three requested orders:

- (a) the Initial Order, which the Applicant requests be granted on the first day hearing (the “**Filing Date**”);

- (b) should the Initial Order be granted, the Amended and Restated Initial Order, the request for which is to be heard at a hearing to be scheduled by the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) within 10 days from the date of the Filing Date (the “**Comeback Hearing**”); and
- (c) an order to approve certain bidding procedures for the business and assets of the Applicant and DCL US (the “**Bidding Procedures Order**”), the request for which is to be heard at a later date, to be scheduled by this Court, and coordinated with the date that the U.S. Bankruptcy Court hears a similar motion in the Chapter 11 Proceedings (the “**Bidding Procedures Hearing**”).

B. Initial Order

9. The relief requested by the Applicant in the requested Initial Order is limited to such relief the Applicant believes it will reasonably require in the initial 10-day period following the Filing Date and includes:

- (a) immediate relief in the form of a stay of proceedings;
- (b) a limited related party stay of proceedings in respect of certain inventory of DCL USA LLC located in Ontario (the “**DCL USA LLC Inventory**”);
- (c) the appointment of Alvarez & Marsal Canada Inc. (the “**Proposed Monitor**”) as monitor of the Applicant (in such capacity, when and if appointed, the “**Monitor**”);
- (d) approval of my appointment as chief restructuring officer pursuant to the terms of the engagement letter dated November 16, 2022 (the “**CRO Engagement Letter**”);

- (e) approval of the DIP ABL Credit Agreement (as defined below) for the provision of interim financing (“**DIP Financing**”) among Wells Fargo Bank, National Association, as the administrative agent (in such capacity, “**DIP Agent**”) and sole lead arranger and booker runner for on behalf of the lenders party thereto (the “**DIP Lenders**”), and the Applicant, DCL USA LLC and DCL BP, as borrowers, and the other members of the DCL Group, as guarantors, with permitted drawings being limited to what is reasonably necessary during the initial 10-day period following the Filing Date;
- (f) approval of a court-ordered charge (the “**DIP Charge**”) against the property of the Applicant, other than with respect to the Excluded Collateral (as defined below), in favour of the DIP Agent and DIP Lenders to secure the obligations under the DIP Financing and DIP ABL Credit Agreement;
- (g) authorization to make certain payments relating to wages, taxes and pension obligations, irrespective of whether such obligations arose prior to or after the Filing Date;
- (h) approval of the continued use of the Applicant’s Cash Management System (as defined below);
- (i) granting of a charge, in the maximum amount of \$175,000¹ over the Applicant’s property (excluding the HSBC Cash Collateral, as defined below) to secure payments of reasonable fees and disbursements incurred both prior to and after the Filing Date, of the Monitor, counsel to the Monitor and counsel to the Applicant (the “**Administration Charge**”);

¹ All currency references contained herein are to USD, unless otherwise indicated

- (j) granting of a charge, to the maximum amount of CAD\$1,000,000 over the Applicant's property (excluding the HSBC Cash Collateral) to secure the indemnification obligations of the Applicant in favour of the officers and directors of the Applicant (the "**Directors**") for any such liabilities as they may incur in these proceedings in their capacity as officers and directors (the "**Directors' Charge**"), to the extent such liability is not covered by existing directors' and officers' insurance;
- (k) approval of the US/Canada Intercompany Agreement (as defined below);
- (l) approval of the European Intercompany Agreement (as defined below);
- (m) granting of the Intercompany Charge (as defined below) over the Applicant's property (excluding the HSBC Cash Collateral) to secure the intercompany balances owing by the Applicant to DCL USA LLC;
- (n) authorization to serve the within application record to the Notice Parties (as defined below) as a means of providing notice of the Comeback Hearing and the Bidding Procedures Hearing; and
- (o) adoption of the Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters issued by the Judicial Insolvency Network to facilitate communications between this Court and the U.S. Bankruptcy Court.

C. Amended and Restated Initial Order

10. If this Court grants the Initial Order, the Applicant intends to return to this Court on notice to the Notice Parties to seek the issuance of an Amended and Restated Initial Order at the

Comeback Hearing. The additional relief requested in the proposed Amended and Restated Initial Order includes:

- (a) granting restructuring powers to the Applicant that will enable it to obtain a going concern solution with the assistance of the Monitor;
- (b) an increase in the quantum that the Applicant is able to borrow under the DIP ABL Credit Agreement to meet its working capital needs during the pendency of these proceedings;
- (c) extending the DIP Charge over the DCL USA LLC Inventory to secure the obligations of DCL USA under the DIP ABL Credit Agreement and related documents;
- (d) authorizing the Applicant to make certain pre-filing payments to critical vendors with the consent of the Monitor;
- (e) increasing the quantum of the Administration Charge to the maximum amount of \$1,100,000;
- (f) increasing the quantum of the Directors' Charge to the maximum amount of CAD\$1,700,000; and
- (g) approval, *nunc pro tunc*, of the retention of TM Capital Corp. ("**TM Capital**"), as investment banker and sale advisor, pursuant to the terms of the engagement letter dated September 6, 2022 between TM Capital and Colors, for and behalf of its subsidiaries including the Applicant (the "**TM Engagement Letter**").

D. Bidding Procedures Order

11. At the Bidding Procedures Hearing, the Applicant will seek the issuance of the Bidding Procedures Order approving the bidding procedures attached as Schedule “A” to the Bidding Procedures Order (the “**Bidding Procedures**”).

12. If the Applicant and DCL US have identified a stalking horse purchaser (a “**Stalking Horse Bidder**”), the Applicant will also file a motion seeking, among things, authorization from this Court to enter into a stalking horse asset purchase agreement (a “**Stalking Horse APA**”) with the Stalking Horse Bidder and that such motion be heard at the Bidding Procedures Hearing (the “**Stalking Horse Motion**”). The Applicant understands that if there is a Stalking Horse Bidder selected, DCL US intends file a similar motion to heard on the same date.

E. Affidavit Structure

13. This Affidavit is subdivided into three broad sections, each of which has a series of sub-sections:

- (a) the first section provides background on the commercial and financial operations of the DCL Group and the Applicant;
- (b) the second section discusses the financial challenges facing the DCL Group and the steps taken prior to seeking the relief hereunder to address those challenges; and
- (c) the third section discusses the key relief sought by the Applicant.

II. Background

A. Corporate History

14. The Applicant is incorporated under the laws of Ontario and the entity through which the DCL Group is headquartered. The Applicant results from a series of amalgamations and name changes, the most recent of which took place in April, 2022. A summary of such name changes and amalgamation activity for approximately the last 10 years is attached hereto as Exhibit “A”. The attached summary is a compilation of data taken from search results obtained from applicable governmental registries.

15. The Applicant can trace its roots back to a predecessor corporation initially incorporated in 1946. In 2005, the DCL Group acquired the Canadian-based Monteith Inc. (“**Monteith**”), which was one of the amalgamating entities that ultimately formed the Applicant.

16. The Applicant (through a predecessor corporation) acquired its UK operating subsidiary, DCL Corporation (Europe) Limited (“**DCL UK**”), in 2009 and its Dutch operating subsidiary, DCL Corporation (NL) B.V. (“**DCL NL**” and together with DCL UK the “**European Subsidiaries**”), in 2010. Neither European Subsidiary is proposed to be a debtor under the CCAA proceedings or the Chapter 11 Proceedings, nor in any insolvency proceeding in their respective jurisdictions. These entities are expected to operate in the normal course of business.

17. The Applicant also has a U.S. subsidiary, DCC USA, which as previously mentioned, will be a debtor in the Chapter 11 Proceedings.

18. The Applicant was acquired by its current owner in 2016, via a share purchase transaction between KNRV Investments Inc., as vendor (“**KNRV**”), Dominion Colour

Corporation (a predecessor entity to the Applicant) and Colour Acquisition Corporation, as purchaser.

19. In 2018, U.S. based Lansco Holdings, Inc. and Lansco Colors, LLC were acquired and added to the DCL Group. These entities changed their names to DCL Holdings (USA), Inc. and DCL Corporation (USA), LLC, respectively, in 2020.

20. In 2021, a manufacturing facility in Bushy Park, South Carolina, now housed in the corporate entity DCL BP, was also added to the DCL Group.

B. Corporate Organization

21. The Applicant is a direct wholly owned subsidiary of its U.S. parent, Colors, which is in turn a wholly owned subsidiary of Holdings. DCC USA and the European Subsidiaries are wholly owned subsidiaries of the Applicant.

22. Colors also wholly owns the U.S. based DCL Holdings and DCL BP. DCL Holdings wholly owns DCL USA LLC. All such entities are incorporated pursuant to the laws of Delaware.

23. Attached hereto as Exhibit “B” is a copy of the corporate chart of the DCL Group.

C. Business Overview of DCL Group

24. The DCL Group operates six manufacturing facilities throughout Canada, the U.S., the Netherlands and United Kingdom.

25. The DCL Group supplies pigments and dispersions to customers in three major market segments:

- (a) the coatings market (approximately 60% of the DCL Group’s sales);

- (b) the plastics market (approximately 25% of the DCL Group's sales); and
- (c) the specialty inks and digital printing market (approximately 10-15% of the DCL Group's sales).

26. In 2021, the DCL Group's sales revenue by region was split between the U.S. (50%), Europe (20%), East Europe/MEA (8%), Asia (12%) and other Americas (10%). Sales in Canada represent approximately 5%-7% of global sales for the DCL Group.

27. Principal customers of the DCL Group include AkzoNobel, Benjamin Moore, Sherwin Williams and PPG (with respect to coatings), Avient and Chroma (with respect to plastics) and Flint Group, Inx, DIC and Cabot (with respect to inks and digital printing).

28. The DCL Group has a diverse group of suppliers from a variety of jurisdictions and industry sectors. Key suppliers to the Applicant are discussed in greater detail below.

D. The Applicant's Business

29. The Applicant's operations are run out of three facilities located at (i) 199 New Toronto Street, Etobicoke, Ontario (the "**New Toronto Plant**"), (ii) 2597 Wharton Glen Avenue, Mississauga, Ontario (the "**Mississauga Plant**"), and (iii) 445 Finley Avenue, Ajax, Ontario (the "**Ajax Plant**"). In addition, the Applicant operates a distribution centre located at 435 Finley Avenue, Ajax, Ontario, which is adjacent to the Ajax Plant (the "**Ajax Distribution Centre**"). With respect to offices, the DCL Head Office, which as noted above, is located at 1 Concorde Gate, Suite 608, Toronto, Ontario, constitutes the global headquarters for the DCL Group. In addition, adjacent to the Mississauga Plant, the Applicant has offices and some manufacturing premises located at 2615 Wharton Glen Avenue, Mississauga, Ontario (the "**Mississauga Office**"). All of these facilities are currently operating. The Applicant owns the real property where the New Toronto Plant, Ajax Plant and Ajax Distribution Centre are located and leases the

property where the Mississauga Plant, DCL Head Office and Mississauga Office are located. The Mississauga Plant and Mississauga Office lease were acquired by the Applicant when it amalgamated with Monteith in April 2022.

30. The Ajax Plant, which focuses on the production of organics and CYMO², and the Ajax Distribution Centre employ approximately 80 employees. The Mississauga Plant has approximately 18 employees and focuses on the production of dispersions (i.e., the pigments suspended in liquid). The New Toronto Plant has approximately 62 employees and is known as the “Organic Plant & Lab”. Approximately 46 employees work out of the DCL Head Office.

31. The Applicant employs key members of the executive management team for the DCL Group, including the Vice Presidents for Supply Chain, Human Resources, Global Procurement, Information Technology, Finance, Sales and Marketing, Regulatory, and Research and Development. All such employees regularly work out of the DCL Head Office. The Chief Executive Officer and Interim Chief Financial Officer of each member of the DCL Group, however, work out of facilities in the U.S. As noted above, my time as CRO is split between the DCL Head Office and my office at Ankura in New York.

32. The Applicant also provides back-office support to each of the DCL Group operating entities.

33. It is intended that the Applicant and the rest of the DCL Group will continue operations as a going concern during these proposed CCAA proceedings.

² Cyan Magenta Yellow Overcoating

E. Intercompany Arrangements

34. As an integrated group, members of the DCL Group engage in a variety of intercompany arrangements, including the sale of finished goods inventory and the sharing of certain operational resources, management services and infrastructure.

35. In preparation for the commencement of these proceedings and as a condition of the DIP Financing, the Applicant and DCL USA LLC have formalized intercompany arrangements anticipated to be on-going between members of the DCL Group, including the Applicant, after the Filing Date, into two intercompany agreements: (i) an intercompany agreement between the Applicant and DCL USA LLC (the “**US/Canada Intercompany Agreement**”), and (ii) an intercompany agreement between the Applicant, DCL USA LLC and the European Subsidiaries (the “**European Intercompany Agreement**”, together with the US/Canada Intercompany Agreement, the “**Intercompany Agreements**”). A copy of the US/Canada Intercompany Agreement is attached hereto as Exhibit “C” and a copy of the European Intercompany Agreement is attached hereto as Exhibit “D”. The copies of the Intercompany Agreements are redacted to remove the pricing information due to its commercially sensitive nature. The Proposed Monitor, the Pre-Filing ABL Agent and the DIP Agent (as defined below) have received disclosures of the pricing information. Unredacted copies of the Intercompany Agreements can be provided to this Court on request.

36. The Intercompany Agreements formalize only those intercompany arrangements amongst members of the DCL Group that are anticipated to continue after the commencement of these proceedings and the Chapter 11 Proceedings.

(i) ***Transfer of Working Capital Assets to DCL USA LLC***

37. Pursuant to an agreement executed on December 15, 2021, and with an effective date of August 1, 2021, the Applicant agreed to sell all of the Applicant's non-Canadian customer sales contracts, and all business information related thereto, and all interests and benefits derived therefrom. Such agreement provided for an effective date of the sale of August 1, 2021. The consideration for this sale was at a fair market value price as determined by the parties in consultation with the DCL Group Tax Advisor (as defined below) (the “**Non-Canadian Contracts Purchase Price**”).³

38. Payment of the Non-Canadian Contracts Purchase Price was made from the proceeds of the Term Loan (as defined below) restructuring in December 2021 described in further detail below.

39. In addition, the Applicant agreed to sell finished goods inventory to DCL USA LLC from and after August 1, 2021, that is required to service the transferred non-Canadian customer sales contracts at an arm's length price as determined by the parties, in consultation with the DCL Group's Tax Advisors and consistent with the DCL Group's transfer pricing policy. Due to systems issues, the sales made to non-Canadian customer contracts were still recorded on the Applicant's books and records and not on DCL USA LLC's books and records from August 1, 2021 until June 30, 2022. However, such sales were made on behalf of DCL USA LLC and adjustments reflecting the applicable margins for inventory sales, for the period from August 1, 2021 until the fiscal year end of the Applicant and DCL USA LLC, were reflected in the tax returns of the Applicant and DCL USA LLC for fiscal year end March 31, 2022 on that basis.

³ The sale of the Applicant's customer sales contracts was a component of an overall restructuring of certain amounts of the Applicant's secured debt. Accordingly, additional information regarding these intercompany arrangements is discussed under the section below entitled “Secured Debt of the Applicant.”

The adjustments made were determined in consultation with the DCL Group Tax Advisor at pricing consistent with the DCL Group's transfer pricing policy.

40. The DCL Group resolved its system issues and effective July 1, 2022, the Applicant transferred to DCL USA LLC (i) third-party accounts receivables existing on July 1, 2022 relating to the Transferred Contracts⁴ (the “**July 1/22 Receivables**”), (ii) finished goods inventory existing on such date manufactured for DCL USA LLC's third-party customers (the “**July 1/22 Inventory**”), and (iii) substantially all its customer sales contracts with Canadian customers other than its third-party customer sales contracts relating to the Monteith business (the “**Non-Monteith Canadian Contracts**”).

(ii) Consideration for the July 1, 2022 transfers

41. In consideration for the sale of the July 1/22 Receivables, an entry was made in the books and records of the Applicant reflecting an intercompany receivable from DCL USA LLC to the Applicant in the amount of the book value of the July 1/22 Receivables.

42. The July 1/22 Inventory was sold at cost and an entry was made in the books and records of the Applicant reflecting an intercompany receivable from DCL USA LLC for such amount. Such entries are subject to adjustment, consistent with the DCL Group's transfer pricing policy.

43. The transfer of the Non-Monteith Canadian Contracts was not recorded on the Applicant's books and records on July 1, 2022. However, an entry will be recorded in such books and records in respect of such sale, reflecting an intercompany accounts receivable from DCL USA LLC to the Applicant, once the fair market value consideration is determined by the DCL Group Tax Advisor.

⁴ The accounts receivables transferred on the Applicant's and DCL USA LLC's books and records included both accounts receivable related to the Non-Monteith Canadian Contracts transferred on July 1, 2022 and also accounts receivable relating to the non-Canadian contracts transferred to DCL USA LLC on August 1, 2022, the latter due to systems issues that prevented the recording of the accounts receivables transfers until July 1, 2022.

44. The existing intercompany balances recorded on the books and records of the Applicant (the “**Intercompany Balances**”) relate primarily to (i) the July 1, 2022 transactions described above, evidencing receivables owing by DCL USA LLC to the Applicant and (ii) the amounts owing by the Applicant to DCL USA LLC for funding provided to the Applicant by DCL USA LLC. However, as noted above, the Intercompany Balances remain subject to adjustment, including in respect of the July 1, 2022 transactions.

45. The Applicant has also agreed to sell finished goods inventory to DCL USA LLC from and after July 1, 2022, required to service the Canadian non-Monteith customers at an arm’s length price calculated in accordance with the US/Canada Intercompany Agreement and consistent with the DCL Group’s transfer pricing policy.

(iii) Current intercompany finished goods inventory sales

46. As a result of the foregoing transactions, the Applicant now sells substantially all its finished goods inventory to DCL USA LLC, who then on-sells that finished goods inventory to their third-party customers, including those customers whose customer sales contracts were acquired by DCL USA LLC from the Applicant pursuant to the foregoing transactions.

47. The ongoing finished goods inventory sales by the Applicant to DCL USA LLC are reflected by way of book entries in the records of DCL USA LLC and the Applicant. Generally, these accounts are reconciled monthly, and are subject to adjustments from time to time pursuant to the DCL Group’s transfer pricing policy established in consultation with the DCL Group’s tax advisor, Grant Thornton LLP, an independent international accounting firm (the “**DCL Group Tax Advisor**”). The transfer pricing adjustments are reflected in the pricing schedules to the US/Canada Intercompany Agreement and any adjustments are to be reflected retroactively on the Applicant’s books and records.

(iv) *The US/Canada Intercompany Agreement*

48. The US/Canada Intercompany Agreement formalizes the intercompany arrangements that are anticipated to continue between the Applicant and DCL USA LLC during these proceedings. The US/Canada Intercompany Agreement sets out the arrangements related to (i) the sale of finished goods inventory by the Applicant to DCL USA LLC, (ii) the responsibility for the costs of shared services provided by each of the Applicant and DCL USA LLC, and (iii) the provision of intercompany funding by DCL USA LLC to the Applicant, and how the obligations related to such arrangements are to be paid or satisfied after the Filing Date.

49. The key terms with respect to the sale of finished goods inventory by the Applicant to DCL USA LLC as set out in the US/Canada Intercompany Agreement are as follows:

- (a) Substantially all of the finished goods inventory that are manufactured at the Ajax Plant and New Toronto Plant and certain finished goods inventory manufactured at the Mississauga Plant will be sold to DCL USA LLC.
- (b) Ownership of such finished goods inventory is transferred to DCL USA LLC at the time such inventory leaves the Ajax Plant or New Toronto Plant and is shipped to one of two Distribution Centres (as defined below) located in Ontario, or in the case of the finished goods inventory manufactured at the Mississauga Plant, when such inventory leaves the Mississauga Plant to be shipped to DCL USA LLC's third-party customers, and in all cases, at DCL USA LLC's cost.
- (c) One distribution centre is the Ajax Distribution Centre owned by the Applicant, while the other distribution centre (the "**Third-Party Distribution Centre**" and together with the Ajax Distribution Centre, the "**Distribution Centres**") is a warehouse owned by Pinnacle Storage & Services Ltd. ("**Pinnacle**"). The

inventory stored at the Ajax Distribution Centre is stored at no cost to DCL USA LLC. DCL USA LLC is responsible for all storage costs for the DCL USA LLC Inventory stored at the Third-Party Distribution Centre.

- (d) DCL USA LLC is responsible for arranging the shipment of the DCL USA LLC Inventory to third-party customers and/or to a distribution centre in the United States, or such other location as may be designated by DCL USA LLC from time to time, at DCL USA LLC's cost, including all related export and customs clearance and payment of any customs duties or fees related to such shipment reflecting DCL USA LLC as the exporter and importer of record.
- (e) With respect to the sale of finished goods inventory to DCL USA LLC produced by the Mississauga Plant, DCL USA LLC arranges for shipment of such DCL USA LLC Inventory at its cost to DCL USA LLC third-party customers, including all related export and customs clearance and payment of any customs duties or fees related to such shipment reflecting DCL USA LLC as the exporter and importer of record.
- (f) All sales of finished goods inventory by the Applicant to DCL USA LLC are to be at an arm's length price as determined in accordance with the US/Canada Intercompany Agreement and consistent with the DCL Group's transfer pricing policy.

50. Pursuant to the US/Canada Intercompany Agreement, DCL USA LLC will make "intercompany transfers" in accordance with the DIP Budget (as defined below). As part of its monthly reconciliation, the parties will allocate the intercompany transfers to one of four categories: first, for the cost of finished goods inventory purchases, second, for the payment for

net shared services costs, third, to fund payment of the DCL NL Supplier Invoices (as defined below), and fourth, to the provision of intercompany loans to the Applicant for the Applicant's operating and non-operating expenses, including professional fees and other costs associated with this proceeding. Such intercompany arrangements are discussed in greater detail below under the section entitled "Financing During the Process".

(v) ***The European Intercompany Arrangements***

51. The Applicant, DCL USA LLC and the European Subsidiaries have also formalized intercompany arrangements that are anticipated to continue during these proceedings. The European Intercompany Agreement sets out the arrangements related to (i) the sale of finished goods inventory from the European Subsidiaries to DCL USA LLC, (ii) the responsibility for the costs of shared services provided by the Applicant and DCL USA LLC to the European Subsidiaries and the cost of shared services provided by the European Subsidiaries to DCL USA LLC, and (iii) the terms of the provisions of intercompany funding between DCL USA LLC and the European Subsidiaries and how the obligations related to such arrangements as set out in the US/Canada Intercompany Agreement are to be paid or satisfied after the Filing Date.

52. As with the intercompany arrangements between DCL USA LLC and the Applicant, the intercompany arrangements as set out in the European Intercompany Agreement are to be conducted on an arm's length basis as determined by the parties, in consultation with the DCL Group Tax Advisor and consistent with the DCL Group's transfer pricing policy, as calculated and adjusted in accordance with the pricing schedules attached thereto.

53. Historically, the Applicant purchased inventory that was produced by the European Subsidiaries for sale to the Applicant's third-party customers. However, as a result of the sale of all of the Applicant's third-party customer sales contracts to DCL USA LLC (other than the

Canadian Monteith contracts), DCL USA LLC began to purchase the finished goods inventory produced by the European Subsidiaries in order to service DCL USA LLC's customers, including those acquired from the Applicant.

54. Despite no longer purchasing finished goods inventory from the European Subsidiaries, the Applicant expects to continue to provide certain shared services to the European Subsidiaries during these proceedings. Although the proportionate share of the cost of those shared services provided to the European Subsidiaries will be charged to the European Subsidiaries, these costs will be paid and satisfied by DCL USA LLC because the European Subsidiaries are captive manufacturers.

55. The Applicant continues to pay the invoices of one of DCL NL's suppliers of raw materials (the "**DCL NL Supplier Invoices**") due to the technical issues with DCL NL's access to certain foreign currency accounts to pay this supplier. Prior to the invoice due date, DCL USA LLC will advance funds to the Applicant to pay the amounts owed under the DCL NL Supplier Invoices and the Applicant then pays the DCL NL Supplier Invoices to the supplier on DCL NL's behalf. Going forward, the DCL Group is hoping to address the issues preventing DCL NL from paying the supplier directly.

F. Cash Management System

56. The Applicant's cash management system, including the collection, transfer and disbursement of funds (the "**Cash Management System**"), is administered by the Applicant's treasury department at the DCL Head Office.

57. The Cash Management System has several functions comprising: (a) collection of accounts receivable, both from third parties and in connection with intercompany sales to DCL USA LLC; (b) disbursements to fund payroll, capital expenditures, maintenance costs and

payments to inventory vendors and other service providers; and (c) other intercompany cash transfers among DCL US, DCL NL and DCL UK.

58. The Applicant utilizes 17 bank accounts (collectively, the “**Bank Accounts**”), of which, 15 are held at HSBC Bank Canada (“**HSBC Canada**”), and two are held at Wells Fargo Bank, N.A., Canadian Branch (“**Wells Fargo Canada**”). The Bank Accounts hold funds in various currencies, including CAD, USD, GBP, EUR and JPY.

59. An overview of the Bank Accounts is as follows:

- (a) four disbursement accounts held with HSBC Canada, denominated in CAD, USD, EUR, and GBP (collectively the “**HSBC Disbursement Accounts**”). The HSBC Disbursement Accounts are funded via intercompany cash transfers from DCL USA LLC;
- (b) one CAD payroll account held with HSBC Canada (the “**CAD Payroll Account**”), which is funded either from the CAD HSBC Disbursement Account or via intercompany cash transfers from DCL USA LLC as needed to fund payroll disbursements. The Applicant utilizes a third-party payroll services provider, ADP Canada Co., to administer its payroll;
- (c) five receipt accounts held with HSBC Canada, denominated in CAD, USD, EUR, GBP and JPY (collectively the “**HSBC Receipt Accounts**”). The HSBC Receipt Accounts are used to collect cash related to intercompany receivables⁵;
- (d) two receipt and disbursement accounts held with HSBC Canada, denominated in CAD and USD (collectively the “**Monteith Accounts**”) are used to collect

⁵ The Applicant also currently collects cash from certain third-party customers on behalf of DCL USA LLC and transfers the funds to DCL USA LLC bank accounts held with Wells Fargo Canada on a weekly basis. The Applicant is seeking to move these customers into direct pay into the DCL USA LLC Wells Fargo accounts.

customer receipts and issue disbursements as it relates to activities of the Mississauga Plant;

- (e) two savings accounts are held with HSBC Canada, denominated in CAD and USD which hold negligible balances and have minimal activity;
- (f) one restricted CAD account (the “**CAD Cash Collateral Account**”) is used as cash collateral for two letters of credit issued by HSBC Canada for the benefit of the Minister of Environment and Climate Change (the “**MECC**”) and the Town of Ajax in connection with certain environmental remediation obligations related to the Ajax Plant. The restricted funds total CAD\$382,000; and
- (g) two receipt and disbursement accounts held with Wells Fargo Canada denominated in CAD and USD (collectively the “**Wells Fargo Canada Accounts**”). The Applicant is in the process of transitioning certain of its HSBC Canada accounts to the Wells Fargo Canada Accounts, such that the Wells Fargo Canada Accounts will become the Applicant’s primary operating accounts. Following that transition, certain of the Bank Accounts held at HSBC Canada will be closed.

60. On a weekly basis, the Applicant’s treasury department reviews near term cash requirements, cash receipts, residual account balances and availability under the Applicant’s borrowing base. Based on this review, the cash required to fund disbursements, in either CAD or USD, is either drawn on the ABL Credit Facility (as defined below), or is transferred from DCL USA LLC.

61. “WellsOne Commercial Cards” are credit cards issued to specific employees of the Applicant for business purposes. The monthly credit card bills are paid through pre-authorized debit transactions under the CAD denominated Wells Fargo Canada Account.

62. As of the business day ending December 16, 2022, the Applicant’s net cash balance was approximately \$1.7 million. This balance will be subject to adjustments for any amounts that were disbursed but not cleared by the Applicant’s bank accounts at the end of the business day.

G. Financial Position

63. Copies of the Applicant’s most recent set of audited financial statements on a consolidated basis and the Applicant’s separate-entity unaudited financial statements for the year ended March 31, 2022 are attached hereto as Exhibit “E”.

H. Assets

64. The DCL Group has audited financial statements on a consolidated basis as of its fiscal year end, of March 31, 2022. The Applicant’s assets, as disclosed in its separate-entity unaudited financial statements as of March 31, 2022, consist of the following:

Current Assets:.....	(in thousands)
Cash and cash equivalents.....	\$ 1,559
Receivable from affiliates	\$ 35,231
Receivables, net.....	\$ 23,104
Inventories, net.....	\$ 45,382
Prepays/Other current assets	\$ 346
 Total current assets.....	 <u>\$ 105,622</u>
 Capital	 <u>\$ 57,848</u>
 Total assets	 <u>\$ 163,470</u>

The foregoing figures represent the book value of the Applicant's assets and do not reflect any adjustments to intercompany balances that were recorded subsequent to the Applicant's fiscal year end.

I. Liabilities

(i) *Secured Debt of the Applicant - Generally*

65. As of July 31, 2022, the DCL Group, collectively, had existing secured indebtedness in the approximate aggregate amount of \$130 million pursuant primarily to a term loan and a revolving credit facility, discussed below.

(ii) *Term Loan*

66. Pursuant to a credit agreement dated as of April 6, 2018 (as amended, the “**Term Credit Agreement**”), Colors, Dominion Color Corporation (now the Applicant) (in such capacity the “**Canadian Term Loan Borrower**”), and Lansco Holdings Inc. (now DCL Holdings) (in such capacity, the “**US Term Loan Borrower**”), and Virtus Group, LP, as administrative agent (the “**Original Term Loan Agent**”) for the lenders party thereto (collectively, the “**Term Loan Lenders**”), entered into a credit facility for a term loan (as amended, the “**Term Loan**”).

67. On June 3, 2022, the Original Term Loan Agent resigned as administrative agent and Delaware Trust Company was appointed as the successor agent for the Term Loan (the “**Term Loan Agent**”). As noted below, Colors was added as a borrower under the Term Loan as part of the internal debt restructuring implemented by the DCL Group in December 2021.

68. Pursuant to the Term Credit Agreement, the DCL Group had access to an initial commitment and a delayed draw commitment of \$99 million and \$25 million, respectively, for

total commitments of \$124 million; however, the delayed draw commitment was never utilized. The US Term Loan Borrower used its portion of the proceeds of the Term Loan, being \$21.6 million, in connection with the acquisition of what is now DCL USA LLC. The Canadian Term Loan Borrower used its portion of the proceeds of the Term Loan, being \$77.4 million, to refinance existing term debt it had at the time.

69. Pursuant to a fourth amendment to credit agreement dated as of December 16, 2021, Colors was added as borrower under the Term Credit Agreement and Term Loan (Colors, together with DCL Holdings and the Applicant, the “**Term Loan Borrowers**”) and the initial Term Loan commitments were increased by an additional \$67 million to facilitate a loan to Colors. At this time, the Applicant owed approximately \$78.5 million under the Term Loan while DCL Holdings owed approximately \$11.9 million.

70. In order to achieve certain tax efficiencies, the proceeds of such Colors’ \$67 million loan were used to implement a restructuring of the Term Loan. Such restructuring resulted in a \$67 million paydown of the Term Loan owed by the Applicant pursuant to the following series of transactions:

- (a) Colors made a contribution to DCL Holdings in an amount equal to the Non-Canadian Contracts Purchase Price;
- (b) DCL Holdings contributed the same amount to DCL USA LLC;
- (c) DCL USA LLC used the proceeds of that contribution to pay the Applicant the Non-Canadian Contracts Purchase Price;
- (d) Colors used the remaining amount to make a contribution of legal stated capital to the Applicant; and

- (e) the Applicant used the proceeds of the Non-Canadian Contracts Purchase Price and the capital contribution from Colors (for a total of \$67 million) to pay down the outstanding obligations owed by the Applicant under the Term Loan, by such amount.

71. As of July 31, 2022, the total principal due on the Term Loan by the DCL Group was approximately \$90.5 million. Approximately \$11.6 million was owing by the Applicant/Canadian Term Loan Borrower, approximately \$11.9 million was owing by DCL Holdings/US Term Loan Borrower and approximately \$67 million was owing by Colors.

72. The obligations owing by the Applicant to the Term Loan Agent and Term Loan Lenders are secured by security granted against the personal and real property of the Applicant and registered under the Ontario personal property security system and the land titles registration system (the “**Term Loan Security**”).

(iii) ABL Cap

73. The Term Loan contains a negative covenant that the Term Loan Borrowers shall not exceed indebtedness under their revolving credit facility in an aggregate principal amount of \$35 million (as may be amended by waiver letters from the Term Loan Agent, the “**ABL Cap**”).

74. On June 30, 2022, the Applicant received waiver letters regarding the ABL Cap from the Term Loan Agent. The waiver letters waived certain defaults in connection with the draws made in excess of \$35 million and allowed borrowings under the ABL Credit Facility up to a maximum principal amount of \$40 million and permitted continued use of the Term Loan on certain conditions, but, the waivers are limited in time. On December 6, 2022, the Term Loan Agent provided a further waiver allowing borrowings up to \$42.5 million but such waivers

expired on December 13, 2022. The Applicant understands that the Term Loan Agent is not prepared to continue to provide such waiver letters for an indefinite period of time.

75. The Applicant and its advisors have been in frequent contact with the Term Loan Lenders regarding the Applicant's restructuring efforts including matters relating to the proposed DIP Financing, which is discussed below.

(iv) Wells Fargo – ABL Credit Facility

76. The Applicant entered into an asset-based lending agreement (as amended, the “**ABL Credit Agreement**”) dated April 25, 2018 for the provision of a revolving lending facility (the “**ABL Credit Facility**”) among Wells Fargo Bank, National Association, as administrative agent (in such capacity, the “**Pre-Filing ABL Agent**”) and as sole lead arranger and bookrunner on behalf of certain lenders party thereto (the “**Pre-Filing ABL Lenders**”), and Dominion Color Corporation and Monteith (now amalgamated to become the Applicant), Lansco Colors, LLC (now DCL USA LLC), and Lansco Holdings, Inc. (now DCL Holdings) and Colors and certain other subsidiaries of Colors as guarantors. Pursuant to subsequent amendments to the ABL Credit Agreement, DCL BP was added as a borrower (together, with DCL USA LLC the “**US ABL Borrowers**”, and together with the Applicant, the “**ABL Borrowers**”).

77. The maximum aggregate principal commitment under the ABL Credit Facility available to the DCL Group is \$55 million (the “**Maximum Credit**”). However, pursuant to the terms of the ABL Credit Facility, the Applicant's borrowing capacity is restricted by its borrowing base comprised of eligible accounts receivable and inventory (the “**Canadian Borrowing Base**”). The borrowing base of the US ABL Borrowers similarly restricted their borrowing capacity.

78. As referenced above, the DCL Group was further restricted by the ABL Cap. Accordingly, the maximum principal amount under the ABL Credit Facility was capped at \$40

million despite the fact that the respective borrowing bases of the ABL Borrowers could support aggregate borrowing in excess of \$40 million. The total net balance due on the ABL Credit Facility was typically at or near the ABL Cap and substantially all amounts were drawn by the Applicant.

79. On November 22, 2022, the DCL Group issued a Notice of Default under the Credit Agreement and Limited Waiver Request to the Pre-Filing ABL Agent (the “**Notice of Default**”) notifying the Pre-Filing ABL Agent of certain Events of Default (as defined in the ABL Credit Agreement) that have occurred and are continuing under the ABL Credit Agreement, including with respect to the Applicant’s non-compliance with the Canadian Borrowing Base, and requesting a temporary waiver of the condition in the ABL Credit Agreement requiring that no Default or Event of Default (as defined in the ABL Credit Agreement) shall have occurred or be continuing on the date of any extension of credit. A copy of the Notice of Default is attached hereto as Exhibit “**F**” hereto.

80. Pursuant to a letter dated November 22, 2022⁶, the Pre-Filing ABL Agent issued a reservation of rights letter in respect of those Events of Default, which confirmed that any election by the Pre-Filing ABL Lenders to provide any further loans would not constitute a waiver of the Events of Default. A copy of the reservation of rights letter is attached hereto as Exhibit “**G**”.

81. As of December 16, 2022, in cooperation with the Pre-Filing ABL Agent, the DCL Group restructured the ABL Credit Facility to make DCL USA LLC the sole party with borrowings under the ABL Credit Facility.

⁶ The reservation of rights letter contains a typo in the date and inadvertently references “2020” instead of “2022”.

82. Following certain preliminary steps, DCL USA LLC drew approximately \$40 million on the ABL Credit Facility. It then made an intercompany payment to the Applicant of that amount. The Applicant then used such amount to pay off the amount the Applicant owed under the ABL Credit Facility, reducing its obligations to \$0. As of quarter ending September 30, 2022, DCL USA LLC owed a net intercompany receivable to the Applicant in the approximate amount of \$40.9 million, with such amount subject to adjustments consistent with the DCL Group's transfer pricing policy and fair market value consideration for the transfer of Non-Monteith Canadian Contracts. As a result of this transaction, and subject to adjustments, the net receivable owing to the Applicant by DCL USA LLC was reduced to approximately \$0.9 million. This intercompany obligation is unsecured.

83. The primary purpose of the transaction was to pay down and align the indebtedness under the ABL Credit Facility with the party that has ownership of the DCL Group's primary working capital assets. In addition, DCL USA LLC had guaranteed the Applicant's obligations under the ABL Credit Facility and the Applicant's borrowings under the ABL Credit Facility were used to support the operations of the entire DCL Group. As noted above, DCL USA LLC owed the Applicant a net amount of approximately \$40.9 million. Completing the transaction was also a precondition to securing the required DIP Financing.

(v) ***ABL Pre-Filing Security Opinion***

84. The Proposed Monitor has obtained an independent legal opinion (the "**ABL Pre-Filing Security Opinion**") from its independent legal counsel, Osler, Hoskin and Harcourt LLP confirming the validity and enforceability of the security held by the Pre-Filing ABL Agent (the "**ABL Pre-Filing Security**") in Ontario subject to the standard assumptions, qualifications and limitations set out in the ABL Pre-Filing Security Opinion. I understand the Proposed Monitor

will report on the ABL Pre-Filing Security and the ABL Pre-Filing Security Opinion in a report to be filed with this Court by the Proposed Monitor (the “**Pre-Filing Report**”).

(vi) ***Intercreditor Agreement – Term Loan and ABL Credit Facility***

85. On April 25, 2018, the Pre-Filing ABL Agent and the Original Term Loan Agent entered into an Intercreditor Agreement (as amended, the “**Intercreditor Agreement**”) a copy of which is attached hereto as Exhibit “**H**”.

86. Pursuant to the Intercreditor Agreement, the parties set out the priority of their respective security interests and enforcement rights under the ABL Credit Agreement and the Term Loan.

87. In summary, the Pre-Filing ABL Agent has priority to the DCL Group’s working capital assets, referred to in the Intercreditor Agreement as “**ABL Priority Collateral**” and the Term Loan Agent has priority to all other real and personal property of DCL Group that does not include working capital assets, referred to as “**Term Loan Priority Collateral**”. The Term Loan Agent has been granted second ranking security interest in the ABL Priority Collateral and the Pre-Filing ABL Agent has been granted a second ranking security interest in the Term Loan Priority Collateral, other than DCL Group’s owned real property and standard miscellaneous excluded assets as set out in the ABL Credit Agreement over which the Pre-Filing ABL Agent does not have any security.

(vii) ***Other Secured Creditors***

88. The Applicant has the following additional secured creditors who have registered security against some or all of its assets:

- (a) HSBC Bank with collateral limited to the Applicant’s rights in certain cash collateral in a deposit account with the bank (the “**HSBC Cash Collateral**”); and

- (b) De Lage Landen Financial Services Canada Inc. with collateral limited to personal property described by vehicle identification numbers (the “**De Lage Landen Collateral**”).

(collectively, the “**Other Secured Creditors**”).

89. In addition, there is a registration in favour of Citibank Europe PLC (“**Citibank**”) in respect of certain receivables owing to the Applicant from Axalta Inc. (“**Axalta**”) pursuant to a supply chain finance arrangement with the Applicant, Citibank and Axalta described below. A summary of the *Personal Property Security Act* registrations against the Applicant in Ontario is attached hereto as Exhibit “**I**” (the “**PPSA Registrations**”).

(viii) Supply Chain Finance Arrangements

90. The Applicant entered into supply chain finance arrangements with two financial institutions to assist the Applicant with processing the accounts receivables arising from the sale of products to certain of its third-party customers:

- (a) a Master Accounts Receivable Purchase Agreement with BNP Paribas Dublin Branch (“**BNP**”) dated February 5, 2014, covering the receivables owing from PPG Industries, Inc. and its subsidiaries (collectively, “**PPG**”); and
- (b) a Supplier Agreement with Citibank dated December 2, 2020 relating to receivables owing from Axalta (“**Citibank SCF Arrangement**”, and together with the BNP SCF Arrangement, the “**SCF Arrangements**”).

91. Under the SCF Arrangements, BNP and Citibank act as the Applicant’s respective supply chain finance service providers (the “**SCF Providers**” and individually, a “**SCF Provider**”). The SCF Arrangements enable the Applicant’s customers, Axalta and PPG, to upload invoices to the

applicable SCF Provider's system, which is deemed to constitute an offer to sell the applicable receivables by the Applicant to the SCF Providers at a discounted price (the "**Discount Offer**"). The SCF Providers accept such Discount Offer by depositing the discounted purchase price in the respective bank accounts as designated by the Applicant. The SCF Arrangements characterize these transactions as "true sales" since the SCF Arrangements provide that all right, title and interest in the accounts receivables associated with each Discount Offer transfer to the SCF Provider when the discounted offer price is deposited and the Applicant receives the funds.

92. As all of the Applicant's non-Monteith customer contracts have been transferred to DCL USA LLC, to my knowledge there are no outstanding receivables owed by PPG or Axalta to the Applicant, except for approximately net \$240,000 receivables owing from Axalta for the purchase of products from the Monteith business, none of which are currently designated or subject to the Citibank SCF Arrangement.

93. With respect to the BNP SCF Arrangement, the Pre-Filing ABL Agent issued a release letter dated August 1, 2018, with respect to the receivables purchased under the BNP SCF Arrangement. The Applicant has not been able to locate a similar release for the Citibank SCF Arrangement but as noted above no receivables of the Applicant are currently subject to the SCF Arrangements.

94. Members of the DCL Group in the U.S. have similar arrangements with other financial institutions. The DCL Group does not control the amount of receivables sold under these types of arrangements. Accordingly, the DCL Group does not have a formal mechanism to determine the historical level of activity. In the case of the Applicant, as noted above, none of their limited third-party receivables are currently subject to the SCF Arrangements.

95. Under the BNP SCF Arrangement, the DCL Group may terminate the arrangement at any time and with immediate effect upon notice to BNP and PPG will no longer be permitted to designate any accounts receivables as Discount Offers.

96. Under the Citibank SCF Arrangement, the DCL Group may terminate the arrangement for any reason upon 30 days' written notice to Citibank.

(ix) *Environmental Obligations - Generally*

97. The Applicant's operations in Ontario are compliant with all regulatory requirements to maintain community and employee safety.

98. As referenced above, the Applicant owns the Ajax Plant and the New Toronto Plant. Over the normal course of the Applicant's operations, various environmental obligations associated with the property, plant and equipment have arisen in connection with the Ajax Plant and New Toronto Plant. In that regard, as of March 31, 2022, the Applicant recognized an asset retirement obligation on its financial statements in the amount of approximately \$4.5 million with respect to both plants. This amount represents an estimate of the future environmental and clean-up expenditures required to remediate the Ajax Plant and the New Toronto Plant.

99. The indoor air at the Ajax Plant and New Toronto Plant has been subject to testing which has evidenced that the environmental circumstances at the two plants do not pose any concerns regarding public health.

(x) *Environmental Obligations - Ajax Plant*

100. Both the soil and groundwater at the Ajax Plant were historically contaminated with metals and petroleum hydrocarbons. The site was remediated in accordance with the Province of Ontario's environmental legislation in 2015 through a combination of soil excavation and the

completion of a risk assessment. The Record of Site Condition confirming completion of the remediation process was filed with the MECC in 2015 by the Applicant.

101. Ongoing risk management measures include a shallow groundwater collection system to facilitate groundwater containment, a permanent extraction well to facilitate long-term intermediate groundwater containment, and a cap on the site to prevent vapour intrusion into buildings. A groundwater monitoring program is also in place. The Applicant expects to spend approximately \$22,000 per year in connection with these risk management measures associated with the Ajax Plant. These risk management measures will be required indefinitely to maintain control of the contaminants present in the groundwater of the Ajax Plant and to satisfy the Applicant's compliance obligations. Furthermore, long-term expenditures for water treatment, storage tank decommissioning and the removal of hazardous materials are required.

102. In aggregate, the environmental expenditures associated with the on-going operations of the Ajax Plant over the next 25 years is approximately \$1.2 million. As per above, the Applicant is also required to maintain one restricted CAD bank account to hold cash collateral in respect of two letters of credit issued by HSBC Canada, for the benefit of the MECC and the Town of Ajax.

(xi) *Environmental Obligations - New Toronto Plant*

103. The site on which the New Toronto Plant is located is contaminated by metals from historical pigment operations. Further contamination was discovered due to the impact of volatile organic compounds that were released from various other properties in the area of the New Toronto Plant. The MECC has not commenced any regulatory action or imposed any remediation requirements on the Applicant at this time. However, the asset retirement obligation currently attributable to the New Toronto Plant is approximately \$3.3 million.

(xii) *Sponsor Note*

104. Pursuant to an unsecured Sponsor Subordinated Promissory Note dated April 26, 2019, the Applicant and DCL Holdings are indebted to H.I.G. Dominion, LLC (“**Dominion**”) in the initial principal amount of \$5 million (the “**Sponsor Note**”). Dominion is the sole shareholder of Holdings, making it the indirect majority shareholder of DCL Group. Pursuant to an Amended and Restated Sponsor Subordinated Promissory Note dated July 31, 2021, the principal amount of the Sponsor Note was increased to \$9.1 million. Dominion agreed that the Sponsor Note is to be treated as subordinated indebtedness, and junior in right of payment to the Term Loan and the ABL Credit Facility. The proceeds of the Sponsor Note were used for working capital and general corporate purposes amongst the DCL Group. As of March 31, 2022, the total amount of liabilities under the Sponsor Note was \$9.8 million.

(xiii) *Other Intercompany Liabilities*

105. The Applicant also has an intercompany loan that it owes to Colors. As of March 31, 2022, the balance payable to the intercompany loan was approximately CAD\$8.9 million. This intercompany loan has not been formally documented.

106. In addition to the intercompany accounts described above between the Applicant and DCL US, the Applicant owes DCL UK approximately \$1.8 million as of September 30, 2022.

(xiv) *Earnout Obligations*

107. As noted above, the Applicant was acquired by the Colors corporate group in September 2016. As part of the share purchase agreement, KNRV, the vendor, is eligible to receive a one-time cash payment from the Applicant of \$13.1 million less certain amounts (the “**Pension Remediation Amount**”) incurred by the Applicant in connection with remediating any solvency

deficit related to the Hourly Plan and the Salaried Plan (each as defined below) (the “**Pension Earn Out**”). The Applicant had until November 15, 2022, to deliver a report of the Applicant’s calculation of the Pension Remediation Amount.

108. On November 14, 2022, the Applicant delivered a report containing calculations for the Pension Remediation Amount and Pension Earn Out. The Pension Earn Out obligation was CAD\$9,822,000. On November 18, 2022, KNRV issued a letter accepting the Applicant’s calculations for the Pension Remediation Amount and Pension Earn Out. KNRV proceeded to request payment for the Pension Earn Out within 5 business days. The Applicant has not made any payments to KNRV for the Pension Earn Out as it does not have resources to make such payments while maintaining its operations. The Pension Earn Out obligation of CAD\$9,822,000 is an unsecured liability.

(xv) Trade Creditors

109. The Applicant has approximately \$11.9 million of third-party trade and vendor liabilities as of the week ended December 9, 2022. Approximately \$2.2 million, or approximately 30% of the Applicant’s trade payables, is overdue by 90 days. The Applicant’s key critical vendors include Unique Organics (largest supplier of organics and critical products), Supreet Chemicals (supplier for raw materials for organics), Elementis Chromium (primary supplier of chromium for CYMO) and Hammond Group Inc. (primary supplier of lead for CYMO).

(xvi) Outstanding Litigation

110. The Applicant is a defendant in certain named litigation proceedings in Ontario, or the subject of threatened litigation, as more particularly summarized in the chart attached hereto as

Exhibit “J” (the “**Outstanding Litigation**”).⁷ Outstanding Litigation relates to employment matters as well as commercial disputes. The Applicant denies all liability with respect to such matters and the Applicant does not view any of the Outstanding Litigation as material.

(xvii) Priority Statutory Liabilities

111. The Applicant has maintained or paid its obligations for payroll, source deductions, current pension liabilities, and HST, and is not in arrears in respect of any of these matters.

J. Employees of the Business

112. The Applicant’s headcount is approximately 206 staff, of which 89 are active hourly employees, 101 are active salaried employees, two are engaged on a contract basis and an additional 14 employees that are currently on leave with the Applicant. Substantially all of the Applicant’s employees are based in Canada.

113. The Applicant entered into a collective bargaining agreement with Teamsters Chemical, Energy and Allied Workers (Local Union No. 1979) (the “**Teamsters**”) effective from March 19, 2021 to March 18, 2024 (the “**Collective Bargaining Agreement**”).

114. The Collective Bargaining Agreement is applicable for employees of the Ajax Plant and the New Toronto Plant. Currently, there are approximately 75 to 77 unionized hourly and salaried workers.

115. The Applicant’s payroll in Canada is approximately \$285,000 per week.

⁷ For arbitration matters with the Applicant’s union, the names of individual employees have not included been for privacy reasons. The union is represented by counsel and the name of counsel is included. For matters where a statement of claim has not been filed and litigation has only been threatened, the potential plaintiff’s name has also not been included and only counsel is referenced.

K. Pension Obligations and Employee Benefit Plans

116. The Applicant is the sponsor and administrator of four registered pension plans and provides certain additional employee benefits.

(i) *Defined Benefit Registered Pension Plans*

117. The Applicant is the sponsor and administrator of the following defined benefit registered pension plans:

- (a) The DCL Corporation Salaried Pension Plan, registered with the Financial Services Regulatory Authority of Ontario (“**FSRA**”) and the Canada Revenue Agency (“**CRA**”) under Registration No. 0989616 (the “**Salaried DB Plan**”).; and
- (b) The DCL Corporation Hourly Pension Plan, registered with FSRA and CRA under Registration No. 0401455 (the “**Hourly DB Plan**”).

118. The assets of the Salaried DB Plan are held by RBC Investor Services. As of December 31, 2021, the market value of invested assets totaled approximately CAD\$48.46 million. There was a total of 95 members, including 59 retirees, under the Salaried DB Plan as at the date of the last actuarial valuation report (December 31, 2021). The Salaried DB Plan was in a surplus position, in the amount of approximately CAD\$2.7 million, as of the date of the last actuarial valuation report. Salaried employees hired on or after January 1, 2005, are not eligible to join the Salaried DB Plan.

119. The assets of the Hourly DB Plan are also held by RBC Investor Services. As of December 31, 2021, the market value of invested assets totaled approximately CAD\$19.69 million. There was a total of 113 members, including 40 retirees, under the Hourly DB Plan as at

the date of the last actuarial valuation report (December 31, 2021). The Hourly DB Plan was in a surplus position, in the amount of approximately CAD\$1 million, as of the date of the last actuarial valuation report. Hourly employees hired on or after February 19, 2006, are not eligible to join the Hourly DB Plan. In addition, all employees participating in the Hourly DB Plan are unionized.

120. The Applicant intends to continue to make its regularly scheduled monthly pension contributions during the pendency of these proceedings to both the Salaried DB Plan and the Hourly DB Plan. The approximate amount of these monthly contributions is approximately CAD\$62,467 and CAD\$28,650, respectively.

(ii) Defined Contribution Registered Pension Plans

121. The Applicant is the sponsor and administrator of the following defined contribution registered pension plans:

- (a) Pension Plan for the Employees of Dominion Colour Corporation, registered with FSRA and CRA under Registration No. 1141860 (the “**Salaried DC Plan**”); and
- (b) Dominion Colour Corporation Hourly Pension Plan, registered with FSRA and CRA under Registration No. 1166354 (the “**Hourly DC Plan**”).

122. The assets of the Salaried DC Plan are held by Canada Life. As of December 31, 2021, the market value of invested assets totaled approximately CAD\$1.6 million. There was a total of 89 members of the Salaried DC Plan as of the date of the last annual information return (December 31, 2021), all of whom were hired on or after January 1, 2005 (the date of the closure of the Salaried DB Plan).

123. The assets of the Hourly DC Plan are held by Canada Life. As of December 31, 2021, the market value of invested assets totaled approximately CAD\$855,000. There was a total of 51 members of the Hourly Plan as of the date of the last annual information return (December 31, 2021), all of whom were hired on or after February 19, 2006 (the date of the closure of the Hourly DB Plan). In addition, all employees participating in the Hourly DC Plan are unionized.

124. The Applicant intends to continue to make its regularly scheduled monthly pension contributions of approximately CAD\$27,795 and CAD\$16,815 per month during the pendency of these proceedings to both the Salaried DC Plan and the Hourly DC Plan, respectively.

(iii) Monteith Pension Plan

125. The Applicant is also the sponsor and administrator of a legacy defined contribution plan for Monteith employees (the “**Monteith Pension Plan**”).

126. As of December 31, 2021, the market value of the invested assets totaled approximately CAD\$889,960. There was a total of 17 members, including 1 retiree, under the Monteith Pension Plan as at the date of the last information return (December 31, 2021).

127. On or about November 2022, the Applicant submitted a request to transfer the assets in the Monteith Pension Plan to the Hourly DC Plan or the Salaried DC Plan, as applicable, and the Applicant is awaiting FSRA approval for such proposed transfer. There are currently no monthly contributions to the Monteith Pension Plan.

(iv) Other Employee Benefit Plans

128. The Applicant provides active employees and their dependents with a suite of welfare benefits, including medical, dental, vision, life, accidental death and dismemberment, business travel insurance, short-term disability and long-term disability. All of these benefits are provided

by Manulife, with the exception of accidental death and dismemberment and business travel insurance which are provided by AIG. All of these benefits are insured, with the exception of short-term disability for salaried employees, which is self-insured and subject to adjudication by a third-party.

129. The Applicant provides retirees with a CAD\$5,000 life insurance benefit which is provided by Manulife.

130. The Applicant intends to continue to make its regularly scheduled monthly premium payments during the pendency of these proceedings in respect of the above-referenced employee benefit plans.

III. Need for Protection

A. Financial Distress

131. As noted above, the DCL Group is a fully integrated business enterprise. The DCL Group as a whole is facing significant financial challenges, including the Applicant.

132. The DCL Group's profitability depends, in large part, on the varying economic and other conditions of the markets they serve and the input prices from its cost of goods sold. Until the recent past several weeks, as the Applicant's financial issues have led to constraints on meeting customer demand, the demand for the DCL Group's products has remained within the range of expected forecasts. However, the DCL Group's input costs have increased due to several macro-economic circumstances. Heavy inflation has resulted in multiple rounds of input cost increases. The Applicant was also faced with supply chain issues due to substantial delays and restrictions in receiving raw materials, higher costs and a higher working capital requirement. In addition, the Applicant faced challenges with retaining and recruiting employees.

133. These factors have eroded the Applicant's gross margins and caused two of its three Canadian manufacturing plants to become unprofitable.

134. The Applicant has a number of past due payables with its trade creditors as a result of its attempts to manage cash flow and working capital. The Applicant was (and remains) unable to pay such obligations when they become due while also paying for critical operating costs.

135. As noted above, the Applicant is currently in default of various obligations under the ABL Credit Facility.

136. Also as noted above, a significant obligation with respect to the Pension Earn Out is also due to KNRV. The Applicant does not have the financial resources to pay such amount at this time, while also maintaining its operations.

137. Consequently, the Applicant is facing a liquidity crisis and urgently requires access to additional capital to meet its working capital needs, including to pay employees, vendors, utilities and the professional advisors required to address these issues.

B. Restructuring Advisors

138. Prior to making any final decision to commence formal insolvency proceedings, the DCL Group retained legal and financial advisors to assist it with: (i) assessing and evaluating the strategic options available to it, and (ii) taking the steps that would be necessary to effectuate formal insolvency proceedings in the U.S. and Canada, should such proceedings become necessary. The DCL Group retained King and Spalding LLP, as U.S. restructuring counsel, Blake, Cassels and Graydon LLP, as Canadian restructuring counsel, Ankura as financial advisor and TM Capital as investment banker and sale advisor. The Applicant also retained the Proposed Monitor, expressly for the purpose of taking the necessary steps to prepare for its potential role

as Monitor, should the Applicant elect to file for protection under the CCAA. As noted above, the relevant members of the DCL Group appointed me as CRO in November, 2022.

C. Key Employee Retention Plan

139. In light of the financial circumstances facing the DCL Group, the DCL Group encountered significant challenges in retaining its experienced employees, whose skills and experience are and would be critical in returning the DCL Group to financial health and maintaining operations at optimal levels. To address this issue, the board of directors of each member of the DCL Group concluded that it was in the best interest of each such entity, including the Applicant, to put in place a key employee retention plan (“**KERP**”) to facilitate the continued participation of senior management and other key employees in the business. The KERP provides incentives for these employees to remain in their current positions and ensures that they are properly compensated for their assistance in any restructuring process.

140. There are 10 employees employed by the Applicant who received KERP payments in the aggregate amount of approximately \$425,000. The payments were made in the weeks ending October 21, 2022, October 28, 2022 and December 2, 2022. Generally, the employees who received the KERP payments are required to continue their employment until March 31, 2023. If an employee resigns prior to that time or is terminated for cause, that employee is obligated to repay the amounts paid to them.

141. Prior to any payments being made, the KERP was provided to the Proposed Monitor for its review.

D. Pre-Filing Sale Process

142. Prior to making any final determination with respect to commencing formal insolvency proceedings, the DCL Group requested that TM Capital take steps to market its business and assets as a going concern (the “**Pre-Filing Sale Process**”). The Pre-Filing Sale Process commenced on or about October 4, 2022.

143. In connection with the Pre-Filing Sale Process, TM Capital:

- (a) prepared a list of the most likely potential strategic buyers, including parties in the U.S., Canada and internationally (“**Potential Bidders**”);
- (b) prepared and delivered a “teaser letter” inviting Potential Bidders to learn more about the potential acquisition opportunity;
- (c) prepared and delivered a “process letter” setting out the terms and conditions under which bids may be submitted and considered;
- (d) prepared and made available to those parties executing a non-disclosure agreement, a confidential information memorandum setting out detailed financial, operational and commercial information regarding the DCL Group; and
- (e) offered Potential Bidders the opportunity to make additional inquiries, meet with management and conduct onsite visits.

144. The Pre-Filing Sale Process has generated positive interest from Potential Bidders and the delivery of non-binding indications of interest. The DCL Group is encouraged by the level of interest, but concluded that it would not be possible to enter into and consummate a transaction with a Potential Bidder in sufficient time to address the DCL Group’s liquidity crisis without additional financing. TM Capital is continuing to engage with these parties and will continue as

part of the formal consolidated court-supervised sale process, to be approved by this Court in these proceedings and the US Bankruptcy Court in the Chapter 11 Proceedings.

145. As a result of the foregoing, the Applicant needs relief under the CCAA to: (i) prevent any creditor action, (ii) give the Applicant the opportunity to secure additional financing, and (iii) give the Applicant the opportunity to implement a going concern sales process that will maximize the value of the Applicant's business. With the commencement of the Chapter 11 Proceedings, and the integrated nature of the DCL Group's businesses, including its financing, it is necessary now to commence these proceedings in Canada to maintain coordination and stability while the Applicant seeks a going concern solution.

IV. Relief Sought

146. The Applicant will be seeking various forms of relief on the Filing Date and at the Comeback Hearing, including the following:

A. Related Party Stay of Proceedings

147. As noted above, the US/Canada Intercompany Agreement provides that DCL USA LLC will own the finished goods inventory located at Distribution Centres in Ontario. The value of this inventory is material. In order to ensure that this inventory is not subject to any precipitous creditor action, the Applicant requests that, in addition to the standard stay of proceedings in favour of the Applicant, this Court grant a narrow, related party stay of proceedings in favour of DCL USA LLC, staying any creditor action with respect to the DCL USA LLC Inventory. The Applicant believes such stay will help maintain the status quo and preserve value for the Applicant and its stakeholders by providing a stable and secure supply of inventory to DCL USA LLC in accordance with the terms of the US/Canada Intercompany Agreement.

148. The Applicant will be seeking this relief on the Filing Date.

149. All storage fees payable to Pinnacle in respect of its Distribution Centre are current and the Applicant and DCL USA LLC intend to keep such payments current during the pendency of these proceedings.

B. Appointment of the Monitor

150. The Applicant seeks the appointment of the Proposed Monitor, Alvarez & Marsal Canada Inc., as the Monitor. The Proposed Monitor has consented to act as the Monitor of the Applicant, subject to approval from this Court. A copy of its consent is attached hereto as Exhibit “K”.

C. Cash Management System

151. The Applicant is seeking the authority to continue to operate its Cash Management System, as described above, to maintain the funding and banking arrangements already in place for the Applicant. The continued operation of its Cash Management System will minimize disruption and enable the Applicant to continue operating in the normal course.

D. Financing During the Proceedings

152. Due to the integrated nature of the DCL Group’s business, the fact that DCL USA LLC owns the DCL Group’s material working capital assets and the necessity of obtaining DIP Financing on both sides of the border, the Applicant concluded that a single credit facility for providing financing for both DCL US and the Applicant would be most efficient and provide the most favourable terms.

(i) ***DIP ABL Credit Agreement***

153. The Applicant, together with DCL US, have substantially settled on the terms for the provision of the DIP Financing with the DIP Agent pursuant to a credit agreement in substantially the form of Exhibit “L” attached hereto (the “**DIP ABL Credit Agreement**”), which will permit the Applicant to continue its operations during these proceedings.

154. The DIP ABL Credit Agreement has substantially similar commercial terms as the existing ABL Credit Agreement. In essence, the DIP ABL Credit Agreement releases the suppressed availability under the ABL Credit Agreement as it will not be subject to the ABL Cap. As a result, the DCL Group’s borrowing capacity is increased from \$40 million to \$55 million, subject to the terms and conditions set out in the DIP ABL Credit Agreement.

155. The key features of the DIP ABL Credit Agreement are as follows:

- (a) Borrowers. The borrowers will be the Applicant, as the Canadian DIP borrower, and DCL USA LLC and DCL BP, as the US DIP borrowers (the “**US DIP Borrowers**” and together with the Applicant, the “**DIP Borrowers**”). The DIP Borrowers are jointly and severally liable for each other’s obligations under the DIP ABL Credit Agreement.
- (b) Creeping Roll-Up. Cash receipts received by the DIP Borrowers will first be applied to amounts outstanding under the ABL Credit Facility, while new borrowings will be made under the DIP ABL Credit Agreement. As the Applicant does not have any obligations owing under the ABL Credit Facility at this time, this roll-up feature does not impact the Applicant.
- (c) Guarantors. The Guarantors are Colors, DCL Holdings, DCL NL and DCL UK. The Applicant will guarantee the obligations of the US DIP Borrowers and the US

DIP Borrowers will guarantee the obligations of the Applicant. The Applicant's guarantee of the US DIP Borrowers' obligations was part of the consideration provided by the Applicant for DCL USA LLC's agreement to pay off the amounts owed by the Applicant under the ABL Credit Agreement.

- (d) Maximum Availability. The DIP Financing will consist of up to \$55 million of revolving loans provided to the US DIP Borrowers and the Applicant, subject to the borrowing bases of the applicable US DIP Borrower and the Applicant and other terms set out in the DIP ABL Credit Agreement. Amounts outstanding under the ABL Credit Facility for each borrower, also constitutes a dollar for dollar block on availability.
- (e) Prepayment. The DIP Financing may be prepaid at any time.
- (f) DIP Charge. The DIP Financing is to be secured by a DIP Charge against the "ABL Priority Collateral," subject only to the Administration Charge. The DIP Charge will have second priority behind the security granted to the Term Loan Agent in the Term Loan Priority Collateral. The DIP Charge will not attach to (i) the Applicant's real property or other collateral to which the ABL Pre-Filing Security does not attach, (ii) the HSBC Cash Collateral, and (iii) the De Lage Landen Collateral (collectively, the "**Excluded Collateral**").
- (g) Interest Rate: The DIP Borrowers may elect that (a) US Revolving Loans (other than Swing Line Loans) bear interest at a rate per annum equal to (i) the US Base Rate plus the Applicable Margin or (ii) Adjusted Term SOFR for the interest period therefor plus the Applicable Margin, and (b) Canadian Revolving Loans (i) denominated in CAD bear interest at a rate per annum equal to (A) the Canadian

Base Rate plus the Applicable Margin or (B) the CDOR Term Rate plus the Applicable Margin and (ii) denominated in USD bear interest at (A) the US Base Rate plus the Applicable Margin or (B) Adjusted Term SOFR plus the Applicable Margin.

“Applicable Margin” means, as of any date of determination, (a) with respect to Revolving Loans bearing interest based on Adjusted Term SOFR or CDOR Term Rate, 4.00% and (b) with respect to Revolving Loans bearing interest based on US Base Rate or Canadian Base Rate, 3.00%.

- (h) Fees: Standard fees are payable under the DIP Financing including an Unused Line Fee, Letter of Credit Fees, Closing and Commitment Fees and an Administrative Agent Fee. These fees are calculated using a variety of standard formulas.
- (i) DIP Budget and Events of Default. I understand that the DIP ABL Credit Facility contains standard events of default in facilities of this nature. The DCL Group will have to demonstrate its compliance with an agreed upon budget (the “**DIP Budget**”), subject to certain acceptable variances. A copy of the DIP Budget, a 13-week cash flow forecasts for the DCL Group on a consolidated basis and for the Applicant on a separate-entity basis, is included in the Pre-Filing Report.
- (j) Maturity. The DIP ABL Facility will mature on March 31, 2023 and upon the occurrence of certain enumerated events.

(ii) ***DIP Milestones***

156. The DIP ABL Credit Agreement sets out certain milestones over the course of these proceedings (the “**DIP Milestones**”). The DIP Milestones establish certain timelines and

strategic goals that must be pursued by the DCL Group, including the sale, restructuring, and/or refinancing of the DCL Group. The key DIP Milestones are (defined terms are as set out in the DIP ABL Credit Agreement):

- (a) On or before 1 Business Day after the Petition Date, Loan Parties shall file a motion with each Bankruptcy Court seeking approval of the DIP ABL Credit Facility under the Bankruptcy Code and the CCAA.
- (b) On or before December 29, 2022, the Canadian Bankruptcy Court shall have entered the Amended Initial CCAA Order in form and substance satisfactory to Agent.
- (c) On or before January 6, 2023, Loan Parties shall have filed a motion (the “Sale Motion”) seeking entry of the Bid Procedures Order pursuant to Section 363 of the Bankruptcy Code and in accordance with the CCAA, which Sale Motion (including all deadlines contained therein) shall be satisfactory to Agent.
- (d) On or before January 23, 2023, the US Bankruptcy Court shall have entered the Final US Financing Order in form and substance satisfactory to Agent.
- (e) On or before January 31, 2023, the Loan Parties shall have filed the DIP Asset Purchase Agreement with each Bankruptcy Court, duly authorized, executed and delivered by the parties thereto, providing for the Sale Transaction, in each case on terms and conditions acceptable to Agent.
- (f) On or before February 7, 2023, each Bankruptcy Court shall have entered one or more orders each in form and substance acceptable to Agent approving the DIP Asset Purchase Agreement and the Bid Procedures Order and providing, among other things, that qualifying bids shall be due by no later than March 10, 2023 (the “Bid Deadline”).
- (g) On or before March 15, 2023, Loan Parties shall have commenced the auction (if there is more than one qualifying bid) for the Sale Transaction, and, in accordance with the Bidding Procedures Order applicable thereto, shall have selected the winning bid(s) for the Sale Transaction at the conclusion of such auction.
- (h) On or before March 17, 2023, each Bankruptcy Court shall have entered the Sale Order with respect to the results of the auction, and with the proceeds to be applied to the obligations under the DIP ABL Credit Facility sufficient to repay such obligations in full in cash.
- (i) On or before March 31, 2023, Loan Parties shall have consummated the Sale Transaction, pursuant to the DIP Asset Purchase Agreement entered into among Loan Parties and the winning bidder(s) at the auction.
- (j) On or before March 31, 2023, the Loan Parties shall make Payment in Full (as defined in the Final US Financing Order) of all Obligations under the DIP ABL Credit Facility and

the Pre-Petition ABL Credit Facility (to the extent still outstanding).

157. The Applicant understands that in its Pre-Filing Report, the Proposed Monitor will provide further details on the commercial reasonableness of the DIP Financing, including the guarantee to be provided by the Applicant of the US DIP Borrowers obligations and the DIP Milestones.

158. The Applicant will be seeking approval of the DIP ABL Credit Agreement on the Filing Date, with borrowings limited to \$5 million, with expanded ability to borrow at the Comeback Hearing up to the maximum amount of \$55 million.

(iii) *Intercompany Transfers*

159. During these proceedings, most of the Applicant's sales revenue will be derived from sales of finished goods inventory to DCL USA LLC, in accordance with the terms set out in the US/Canada Intercompany Agreement. If the Applicant's borrowings on the DIP ABL Facility and the revenue derived from these intercompany sales are insufficient to cover the Applicant's working capital needs, DCL USA LLC has agreed to fund such working capital needs in accordance with the DIP Budget. The terms of such funding are more fully set out in the US/Canada Intercompany Agreement. I understand the Proposed Monitor will provide additional comments on such terms in its Pre-Filing Report.

E. Chief Restructuring Officer

160. In addition to my corporate appointment as CRO in order to best assist with the Applicant's operational and other restructuring efforts, the Applicant will be seeking my appointment as CRO by this Court on the Filing Date. I understand that the Proposed Monitor will address this proposed court appointment in the Pre-Filing Report.

161. DCL USA LLC is expected to pay for service fees and expenses under the CRO Engagement Letter and an appropriate allocation will be made to the Applicant, in consultation with the Monitor.

F. Administration Charge

162. In order to protect payment of the fees and expenses of the Monitor, counsel to the Monitor, and counsel to the Applicant, the Applicant seeks a charge in favour of these professionals to secure payments of their reasonable fees and disbursements incurred both prior to and after the Filing Date, initially in the amount of \$175,000, to be increased to \$1,100,000 as set out in the proposed Amended and Restated Initial Order which will be requested at the Comeback Hearing. It is requested that the Administration Charge have first priority against the property of the Applicant (other than the HSBC Cash Collateral).

G. Directors' Charge

163. In order to continue to carry on business during these proceedings, the Applicant requires the Directors to remain committed. Although the Applicant intends to comply with applicable laws with respect to matters affecting it during these proceedings, including, without limitation, the payment of wages, employee source deductions, vacation pay, HST and statutory deemed trust requirements, the failure to successfully complete a restructuring process may result in significant personal liabilities for the Directors.

164. As such, the Applicant intends to indemnify the Directors for such potential liabilities and request a charge in the amount of CAD\$1,000,000 over the property of the Applicant (other than the HSBC Cash Collateral) to secure such indemnity in respect of any such liabilities as may arise in these proceedings, with the priority as set out in the Initial Order.

165. The Applicant will be seeking the Directors' Charge on the Filing Date and will be requesting an increase in the amount secured by the Directors' Charge at the Comeback Hearing to a maximum of CAD\$1,700,000.

H. Intercompany Agreements and Intercompany Charge

166. The US/Canada Intercompany Agreement requires that intercompany obligations arising from the intercompany loans from DCL USA LLC to the Applicant to be secured against the Applicant's property (other than the HSBC Cash Collateral) through a court-ordered intercompany charge (the "**Intercompany Charge**"). Together with the approval of the US/Canada Intercompany Agreement and the European Intercompany Agreement, the Applicant will be requesting, on the Filing Date, that this Court grant the Intercompany Charge to ensure that the Applicant is able to receive sufficient working capital funding from DCL USA LLC. The Intercompany Charge is proposed to have the priority as set out in the Initial Order.

167. To the extent that there are any net intercompany balances owing to the Applicant from DCL USA LLC after the Filing Date, the US/Canada Intercompany Agreement also provides for an administrative expense claim in the Chapter 11 Proceedings in favour of the Applicant with the rank, priority and rights ascribed to it in the Chapter 11 Proceedings and applicable U.S. bankruptcy law.

I. TM Engagement Letter

168. The DCL Group retained TM Capital as its exclusive investment banker in connection with the proposed sale of the DCL Group. The terms of this arrangement are set out in the TM Engagement Letter. The TM Engagement Letter is attached hereto as Exhibit "**M**".

169. Pursuant to the TM Engagement Letter, TM Capital agreed to assist with (a) preparing descriptive materials, (b) identifying and contacting prospective acquirers, and (c) structuring, negotiating and closing a proposed Transaction (as defined below). TM Capital is compensated for its services through monthly retainer payments (the “**TM Monthly Fees**”) and a transaction fee (the “**TM Transaction Fee**”).

170. The TM Monthly Fees contemplate the payment of cash retainers of \$50,000 per month to TM Capital. The TM Monthly Fees will be reduced to \$15,000 following the first three payments of \$50,000. All TM Monthly Fees after the third month of the engagement shall be credited, without duplication, against any TM Transaction Fees payable under the TM Engagement Letter.

171. A “Transaction” means the sale of all or a substantial part of the business and assets of the DCL Group either by way of merger, stock or asset sale, recapitalization, other transaction or combination thereof.

172. The TM Transaction Fee is payable in cash at the closing of a Transaction and is calculated to be an amount equal to the greater of:

- (a) \$1,500,000; and
- (b) the sum of: (i) 2% of any Consideration (as defined below) paid pursuant to a Transaction up to \$100 million, plus; (ii) 3.5% of any Consideration paid in excess of \$100 million but less than \$140 million, plus; (iii) 5% of any Consideration paid in excess of \$140 million.

173. For the purposes of calculating the TM Transaction Fee, “Consideration” is defined as:

- (a) in the case of an equity transaction, the total consideration paid for such interests, plus the implied value pursuant to the transaction of any equity interests retained

by current stockholders, plus the face value of the indebtedness for borrowed money at closing; or

- (b) in the case of an asset transaction, the total consideration paid for such assets, plus the net book value of any assets liquidated by the DCL Group, plus the face value of any indebtedness for borrowed money of the DCL Group which is assumed by the purchaser.

174. The terms and fees contemplated under the TM Engagement Letter were supported by the Term Loan Lenders as confirmed in a letter issued by the Term Loan Lenders to TM Capital.

175. TM Capital's fees are to be paid by DCL USA LLC, with an appropriate allocation of such fees to be made to the Applicant, in consultation with the Monitor.

176. The Applicant seeks to have the TM Engagement Letter approved by this Court, *nunc pro tunc*, at the Comeback Hearing and seeks approval to be responsible for its proportionate share of the fees contemplated thereunder.

J. Critical Suppliers

177. The Applicant uses a variety of vendors to provide services and source raw materials and finished goods critical to operating the Applicant's business ("**Critical Suppliers**"). The Applicant seeks this Court's approval to make payment of pre-filing amounts or to honour cheques issued to these Critical Suppliers, prior to the Filing Date that the Applicant, in consultation with the Monitor and consistent with the DIP Budget, believe are necessary to facilitate the Applicant's ongoing operations and to preserve value during these proceedings.

178. In many instances, these Critical Suppliers are the only vendors able to provide the services and goods required to meet the Applicant's operational needs given the unique

chemicals used by the Applicant in its manufacturing process. Anticipating this situation, the Applicant together with other members of the DCL Group, with the assistance of their advisors, spent significant time prior to the Filing Date reviewing and analyzing their books and records, open accounts payable systems, and supplier lists to identify those vendors and suppliers that are in fact critical to the Applicant's and the DCL Group's operations, the loss of which could materially harm the Applicant and the broader DCL Group's businesses or impair going-concern viability.

179. These Critical Suppliers have a detailed understanding of the Applicant's operations and products. Even if it were commercially practicable to replace and retrain new service providers, the efforts expended to locate and replace the current Critical Suppliers and the time required to do so would detract from the goals of these proceedings, reducing recoveries for the Applicant, their creditors and all parties in interest. Any loss of these Critical Suppliers during the time following the commencement of the proceedings will impair the Applicant's effort to preserve and maximize the value of its business. The Applicant also notes that a significant number of its Critical Suppliers are foreign (i.e., outside the United States and Canada) and may not recognize the jurisdiction of this Court or believe that they are subject to orders granted by this Court. Accordingly, to preserve the value of the Applicant's business as a going concern through the DCL Group's sale process, the Applicant requires the ability to assuage the concerns of Critical Vendors by funding them without interruption.

180. I note that in the Chapter 11 Proceedings, DCL US will be seeking similar relief from the U.S. Bankruptcy Court. Given the heavily integrated nature of the DCL Group's business, the Applicant believes having a symmetrical approach in the two proceedings is important to maintaining go-forward market confidence.

181. The Applicant proposes that any such payment only be made with the consent and approval of the Monitor.

182. The Applicant will be seeking authority to pay Critical Suppliers at the Comeback Hearing.

K. Related Party DIP Charge

183. As noted above, the US/Canada Intercompany Agreement contemplates that the DCL USA LLC Inventory will be stored for a period of time in the Distribution Centres. In addition to the related party stay, which will be sought on the Filing Date, at the Comeback Hearing the Applicant will request that this Court extend the requested DIP Charge over the DCL USA LLC Inventory, in order to secure the obligations of DCL USA LLC under the DIP ABL Credit Agreement and related documents. Such relief has been requested by the DIP Agent, is supported by the Proposed Monitor, is consented to by DCL USA LLC and is contemplated by a proposed order of the US Bankruptcy Court. The Applicant therefore believes such relief is reasonable and appropriate in the circumstances.

L. Bidding Procedures Order

184. While the results of the Pre-Filing Sale Process were encouraging, the DCL Group determined that it would be in their best interest to expand the pool of bidders and consummate the next steps in the sale process with the stability and funding available to the DCL Group in formal restructuring proceedings.

185. The Applicant and DCL US are seeking approval of a single set of Bidding Procedures before both this Court and the U.S. Bankruptcy Court, respectively, to facilitate a consolidated sale process for the business and assets of the DCL Group. However, as noted above, the

Applicant is not seeking approval of the Bidding Procedures Order at this time. Rather, at the hearing for the Initial Order the Applicant will be requesting a date for the Bidding Procedures Hearing before this Court in approximately 5-6 weeks from the granting the requested Initial Order, with such date to be coordinated with the hearing to be held by the U.S. Bankruptcy Court in respect of similar relief in the Chapter 11 Proceedings.

186. Until the Bidding Procedures Hearing, to further maximize the competitiveness of any bidding process, the Applicant and DCL US will be seeking, after consultation with the Consultation Parties (as defined in the Bidding Procedures, which includes, among other parties, the Monitor and the DIP Agent), one or more parties to serve as a Stalking Horse Bidder. The Applicant proposes that a determination will be made regarding the selection of a Stalking Horse Bidder, if any, on or before January 31, 2023. If a Stalking Horse Bidder is selected by the Applicant and DCL US, after consultation with the Consultation Parties, the Applicant and DCL US will be seeking approval of the Stalking Horse APA and any break-up fee at the Bidding Procedures Hearing, together with approval of the Bidding Procedures.

187. If the Applicant enters into any Stalking Horse APA that the Applicant and DCL US determines, after consultation with the Consultation Parties, is in the best interests of the DCL Group, the Applicant will file the Stalking Horse Motion seeking approval of the Stalking Horse APA and a break-up fee. The Stalking Horse Motion would include, among other things, the following information: (a) the identification of the Stalking Horse Bidder; (b) a copy of the Stalking Horse APA; (c) the purchase price provided for in the Stalking Horse APA; (d) the amount of the deposit paid by the Stalking Horse Bidder; and (e) the amount of any break-up fee. It is anticipated that a similar motion will be filed by DCL US with the U.S. Bankruptcy Court. Both motions will be sought to be heard by the applicable court at the Bid Procedure

Hearing on a coordinated basis in approximately 5-6 weeks from the granting of the requested Initial Order.

188. The DCL Group is of the view that the Bidding Procedures are designed to maximize recoveries for creditors and other parties in interest and minimize the risk that the DCL Group will be left without a going concern solution.

189. I understand that once appointed, the Monitor will serve and file a report in advance of the Bidding Procedures Hearing that will include a discussion of the proposed Bidding Procedures and, if applicable, the Stalking Horse APA, and related timelines and processes.

M. Notice Parties

190. Due to the sensitive nature of these proceedings, this Application was brought on limited notice to the Term Loan Agent, Term Loan Lenders, the Pre-Filing ABL Agent, and DIP Agent. Prior to seeking the expanded relief contemplated by the proposed Amended and Restated Initial Order, the Applicant seeks authority from this Court to serve this Application on the following parties as notice of the Comeback Hearing:

- (a) the Teamsters;
- (b) FSRA;
- (c) KNRV (the vendor owed the Pension Earn Out);
- (d) the plaintiffs or their counsel if they are represented in the Outstanding Litigation;
- (e) the landlords of the Applicant;
- (f) Pinnacle, as the owner of the Third-Party Distribution Centre;
- (g) the Other Secured Creditors;

- (h) HSBC Canada, as the cash management bank;
- (i) CRA;
- (j) the Ontario Ministry of Finance;
- (k) the Ontario Ministry of the Environment;
- (l) Citibank, as a SCF Provider; and
- (m) BNP, as a SCF Provider,

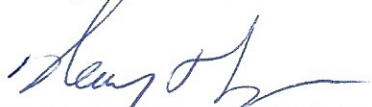
(collectively, the “**Notice Parties**”).

V. Conclusion

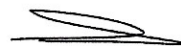
191. Should the requested relief be granted, the Applicant anticipates returning to Court to seek formal approval of single set of Bidding Procedures for the DCL Group’s business and assets, in coordination with the US Bankruptcy Court. In the interim, TM Capital will continue and expand its efforts to identify Potential Bidders, including a Stalking Horse Bidder, if any.

192. This Affidavit is made in support of the Applicant’s application for the relief set out in the CCAA and for no other or improper purpose.

SWORN remotely by Scott Davido, of the City)
 of New York, in the State of New York, before)
 me at the City of Brampton, in the Regional)
 Municipality of Peel, this 20th day of December)
 2022, in accordance with O. Reg. 431/20,)
 Administering Oaths or Declaration Remotely)



A commissioner for taking affidavits, etc.



Scott Davido

Nancy Ann Thompson, a Commissioner, etc.,
 Province of Ontario, for Blake, Cassels & Graydon LLP,
 Barristers and Solicitors. Expires July 13, 2024.

Court File No.:

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL Corporation
Applicant****ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF SCOTT DAVIDO
(SWORN DECEMBER 20, 2022)****BLAKE, CASSELS & GRAYDON LLP**199 Bay Street
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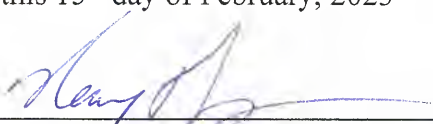
Email: alexia.parente@blakes.com

Lawyers for the Applicant

This is **Exhibit "B"** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023


A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

Court File No. CV-22-00691990-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION (the “**Applicant**”)

AFFIDAVIT OF SCOTT DAVIDO

(Sworn December 23, 2022)

I, **Scott Davido**, of New York City, in the State of New York, United States of America,
MAKE OATH AND SAY AS FOLLOWS:

I. INTRODUCTION

1. I am a Senior Managing Director at Ankura Consulting Group, LLC (“**Ankura**”). I have over 30 years of experience in senior executive management and financial/restructuring advisory roles and specialize in turnaround and restructuring initiatives, streamlining operations, implementing efficient financial controls, negotiating with creditors and equity investors, and advising management and boards of directors in financial distress and turnaround situations. I have also managed numerous in-court and out-of-court restructuring efforts, including those with multi-jurisdictional elements.

2. Ankura was engaged by the Applicant and certain affiliates to provide restructuring advisory services beginning in August 2022. I have been serving as a financial advisor to the Applicant and other members of the DCL Group (as defined below) since that time. On

November 16, 2022, I was appointed by the Applicant and other members of the DCL Group to serve as the Chief Restructuring Officer (“**CRO**”) for the DCL Group. As CRO, I am familiar with the Applicant’s business, day-to-day operations, and financial affairs. I perform my duties out of (i) the Applicant’s corporate headquarters at 1 Concorde Gate, Suite 608, Toronto, Ontario (the “**DCL Head Office**”), and (ii) Ankura’s office located in New York, New York in the United States. On December 20, 2022, I was formally appointed by this Court as CRO of the Applicant.

3. This affidavit (the “**Second Davido Affidavit**”) is intended to supplement the affidavit I previously swore in these proceedings on December 20, 2022 (the “**Initial Affidavit**”) in support of the Applicant’s application for an initial order (the “**Initial Order**”). A copy of the Initial Affidavit, without exhibits, is attached hereto as **Exhibit “A”**.

4. I swear this affidavit in support of an application by the Applicant for an amended and restated initial order (the “**Amended and Restated Initial Order**”) pursuant to the *Companies’ Creditors Arrangement Act*, (Canada) (“**CCAA**”), among other things:

- (a) approving the Intercompany Agreements and granting an Intercompany Charge over the Applicant’s property (excluding the HSBC Cash Collateral) to secure the intercompany balances owing by the Applicant to DCL USA LLC;
- (b) sealing the unredacted copies of the Intercompany Agreements attached hereto as Confidential Exhibits “**1**” and “**2**”;
- (c) authorizing the Applicant to make certain pre-filing payments to Critical Suppliers;
- (d) approving the Final DIP ABL Credit Agreement (as defined below) which was the subject of the US Interim DIP Order (as defined below);

- (e) extending the DIP Charge over the DCL USA LLC Inventory to secure the obligations of DCL USA LLC under the DIP ABL Credit Agreement and related documents (the “**Related Party DIP Charge**”); and
- (f) extending the stay of proceedings granted by this Court initially until December 30, 2022 (the “**Initial Stay Period**”), until March 17, 2023.

5. In making this Second Davido Affidavit, I have had discussions with current and former members of the Applicant’s senior management and the Applicant’s professional advisors and have relied, in part, on information and materials that the Applicant’s personnel and advisors have gathered, prepared, verified, and provided to me.

6. Accordingly, I have knowledge of the matters deposed to in this affidavit. Where this affidavit is not based on my direct personal knowledge, it is based on information and belief, and I believe such information to be true.

7. Capitalized terms not otherwise defined herein have the meaning ascribed to them in the Initial Affidavit, unless stated otherwise.

II. STATUS OF THE CCAA AND CHAPTER 11 PROCEEDINGS

8. The background on the Applicant’s business and the necessity for these CCAA proceedings is set out in detail in the Initial Affidavit.

9. On December 20, 2022, the Applicant sought and obtained creditor protection and other ancillary relief pursuant to the Initial Order granted by this Court under the CCAA. The Initial Order was tailored to provide the Applicant with the relief reasonably necessary to maintain the status quo and to continue its business operations during the Initial Stay Period. Among other things, the Initial Order approved the proposed DIP ABL Facility and granted a DIP Charge

against certain of the Applicant's property. A copy of the Initial Order is attached hereto as **Exhibit "B"**.

10. On December 20, 2022, DCL US commenced parallel proceedings pursuant to chapter 11 of the United States Bankruptcy Code (the "**Chapter 11 Proceedings**"), by way of a voluntary petition filed in the United States Bankruptcy Court for the District of Delaware (the "**US Bankruptcy Court**") by the Applicant's U.S. based related parties (collectively, "**DCL US**" and together with the Applicant and the Applicant's other subsidiaries, the "**DCL Group**").

11. At the first day hearings held on December 22, 2022, the Honourable Judge Stickles of the U.S. Bankruptcy Court entered several orders including, among other things, an order granting, on an interim basis, super-priority liens in favour of the DIP Agent and DIP Lender against the assets of DCL US (the "**US Interim DIP Order**"). A copy of the US Interim DIP Order is attached hereto as **Exhibit "C"**.

12. The US Bankruptcy Court also granted an order, which among other things, authorized, on an interim basis, DCL US to make payments of "prepetition amounts" to US based critical vendors, foreign vendors, and shippers and warehousemen, in the ordinary course, in amounts not to exceed prescribed caps (the "**US Interim Critical Supplier Order**"). DCL US is authorized, but not directed, to condition payment to the applicable vendors upon agreement by the vendor to (i) accept payment in all or part of the prepetition claim, and (ii) continue to provide supplies or services to DCL US on trade terms. A copy of the US Interim Critical Supplier Order is attached hereto as **Exhibit "D"**.

13. The US Bankruptcy Court scheduled a second day hearing for January 19, 2022 (the "**Second Day Hearing**"). DCL US will request the granting of final orders, in respect of the interim orders that were granted on December 22, 2022 and certain additional relief including the

granting of a bidding procedures order (the “**US Bidding Procedures Order**”) at the Second Day Hearing.

III. THE APPLICANT’S ACTIVITIES SINCE THE COMMENCEMENT OF PROCEEDINGS

14. Since the granting of the Initial Order, the Applicant and DCL US have selected a Stalking Horse Bidder and entered into the Stalking Horse APA with a nominee of the Term Loan Lenders dated December 21, 2022. A copy of the Stalking Horse APA, without schedules, is attached hereto as **Exhibit “E”**. The proposed bidding procedures filed by DCL US in the Chapter 11 Proceedings (the “**Revised Bidding Procedures**”) are attached hereto as Exhibit “**F**”. Both the Stalking Horse APA and the Revised Bidding Procedures remain subject to Court approval in both jurisdictions.

15. The Applicant intends to return to this Court for additional relief including the approval of the Stalking Horse APA, as a stalking horse agreement, and the granting of the Bidding Procedures Order in mid-January 2023. I understand that the Monitor anticipates filing a report to the Court in advance of the Bidding Procedures Hearing, with its views on the Stalking Horse APA and the Revised Bidding Procedures. The Applicant also contemplates filing further evidence in respect of the Stalking Horse APA. No relief is being sought in respect of the Stalking Horse APA or the Revised Bidding Procedures at the Comeback Hearing.

16. In addition, the Applicant and DCL US finalized and executed the DIP ABL Credit Agreement on December 22, 2022 (the “**Final DIP ABL Credit Agreement**”), which required entry into the Stalking Horse APA as a condition to its effectiveness. A substantially final form of DIP ABL Credit Agreement was attached to the Initial Affidavit, but, that form was drafted prior to the execution of the Stalking Horse Agreement. The details of the DIP ABL Credit Agreement are discussed in greater detail in the Initial Affidavit. A copy of the executed DIP

ABL Credit Agreement is attached hereto as **Exhibit “G”**. A blackline to the version which was filed on the initial application in these proceedings, with changed pages only, is attached as **Exhibit “H”**.

17. The key changes are: (i) the representations, warranties and covenants in the Stalking Horse APA are included in the Final DIP ABL Credit Agreement; (ii) the termination of the Stalking Horse APA constitutes an Event of Default under the Final DIP ABL Credit Agreement; and (iii) new “DIP Milestones” have been provided for.

18. The DIP Milestones establish certain timelines and strategic goals that must be pursued by the DCL Group, including the sale, restructuring, and/or refinancing of the DCL Group.

- (a) On or before 1 Business Day after the Petition Date, Loan Parties shall file a motion with each Bankruptcy Court seeking approval of the DIP ABL Credit Facility under the Bankruptcy Code and the CCAA.
- (b) On or before the date that is 2 Business Days after the Petition Date, Loan Parties shall have filed a motion (the US Sale Motion”) seeking (i) entry of the Bid Procedures Order and the Sale Order and (ii) approval of the DIP Asset Purchase Agreement, pursuant to Section 363 of the Bankruptcy Code, which Sale Motion (including all deadlines contained therein) shall be reasonably satisfactory to Agent (unless waived by Agent).
- (c) On or before the date that is 1 Business Day after the Petition Date, Loan Parties shall have filed a motion (the “Canadian Bid Procedures Motion”) seeking (i) entry of the Bid Procedures Order and (ii) approval of the DIP Asset Purchase Agreement, pursuant to and in accordance with the CCAA, which Canadian Bid Procedures Motion (including all deadlines contained therein) shall be reasonably satisfactory to Agent (unless waived by Agent).
- (d) On or before the date that is 10 days after the Petition Date, the Canadian Bankruptcy Court shall have entered the Amended Initial CCAA Order in form and substance acceptable to Agent.
- (e) On or before January 23, 2023, the US Bankruptcy Court shall have entered the Final US Financing Order in form and substance acceptable to Agent.
- (f) On or before February 7, 2023, each Bankruptcy Court shall have entered one or more orders, each in form and substance acceptable to Agent, approving the DIP Asset Purchase Agreement and the Bid Procedures Order and providing, among other things, that qualifying bids shall be due by no later than March 10, 2023 (the “Bid Deadline”).

- (g) On or before March 9, 2023, the Loan Parties shall have filed a motion (the “Canadian Sale Motion”) seeking approval of the Sale transaction and entry of the Sale Order, pursuant to and in accordance with the CCAA, which Canadian Sale Motion (including all deadlines contained therein) shall be satisfactory to Agent.
- (h) On or before March 14, 2023, Loan Parties shall have commenced the auction (if there is more than one qualifying bid) for the Sale Transaction, and, in accordance with the Bidding Procedures Order applicable thereto, shall have selected the winning bid(s) for the Sale Transaction at the conclusion of such auction.
- (i) On or before March 16, 2023, each Bankruptcy Court shall have entered the Sale Order with respect to the results of the auction, and with the proceeds to be applied to the obligations under the DIP ABL Credit Facility sufficient to repay such obligations in full in cash.
- (j) On or before March 17, 2023, Loan Parties shall have consummated the Sale Transaction, pursuant to the DIP Asset Purchase Agreement entered into among Loan Parties and the winning bidder(s) at the auction.
- (k) On or before March 17, 2023, the Loan Parties shall make Payment in Full (as defined in the Final US Financing Order) of all Obligations under the DIP ABL Credit Facility and the Pre- Petition ABL Credit Facility (to the extent still outstanding).

19. With respect to DIP Milestone (c) above, the Applicant requested and received authority to serve its Application to the Notice Parties as notice of the Bidding Procedures Motion, service of which has been completed. On the Filing Date, counsel to the Applicant advised the Court that the draft Bidding Procedures attached to the draft Bidding Procedures Order, should be considered a “placeholder” only, as modifications would be required if a Stalking Horse APA was executed. I understand that counsel to the DIP Agent and counsel to the Stalking Horse Bidder have advised that the inclusion of the Stalking Horse APA and Revised Bidding Procedures in this Second Davido Affidavit, the reservation of the date of January 19, 2022 before this Court for the Bidding Procedures Hearing and the undertaking by the Applicant to serve and file additional court materials seeking approval of the Stalking Horse Agreement and of the Revised Bidding Procedures in early January, satisfies this DIP Milestone.

20. The Applicant understands that in its first report to the Court, the Monitor will provide further details with respect to the Final DIP ABL Credit Agreement.

IV. THE AMENDED AND RESTATED ORDER

A. The Sealing of the Intercompany Agreements

21. As described more fully in the Initial Affidavit, the Applicant is party to two Intercompany Agreements, one just with DCL USA LLC and a second with DCL USA LLC and the European Subsidiaries.

22. These Intercompany Agreements formalize the intercompany arrangements related to finished goods inventory sales to DCL USA LLC, shared services, flow through payments by DCL USA LLC to a European Subsidiary, and intercompany loans by DCL USA LLC between these parties, and they were summarized in the Initial Affidavit.

23. The copies of the Intercompany Agreements, which were attached to the Initial Affidavit, are lightly redacted to remove pricing information related to margins charged on inventory sold by the Applicant to DCL USA LLC, which inventory is then on-sold by DCL USA LLC to third parties. All other information relating to the nature of the transactions between the companies is fully detailed and disclosed, including (i) a history of key intercompany transactions prior to the Filing Date; (ii) the timing of transfer of title of such inventory; (iii) where such inventory is stored; (iv) which party is responsible for which obligations; (v) the nature of shared services provided and which party has the responsibility for such services; and (vi) how monetary intercompany transfers are to be accounted for.

24. The Applicant requests that the Court grant a sealing order in respect of the unredacted Intercompany Agreements to permit the redaction of only the commercially sensitive pricing information contained therein.

B. Extension of Stay of Proceedings

25. The Applicant is seeking to extend the Initial Stay Period up to and including March 17, 2023. This is the date on which repayment is required on the DIP ABL Facility. The DIP Budget demonstrates that the Applicant should have sufficient liquidity to satisfy its post-filing obligations until that time. The Applicant anticipates being in Court earlier in March 2023 in connection with a sale approval hearing and can provide the Court with an appropriate update of the Applicant's sale and restructuring efforts at that time.

26. The requested extension of the Initial Stay Period is necessary and appropriate in the circumstances to allow for continued steps to pursue a going concern sale of the Applicant's business assets.

27. During the Initial Stay Period, the Applicant has acted in good faith and with due diligence as evidenced by the execution of the Stalking Horse APA, which remains subject to Court approval.

C. Related Party DIP Charge

28. The grounds for the material additional relief requested in the Amended and Restated Initial Order are set out in the Initial Affidavit and are not repeated herein.

V. CONCLUSION

29. Since the granting of the Initial Order, the Applicant has acted in good faith and with due diligence to, among other things, stabilize the business, apprise its stakeholders of these CCAA

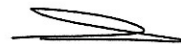
proceedings and advance its restructuring efforts. With the benefit of the relief proposed under the Amended and Restated Initial Order and the assistance of the Monitor, the Applicant will be able to continue its business operations in the ordinary course and pursue its restructuring objectives for the benefit of the broad cross-section of the Applicant's stakeholders.

30. I swear this affidavit in support of the Applicant's motion for the Amended and Restated Initial Order and for no other or improper purpose.

SWORN remotely by Scott Davido, of the City)
 of New York, in the State of New York, before)
 me at the City of Brampton, in the Regional)
 Municipality of Peel, this 23rd day of December)
 2022, in accordance with O. Reg. 431/20,)
 Administering Oaths or Declaration Remotely.)



A commissioner for taking affidavits, etc.



Scott Davido

Nancy Ann Thompson, a Commissioner, etc.,
 Province of Ontario, for Blake, Cassels & Graydon LLP,
 Barristers and Solicitors. Expires July 13, 2024.

Court File No.: CV-22-00691990-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL Corporation
Applicant****ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding commenced at Toronto

**AFFIDAVIT OF SCOTT DAVIDO
(SWORN DECEMBER 23, 2022)****BLAKE, CASSELS & GRAYDON LLP**199 Bay Street
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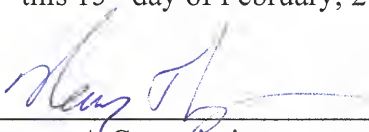
Email: alexia.parente@blakes.com

Lawyers for the Applicant

This is **Exhibit "C"** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024

Thompson, Nancy

From: Thompson, Nancy
Sent: Wednesday, February 8, 2023 11:42 AM
To: Rogers, Linc; Chow, Milly; Parente, Alexia; Wu, Kevin; NANCY THOMPSON; sborders@kslaw.com; jdutson@kslaw.com; mhandler@kslaw.com; collins@rlf.com; steele@rlf.com; scott.davido@ankura.com; jnevsky@alvarezandmarsal.com; sferguson@alvarezandmarsal.com; smoore@alvarezandmarsal.com; asterling@alvarezandmarsal.com; fmak@alvarezandmarsal.com; mwasserman@osler.com; mcalvaruso@osler.com; tsun@osler.com; jonathan.morrison@ankura.com; jared.rapoport@ankura.com; agiorgio@tmcapital.com; tneblett@tmcapital.com; dmorse@otterbourg.com; dfiorillo@otterbourg.com; csimon@otterbourg.com; jlatham@goodmans.ca; eaxell@goodmans.ca; matthew.ward@wbd-us.com; jpawlitz@willkie.com; ddurschlag@willkie.com; bfeldman@willkie.com; rjacobs@cassels.com; jbellissimo@cassels.com; mwunder@cassels.com; emorton@ycst.com; mlunn@ycst.com; john.strek@fticonsulting.com; lossrecovery@leasedirect.com; srodriguez.teamsters1979@gmail.com; david.cohen@gowlingwlg.com; mklein1146@gmail.com; djmiller@tgf.ca; asoutter@tgf.ca; rmanea@tgf.ca; davinia.conlan@citi.com; dublintradeservices@bnpparibas.com; drmark.vincent@gmail.com; regentstreetcap@gmail.com; dfader@strategicpm.ca; joe.itner@fengate.com; rachna.morgado@fengate.com; puii.morariu@fengate.com; chadb@pinnacletransportation.com; irenem@pinnacletransportation.com; diane.winters@justice.gc.ca; pat.confalone@justice.gc.ca; insolvency.unit@ontario.ca; nadine.harris@ontario.ca; jordan.solway@fsrao.ca; pmartin@wmlitigation.com; russellm@caleywrap.com; mgorodensky@dismissed.ca; godfrey@gblawpc.com
Subject: RE: DCL Corporation, Court File No. CV-22-00691990-00CL

To the Service List:

Further to my message below, the virtual hearing has been re-scheduled to **Tuesday, February 21, 2023 at 12:30 pm (via Zoom)**.

A motion record will be served by the Applicant in connection with the requested relief, in due course. The Zoom details for the hearing will be provided by the Court Office staff closer to the hearing date and will be sent to participants and attendees when available.

If you have any questions, in the interim, please do not hesitate to contact Linc Rogers at linc.rogers@blakes.com (416-863-4168) or Milly Chow at milly.chow@blakes.com (416-863-2594).

Yours truly,

Nancy Thompson (she, her, hers)
 Law Clerk
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 T. +1-416-863-2437

From: Thompson, Nancy
Sent: Wednesday, January 25, 2023 11:57 AM
To: Rogers, Linc <LINC.ROGERS@blakes.com>; Chow, Milly <MILLY.CHOW@blakes.com>; Parente, Alexia <alexia.parente@blakes.com>; Wu, Kevin <Kevin.Wu@blakes.com>; Thompson, Nancy <nancy.thompson@blakes.com>; sborders@kslaw.com; jdutson@kslaw.com; mhandler@kslaw.com; collins@rlf.com; steele@rlf.com;

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Subject: DCL Corporation, Court File No. CV-22-00691990-00CL

To the Service List:

We are counsel to DCL Corporation, the Applicant in the above referenced matter.

A virtual hearing has been scheduled by the Ontario Superior Court of Justice (Commercial List) for **Friday, February 10, 2023 at 9:00 am (via Zoom)**, at which the Applicant will be seeking (i) approval of a Key Employee Incentive Plan; (ii) the approval of the "Stalking Horse APA", as a stalking horse bid; and (iii) related "Bidding Procedures." Copies of the Stalking Horse APA (without schedules) and the proposed Bidding Procedures were included in the Affidavit of Scott Davido sworn December 23, 2022 in these proceedings, and copies of such documents are attached to this e-mail for ease of reference.

A motion record will be served by the Applicant in connection with the requested relief, in due course. If any agreed to amendments are made to the Stalking Horse APA or Bidding Procedures prior to the hearing date, a blackline will be provided against the versions attached.

The Zoom details for the hearing will be provided by the Court Office staff closer to the hearing date and will be sent to participants and attendees when available.

If you have any questions, in the interim, please do not hesitate to contact Linc Rogers at linc.rogers@blakes.com (416-863-4168) or Milly Chow at milly.chow@blakes.com (416-863-2594).

Yours truly,

Nancy Thompson (she, her, hers)
Law Clerk
nancy.thompson@blakes.com
T. +1-416-863-2437

This is **Exhibit “D”** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

By and Among

H.I.G. COLORS HOLDINGS INC. AND ITS SUBSIDIARIES

as Sellers

and

PIGMENTS HOLDINGS, INC.

as Purchaser

Dated as of February 13, 2023

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AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

THIS AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of February 13, 2023, is made by and among Pigments Holdings, Inc., a Delaware corporation (“**Purchaser**”), and H.I.G. Colors Holdings Inc., a Delaware corporation (“**Holdings**”), and its direct and indirect Subsidiaries (together, with Holdings, but excluding the Acquired Subsidiaries, “**Sellers**”) that are debtors in the US Bankruptcy Cases or the CCAA Proceeding, as applicable. Capitalized terms used herein but not immediately defined shall have the meaning ascribed to them elsewhere in this Agreement.

WHEREAS, on December 20, 2022 (the “**Petition Date**”), Holdings, H.I.G. Colors, Inc., DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA), LLC, and Dominion Colour Corporation (USA) (the “**US Sellers**”) commenced voluntary cases (the “**US Bankruptcy Cases**”) under chapter 11 of title 11, United States Code, 11 U.S.C. § 101–1532 (the “**US Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**US Bankruptcy Court**”), which cases shall be jointly administered;

WHEREAS, on December 20, 2022 (the “**CCAA Filing Date**”), DCL Corporation, a corporation existing under the laws of Ontario, Canada (the “**Canadian Seller**”) obtained from the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario (the “**CCAA Court**”) an initial order granting the Canadian Seller relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceeding**”);

WHEREAS, Sellers continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the US Bankruptcy Code and pursuant to the CCAA and the terms of the CCAA Initial Order and CCAA Amended and Restated Initial Order;

WHEREAS, Purchaser desires to purchase and assume from Sellers, and Sellers desire to sell, transfer, and assign to Purchaser, pursuant to sections 363 and 365 of the US Bankruptcy Code and section 36 of the CCAA, all of the Purchased Assets and Assumed Liabilities on the terms and subject to the conditions set forth in this Agreement (the “**Sale**”);

WHEREAS, Sellers and Purchaser entered into that certain Asset Purchase Agreement (the “**Original Asset Purchase Agreement**”), dated December 21, 2022;

WHEREAS, Sellers and Purchaser now wish to amend and restate in its entirety the Original Asset Purchase Agreement and provide for this Agreement to supersede in its entirety the Original Asset Purchase Agreement, as heretofore amended;

WHEREAS, this Agreement shall not be binding upon Sellers until approved by the CCAA Court and the US Bankruptcy Court; and

WHEREAS, each of the parties has complied, to the extent required pursuant to applicable Law, with the employee consultation obligations in respect of the transaction under the Works Council Act (*Wet op de ondernemingsraden*) and the SER Merger Code (*SER-besluit Fusiegedragsregels 2015*).

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

ARTICLE I CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

“503(b)(9) Claims” means allowed Claims arising under section 503(b)(9) of the US Bankruptcy Code in the Bankruptcy Cases which remain unpaid as of the Closing Date.

“Accounts Receivables” means as of the Closing Date, all accounts receivables, trade receivables, notes receivables, and other miscellaneous receivables, whether current or overdue, of any Seller, excluding any such accounts receivables, trade receivables, notes receivables, and other miscellaneous receivables arising out of the Excluded Assets.

“Acquired Subsidiaries” means DCL Corporation (NL) B.V. and DCL Corporation (Europe) Limited.

“Action” means any complaint, claim, charge, prosecution, indictment, action, suit, arbitration, audit, hearing, litigation, inquiry, investigation or proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought or asserted by any Person or group of Persons or Governmental Authority or conducted or heard by or before any Governmental Authority or any arbitration tribunal.

“Adequate Assurance Account” shall have the meaning ascribed to it in any order entered by the US Bankruptcy Cases with respect to adequate assurance under Section 366 of the Bankruptcy Code.

“Additional Cash Consideration” means an amount equal to (a) the Required Amount *minus* (b) the amount of Excluded Cash; provided that the Additional Cash Consideration shall not be an amount less than zero nor greater than \$2,750,000.

“Affiliate” of any Person means any other Person who either directly or indirectly through one or more intermediaries is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, **“control”** means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, partnership interests or by contract, assignment, credit arrangement, as trustee or executor, or otherwise, and the terms **“controls,” “controlling”** and **“controlled by”** shall have correlative meanings. With respect to Purchaser, the term **“Affiliate”** shall also include its managers or members or similar Persons, and any other entity controlled by the same managers or members or similar Persons as Purchaser (as the case may be), provided that such term shall not include any portfolio companies or managed accounts.

“**Agent**” means Delaware Trust Company, in its capacity as Agent under the Pre-Petition Term Loan.

“**Agreement**” has the meaning set forth in the Preamble.

“**Allocation Schedule**” has the meaning set forth in Section 3.2.

“**Alternative Restructuring Proposal**” means any inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, plan of arrangement, merger, amalgamation, acquisition, consolidation, dissolution, financing proposal, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, plan of compromise or arrangement, share exchange, business combination, or similar transaction or series of transactions involving Sellers or the debt, equity, or other interests in Sellers, in each case, that is inconsistent with or represents an alternative to one or more of the Restructuring Transactions or any part thereof.

“**Anti-Corruption Laws**” means the FCPA, COFPOA, the Criminal Code, and any other applicable anti-corruption Laws.

“**Anti-Money Laundering Laws**” has the meaning specified in Section 5.18(d).

“**ARC**” means the advance ruling certificate issued by the Commissioner of Competition pursuant to Section 102 of the Competition Act with respect to the transaction contemplated under this Agreement.

“**Assigned Claims**” has the meaning specified in Section 7.6(d).

“**Assumed Benefit Plans**” means (i) each Benefit Plan (other than a European Benefit Plan) designated by Purchaser as an Assumed Benefit Plan in a writing to Sellers prior to the Closing Date, (ii) the self-insured short-term disability plan of the Canadian Seller, and (iii) each European Benefit Plan.

“**Assumed DB Liabilities**” has the meaning set forth in Section 7.9(b)(iii).

“**Assumed DB Assets**” has the meaning set forth in Section 7.9(b)(iii).

“**Assumed DC Assets**” has the meaning set forth in Section 7.9(b)(iv).

“**Assumed Liabilities**” has the meaning set forth in Section 2.3.

“**Assumed Tax Liabilities**” means any Taxes that are not Income Taxes.

“**Auction**” has the meaning set forth in the Sale Procedures.

“**Avoidance Actions**” means all claims and causes of action arising under sections 542 through 553 of the US Bankruptcy Code or any analogous state law or section 36.1 of the CCAA, sections 95 to 101 of the BIA or any analogous provincial law.

“**Bankruptcy Cases**” means the US Bankruptcy Cases and the CCAA Proceeding.

“Bankruptcy Courts” means the US Bankruptcy Court and the CCAA Court.

“Bankruptcy-Related Default” means any default or breach of a Contract that is not entitled to cure under section 365(b)(2) of the US Bankruptcy Code or section 11.3(4) of the CCAA, including a default or breach relating to the filing of the Bankruptcy Cases or the financial condition of Sellers or any default caused by the failure to pay amounts due under a Contract as a result of the filing of the Bankruptcy Cases.

“Benefit Plans” means each “employee benefit plan” within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), the Canadian Pension Plans, and all other compensation and benefits plans, policies, trust funds, programs, arrangements or payroll practices, and each stock purchase, stock option, restricted stock, profit sharing, retirement savings, pension, supplemental pension, savings, severance, retention, employment, consulting, commission, change-of-control, collective bargaining, bonus, incentive, deferred compensation, loan, fringe benefit, insurance, welfare, post-retirement health or welfare, health, life, tuition refund, service award, company car, scholarship, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, holiday, termination, unemployment, restrictive covenant, and other benefit plan, policy, trust fund, program, arrangement or payroll practice, whether or not subject to ERISA (including any related funding mechanism now in effect or required in the future), whether oral or written, funded or unfunded, insured or self-insured, in each case, that is sponsored, established, maintained, contributed to or required to be contributed to by any of the Sellers, or under which any of the Sellers has any current or potential Liabilities in respect of its current or former employees, including current and former directors, officers and independent contractors, but does not include plans established pursuant to statute to the extent that the administration of such plan is outside of Sellers’ control.

“BIA” means the *Bankruptcy and Insolvency Act*, R.S.C 1985, C. B-3, as amended.

“Bid Deadline” means the date established by the Sale Procedures for the submission of initial bids at the Auction.

“Bid Direction Letter” means the Bid Direction Letter attached hereto as Exhibit B, which may not be amended without Sellers’ consent, acting reasonably.

“Books and Records” means all books, records, files, advertising materials, customer lists, cost and pricing information, business plans, catalogs, customer literature, quality control records and manuals, research and development files, records and credit records of customers (including all data and other information stored on discs, tapes or other media or in the cloud) to the extent used in or to the extent relating to the operation of the Business or the ownership of the Purchased Assets, but excluding Sellers’ (i) Fundamental Documents and share registers, stock and minute books, and (ii) any documents protected by any applicable privilege, including attorney-client or attorney work product privilege.

“Business” means the business of Sellers and the Acquired Subsidiaries as global manufacturer and reseller of high-performance specialty pigments and dispersions which also provides technical service capability and new product development processes.

“Business Day” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of Delaware or the province of Ontario.

“Business Employee” means each individual who is a current or former director, officer, employee or individual independent contractor of DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA), LLC, or the Canadian Seller.

“Business Employee List” means the letter provided by Sellers to Purchaser within ten (10) calendar days of the execution and delivery of this Agreement, which letter contains a true and complete list of each individual who is employed by Sellers, together with such individual’s title or position, employing entity, work location, full-time or part-time status, accrued vacation, banked overtime, years of credited service, current rate of hourly wage or salary, annual target cash bonus opportunity, any other compensatory entitlements, each Benefit Plan in which he or she participates or is eligible to participate, along with whether they are on a leave of absence and if so, they type of leave and expected return to work date (if known), and, with respect to any non-union employee, whether, to the Knowledge of Sellers, any allegations of workplace sexual harassment or illegal retaliation or discrimination have been proven (either through a workplace investigation or by a Governmental Authority) against the individual.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) and any similar or successor legislation, together with any memoranda or executive orders relating to COVID-19.

“Canadian Employee” means each Business Employee who is employed by the Canadian Seller immediately prior to the Closing.

“Canada Pension Plan” means the Canadian government sponsored pension plan established under an Act to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors (Canada).

“Canadian Pension Plans” means the following registered pension plans, as that term is defined in subsection 248(1) of the Tax Act, each of which is administered by one of the Sellers, or to which any of the Sellers is a participating employer: (i) the Salaried DB Plan; (ii) the Hourly DB Plan; (iii) the Salaried DC Plan; and (iv) the Hourly DC Plan.

“Canadian Purchased Assets” means Purchased Assets belonging to DCL Corporation.

“Canadian Seller” has the meaning set forth in the Recitals.

“CCAA” has the meaning set forth in the Recitals.

“CCAA Amended and Restated Initial Order” means an Order of the CCAA Court pursuant to sections 11 and 11.02(2) of the CCAA, amending and restating the CCAA Initial Order and which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“CCAA Cash Pool” means the amount of \$750,000 to be delivered by Sellers to the Monitor from Excluded Cash to be held for the benefit of the estate of the Canadian Seller in the CCAA Proceeding, including any costs for the administration of the CCAA Proceeding.

“CCAA DIP Order” means the order approving the DIP Facility by the CCAA Court.

“CCAA Initial Order” means an Order of the CCAA Court pursuant to sections 11 and 11.02(1) of the CCAA, granting the Canadian Seller relief under the CCAA and which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“CCAA Proceeding” has the meaning given to it in the Recitals.

“CCAA Sale Hearing” means the hearing scheduled by the CCAA Court to approve the Sale of the Canadian Purchased Assets.

“CCAA Sale Motion” has the meaning set forth in Section 7.7(b)(i).

“CCAA Sale Order” means an Order of the CCAA Court approving the Sale, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“CCAA Sale Procedures Motion” has the meaning set forth in Section 7.7(a).

“CCAA Sale Procedures Order” means an Order of the CCAA Court approving procedures governing the solicitation of bids for Sellers’ assets and business and scheduling an auction and hearing on the Sale, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“Claim” has the meaning set forth in section 101(5) of the US Bankruptcy Code or section 2(1) of the CCAA.

“Closing” has the meaning set forth in Section 4.1.

“Closing Date” means the date on which the Closing occurs.

“COFPOA” means the *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34, as amended.

“Commissioner of Competition” means the Commissioner of Competition, appointed pursuant to the Competition Act or any Person duly authorized to exercise the powers and perform the duties on behalf of the Commissioner of Competition and shall include the Competition Bureau.

“Company Benefit Plan” has the meaning set forth in Section 5.12(a).

“Competition Act” means the *Competition Act* (Canada) R.S.C. 1985, c. C-34, as amended, and the regulations promulgated thereunder.

“Competition Act Clearance” means that either (a) the Commissioner of Competition shall have issued an ARC to Purchaser in respect of the transactions contemplated by this

Agreement, or (b) the applicable waiting period under Section 123 of the Competition Act shall have expired or been terminated or a waiver under subsection 113(c) of the Competition Act shall have been issued by the Commissioner of Competition and, in either case, Purchaser shall have received a No Action Letter in respect of the transactions contemplated by this Agreement.

“Competition Tribunal” means the Competition Tribunal established under the *Competition Tribunal Act* (Canada).

“Conditions Certificates” has means (i) a certificate signed by a Responsible Officer of Purchaser and addressed to Sellers and the Monitor (in form and substance satisfactory to Sellers and the Monitor, acting reasonably) certifying that the closing conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied or waived and (ii) the certificate to be delivered pursuant to Section 4.2(a)(ii).

“Confidentiality Agreement” means any confidentiality provision or agreement between or among one or more of the Sellers and Blackstone Alternative Credit Advisors LP, on behalf of its funds and accounts managed, advised or sub-advised by it and its Affiliates.

“Consent” means any consent, approval, franchise, order, License, Permit, waiver, authorization, registration, declaration filing, exemption, notice, application, or certification, including all Regulatory Approvals, made with or granted by any Person.

“Contract” means any executory contract or Lease, but excluding the Fundamental Documents of any Seller.

“Copyright Licenses” means any written agreement granting any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary under any Copyright in connection with the Business.

“Copyrights” means all of the following: (i) all copyrights (whether registered or not); all registrations thereof; and all applications in connection therewith, including all registrations, and applications in the United States Copyright Office, the Canadian Intellectual Property Office, or in any similar office or agency of any other Governmental Authority, (ii) all extensions or renewals thereof, and (iii) all moral rights or equivalent rights as recognized under the Laws of any jurisdiction.

“COVID-19” means the coronavirus disease 2019.

“Credit Bid” has the meaning set forth in Section 3.1.

“Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed in the US Bankruptcy Cases.

“Criminal Code” means the Criminal Code, R.S.C., 1986, c. C-46, as amended.

“Critical Vendor Agreements” means the agreements entered into by Sellers in regards to Critical Vendor Claims during the Bankruptcy Cases in accordance with the Critical Vendor Order.

“Critical Vendor Claims” means (i) Vendor Claims and Shippers and Warehousemen Claims (both as defined in the Critical Vendor Order in the US Bankruptcy Case) and (ii) claims for goods and services pursuant to paragraph 9 of initial order of the CCAA Proceeding dated December 20, 2022, as amended and restated on December 29, 2022.

“Critical Vendor Order” means either the final Order entered in the US Bankruptcy Cases or the final Order entered in the CCAA Proceeding authorizing Sellers to pay Critical Vendor Claims.

“Cure Costs” means all cash amounts that, pursuant to section 365 of the US Bankruptcy Code or section 11.3(4) of the CCAA, will be required to be paid as of the Closing Date to cure any monetary defaults on the part of Sellers under the Purchased Contracts, in each case to the extent such Contract was entered into prior to the commencement of the Bankruptcy Cases and as a prerequisite to the assumption of such Purchased Contracts under section 365 of the US Bankruptcy Code or as a prerequisite to the assignment of such Purchased Contracts under section 11.3(1) of the CCAA; *provided, however*, in the case of any Contract, such Contract is executory and, in the case of any Lease, such Lease is unexpired.

“Debt Financing” means any debt financing incurred by Purchaser in connection with the transactions contemplated by this Agreement.

“Designated Amount” means \$2,000,000, which shall be utilized solely to conduct an orderly wind-down of Sellers after the Closing, of which \$575,000 shall be delivered to the Monitor, on behalf of the Canadian Seller, and \$1,425,000 shall be delivered to the US Sellers. For the avoidance of doubt, if the reasonable and documented costs incurred by either the US Sellers or the Canadian Seller in connection with the orderly wind-down of applicable Sellers after the Closing and the administration, closing, conversion or dismissal of the US Bankruptcy Cases and CCAA Proceeding (and any subsequent proceedings), as applicable, are less than the Designated Amount with respect to such Sellers (i) the US Seller shall return any remaining amounts to Purchaser, and (ii) the Canadian Seller shall transfer any remaining amounts to the CCAA Cash Pool.

“Designated Location” means the facilities of the Canadian Seller referenced on Section 1.1 of the Seller Disclosure Schedule.

“DIP Credit Agreement” means the debtor in possession credit agreement provided in accordance with the terms, and subject to the conditions, set forth thereof and in the DIP Orders, each of which shall be acceptable to Purchaser.

“DIP Facility” means the debtor in possession credit facility provided in accordance with the terms, and subject to the conditions, set forth in the DIP Credit Agreement and the DIP Orders, each of which shall be acceptable to Purchaser.

“DIP Lenders” means all Persons who are lenders under the DIP Credit Agreement, each in its capacity as such.

“DIP Orders” means, together, the US DIP Order and the CCAA DIP Order.

“Dutch Deed of Transfer” means the notarial deed of transfer, in substantially the form attached as Exhibit A, to effect the transfer of the Dutch Shares to Purchaser.

“Dutch Shares” means six hundred thousand (600,000) ordinary shares in the share capital of DCL Corporation (NL) B.V., with a nominal value of 1 euro (EUR 1) numbered 1 up to and including 600,000.

“End Date” has the meaning set forth in Section 10.1(c).

“Environment” means the environment or natural environment as defined in any Environmental Laws and includes air, ambient air, all layers of the atmosphere, all water including surface water, groundwater and underground water, all land, land surface soil, subsurface strata, all living organisms and the interacting natural systems, and includes indoor spaces.

“Environmental Claim” means any Action, Governmental Order, Lien, fine, written report, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging any Environmental Liability arising out of, based on, or resulting from: (i) the presence, Environmental Release of, or exposure to, any Hazardous Materials; or (ii) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit; or (iii) any other liability arising under Environmental Law or relating to Hazardous Materials.

“Environmental Laws” means any applicable Law, any Governmental Order, or binding agreement with any Governmental Authority relating to: (i) pollution or the protection, restoration or remediation of, or prevention of harm to, the Environment and natural resources; (ii) the protection of human health and safety as it pertains to exposure to Hazardous Materials; (iii) the manufacture, processing, registration, distribution, formulation, packaging or labeling of Hazardous Materials or products containing Hazardous Materials; (iv) the transport or handling, use, presence, generation, treatment, incineration, landfilling, milling, storage, disposal, Environmental Release of or exposure to any Hazardous Materials; or (v) recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials.

“Environmental Liability” means any direct, indirect, pending or threatened indebtedness, liability, claim, loss, damage, fine, penalty, cost, expense, deficiency or responsibility, whether known or unknown, arising under or relating to any Environmental Claim, Environmental Law, Environmental Permit, or Environmental Release, whether based on negligence, strict liability or otherwise (including costs and liabilities for investigation, government response, removal, remediation, restoration, abatement, monitoring, personal injury, medical monitoring, monitoring, penalties, contribution, indemnification, injunctive relief, property damage, natural resource damages, court costs, costs of enforcement proceedings or government responses, and reasonable attorneys’ fees in connection with each of the foregoing), including (i) any actual or alleged violation of any Environmental Law, (ii) any actual or alleged generation, use, handling, transportation, storage, treatment, disposal, release, or threatened release of, or exposure to, any Hazardous Materials at any facility or location, (iii) any liability arising under Environmental Law relating to, arising from or with respect to any formerly owned, leased, or operated properties or any former, closed, divested, or discontinued business operations, (iv) any liabilities arising under Environmental Law assumed or retained by contract, operation of law, or otherwise.

“Environmental Notice” means any written directive, written notice of violation or infraction, or other written notice with respect to any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, Consent, waiver, closure, exemption, decision, or other action required under or issued, granted, given, authorized by, or made pursuant to Environmental Law.

“Environmental Release” means any actual or threatened, direct or indirect, release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, spraying, burying, escaping, leaching, dumping, abandonment, disposing, depositing, migrating, incineration, seepage, placement, introduction, or allowing to escape or migrate within, into, through or from the Environment and/or within, into, through or from any Structure, building, facility, or fixture or into or out of any property, whether intentional or unintentional, known or unknown.

“Equity Securities” means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all limited liability company interests or membership interests, participations or other equivalents of limited liability company interests or membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

“ERISA Affiliate” means each entity, trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the IRC or Section 4001(b)(1) of ERISA that includes or included any Seller or any of the Acquired Subsidiaries, or that is, or was at the relevant time, a member of the same “controlled group” as any of the Sellers pursuant to Section 4001(a)(14) of ERISA.

“ETA” means *Excise Tax Act* (Canada) R.S.C. 1985, c. E-15.

“ETA Tax” means taxes imposed under Part IX of the ETA and sales, use or value-added tax legislation enacted by a Canadian province.

“European Benefit Plan” shall mean each Benefit Plan that is maintained or sponsored exclusively by one or more of the Acquired Subsidiaries.

“European Employee” shall mean each individual who is a director, officer, employee or individual independent contractor actively employed by the Acquired Subsidiaries immediately prior to the Closing.

“EX-IM Laws” means all applicable U.S., Canadian and foreign Laws relating to export, reexport, transfer, and import controls, including, without limitation, (a) EAR, ITAR, the customs and import Laws administered by U.S. Customs and Border Protection, (b) the Export and Import Permits Act., the Customs Act, the Defence Production Act, the Department of Public Works and Government Services Act, including all regulations thereunder, the Export Control List, Area Control List, Brokering Control List, and the Controlled Goods Regulations, and the customs and import Laws administered by the Canada Border Services Agency and Global Affairs Canada.

“Exchange Act” means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

“Excluded Assets” has the meaning set forth in Section 2.2.

“Excluded Avoidance Actions” means (a) any Avoidance Actions against the Sellers’ Chief Executive Officer arising from payments listed on the US Sellers’ Schedules of Assets and Liabilities and Statements of Financial Affairs filed prior to the date hereof and (b) any Avoidance Actions against the Transferred Employees or Sellers’ vendors or customers.

“Excluded Benefit Plan” means each Benefit Plan that is not an Assumed Benefit Plan.

“Excluded Cash” means all cash held by the Sellers at the Closing, including cash drawn by Sellers under the DIP Facility at the Closing (but excluding amounts held in the Adequate Assurance Account); provided that Excluded Cash shall not exceed the Required Amount.

“Excluded Employee” means (i) each Business Employee who is primarily employed at the Designated Location, (ii) each Retention Eligible Employee identified as an Excluded Employee in writing to Sellers prior to the earlier of (x) ten (10) days immediately prior to the Closing Date, and (y) March 17, 2023, and (iii) each non-union Business Employee against whom there are pending allegations of workplace sexual harassment or illegal retaliation or discrimination that Purchaser reasonably believe have merit after discussions with Sellers’ human resources department, unless otherwise determined by Purchaser in its sole discretion.

“Excluded Employee Liabilities” means (a) any and all Liabilities, and any and all other payments, compensation, commissions, benefits, bonuses, vacation and entitlements that Sellers owe or are obligated to provide, whether prior to, on or following the Closing, in each case, with respect to any Business Employee (or any of their respective covered dependents, beneficiaries and estates), in connection with any such individual’s employment with and/or engagement by Sellers, and, with respect to any Business Employees who are not Transferred Employees, the termination of their employment, including, without limitation, any and all entitlements to notice of termination, severance (whether statutory or contractual), damages for wrongful dismissal, or other Liabilities arising out of the termination of employment or service with Sellers and their respective Subsidiaries and Affiliates (other than any pay in lieu of notice, termination pay, severance pay or similar amount, in each case, that is required to be paid by applicable Law to a Retention Eligible Employee who does not receive an Offer and who is terminated by Sellers on

or about the Closing Date), and (b) any and all Liabilities, payments, costs, expenses or disbursements which arise under or relates to any Benefit Plan (other than Liabilities that are Assumed Liabilities pursuant to Section 2.3(j)); *provided, however*, that Excluded Employee Liabilities shall not include any (i) Liabilities for wages and salaries, vacation and other time-off and commissions accrued prior to the Closing, but unpaid in the ordinary course of business in respect of service by a Business Employee after the last day covered by the last regularly scheduled payroll date of Sellers and their respective Affiliates and Subsidiaries to occur on or prior to the Closing Date and any payroll taxes associated therewith, or (ii) Liabilities with respect to Business Employees in Canada that are assumed by Purchaser by operation of labour relations and minimum employment standards Laws.

“Excluded Liabilities” has the meaning set forth in Section 2.4.

“Exit Costs” means the amount of 503(b)(9) Claims.

“FCPA” has the meaning set forth in Section 5.18(b).

“Filing Date” shall mean (i) the Petition Date in respect of the US Sellers and (ii) the CCAA Filing Date in respect of the Canadian Seller.

“Financial Assurance” means the letters of credit issued by HSBC Bank Canada in favor of (i) the Ontario Ministry of the Environment and Climate Change in the amount of CAD\$371,058 as required by Certificate of Property Use No. 3643-99WJAH for the Designated Location and (ii) the Town of Ajax in the amount of CAD\$11,283 as required by the Amending Site Plan Agreement dated October 23, 2012 and registered on title to the Designated Location as instrument no. DR1137039) between the Corporation of the Town of Ajax and the Canadian Seller for the Designated Location.

“Forecasted Availability” means projected Excess Availability on or about the Closing Date as set forth in the budget prepared in accordance with the terms of the DIP Credit Agreement.

“FSRA” means the Financial Services Regulatory Authority of Ontario.

“Fundamental Documents” means the documents of a Person (other than a natural person) by which such Person establishes its legal existence or which govern its internal affairs. For example, the Fundamental Documents of a corporation would be its articles, charter, bylaws and unanimous shareholders’ agreements, if any, and the Fundamental Documents of a limited liability company would be its certificate of formation and limited liability company agreement or operating agreement.

“Fundamental Representations” means (i) with respect to Sellers and the Acquired Subsidiaries, the representations and warranties contained in Section 5.1 (Organization, Standing and Corporate Power), Section 5.3(a) (Authority; Noncontravention), Section 5.4(a) (Capitalization of Acquired Subsidiaries), and Section 5.16 (No Brokers), and (ii) with respect to Purchaser, the representations and warranties contained in Section 6.1 (Corporate Existence and Qualification), Section 6.2 (Corporate Power, Authorization, Enforceable Obligations), and Section 6.5 (No Brokers).

“Funding Arrangements” means a trust agreement or other funding arrangement established in respect of any of the Canadian Pension Plans or in respect of the Purchaser’s Plan, as the context requires.

“GAAP” means generally accepted accounting principles in the United States.

“General Intangibles” means all intangible assets now owned by any Seller, including all right, title and interest that such Seller may now or hereafter have in or under any Contract, all payment intangibles, interest in business associations, Licenses, Permits, uncertificated securities, checking and other bank accounts, rights to receive Tax refunds (to the extent assignable under Law) and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Equity Securities and investment property, and rights of indemnification.

“Governmental Authority” shall mean any (i) nation, state, province, tribal, county, city, municipality, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, provincial, regional, municipal, foreign, local or other government; (iii) governmental or quasi-governmental authority of any nature (including any government agency, ministry, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or Taxing Authority or power of any nature.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority, including, but not limited to, any order, writ, judgment, decree, stipulation, determination, award or guideline issued by a Governmental Authority restricting business operations.

“Hazardous Materials” means any (i) constituent, material, substance, chemical, or waste (or combination thereof) that is listed, defined, designated, regulated or classified as hazardous, explosive, corrosive, flammable, infectious, toxic, carcinogenic, mutagenic, radioactive, dangerous, a pollutant, a contaminant, or words of similar meaning or effect under any Environmental Law, (ii) substance that requires removal or remediation under any Environmental Law, (iii) substance that can give rise to liability under any Environmental Law or the presence of which requires investigation, clean up, removal, abatement, remediation or other corrective or remedial action under any Environmental Laws, and (iv) petroleum or petroleum by-products, asbestos or asbestos-containing materials or products, per- and polyfluoroalkyl substances, polychlorinated biphenyls (PCBs) or materials containing same, chlorinated solvents, polyvinyl chloride, radioactive materials, lead-based paints or materials, radon, flammable substances, explosives, toxic mold, and including the contaminants in respect of site condition standards that have been established under Records of Site Condition – Part XV.1 of the Environmental Protection Act (Ontario Regulation 153/04) and all other similar or analogous legislation of a Governmental Authority.

“Holdings” has the meaning set forth in the Preamble.

“Hourly DB Plan” means the DCL Corporation Hourly Pension Plan registered under the PBA and the Tax Act with registration number 0401455.

“Hourly DC Plan” means the Dominion Colour Corporation Hourly Pension Plan registered under the PBA and the Tax Act with registration number 1166354.

“Incidental License” means any (i) permitted use right to confidential information in a non-disclosure agreement entered into in the ordinary course of business; (ii) non-exclusive license to commercially-available software, including all shrink-wrap and click-wrap licenses or other generally commercially available license with annual payments of less than \$100,000, and (iii) non-exclusive license that is not material to the Business and merely incidental to the transaction contemplated in the agreement, the commercial purpose of which is primarily for something other than such license, such as any: (A) agreement for the sale of advertising; (B) sales or marketing or similar agreement that includes a license to use Trademarks or Copyrights for the purposes of promoting the products and services of the Business and (C) vendor agreement that includes permission for the vendor to identify the Business as a customer of the vendor.

“Income Taxes” means Taxes imposed on, or measured by, income or profits, including franchise taxes imposed in lieu of income tax.

“Indebtedness” shall mean, with respect to any Person, without duplication:

- (a) obligations of such Person for borrowed money, or otherwise evidenced by bonds, debentures, notes or similar instruments;
- (b) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, other than any such obligation made in the ordinary course of business;
- (c) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, Inventory, services and supplies incurred in the ordinary course of such Person’s business);
- (d) all obligations of such Person under leases that have been or should be treated, in accordance with GAAP, as capitalized lease obligations of such Person;
- (e) all obligations of others secured by any Lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, other than any such obligation made in the ordinary course of business;
- (f) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof);
- (g) all letters of credit issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the ordinary course of business); and
- (h) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person.

“Indemnification Claims” means claims for indemnification of any present or former officer, director, employee, partner or member of any Seller whether arising under a Seller’s Fundamental Documents or any Contract arising prior to the Closing Date.

“Instruments” means all “instruments,” as such term is defined in the UCC, now owned or hereafter acquired by any Seller, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, chattel paper.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, Trade Secrets, methods, processes, know how, internet domain names, social media accounts, and other intellectual property or industrial or intangible rights, all goodwill associated therewith, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intellectual Property Agreements” means all Copyright Licenses, Patent Licenses, and Trademark Licenses and all other agreements granting any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary with respect to any Intellectual Property used in connection with the Business (expressly excluding, in each instance, Incidental Licenses).

“Inventory” means all “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by any Seller, wherever located, and, without limiting the foregoing, all (i) inventory, (ii) merchandise, (iii) goods and other personal property, (iv) raw materials, work or construction in process, (v) finished goods, returned goods, or materials or supplies of any kind, nature or description and (vi) products, equipment, and appliances, whether owned or on order, including all embedded software.

“Investment Canada Act” means the Investment Canada Act (Canada), R.S.C. 1985, c. 28 (1st Supp), as amended, and the regulations promulgated thereunder.

“IRC” means the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“IRS” means the U.S. Internal Revenue Service.

“Knowledge of Sellers” means the actual knowledge after reasonable inquiry of the individuals identified in Section 1.1(b) of the Seller Disclosure Schedule.

“Laws” means any federal, state, provincial, local or municipal (or any subdivision of any of them), foreign, international or supranational law (including common law), statute, treaty, ordinance, rule, regulation, by-law, Order, code, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Authority.

“Leased Real Estate” has the meaning set forth in Section 5.6(c).

“Leases” means each unexpired lease of real or personal property leased, licensed or otherwise granted to Sellers or the Acquired Subsidiaries.

“Liabilities” means any and all debts, losses, liabilities, claims, damages, fines, costs, royalties, proceedings, deficiencies or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due and any out-of-pocket costs and expenses (including reasonable attorneys’, accountants’ or other fees and expenses).

“License” means any licenses, franchises, Consents, approvals and any Permits, including Permits of or registrations with any Governmental Authority; but expressly excluding any license or sublicense of Intellectual Property.

“License Approvals” shall have the meaning set forth in Section 7.12.

“Liens” means any mortgage, pledge, hypothecation, security interest (whether contractual, statutory or otherwise), charge, trust (including any statutory, deemed or constructive trust), encumbrance, easement, license, encroachment, servitude, Consent, option, lien, put or call right, right of first refusal, voting right, charge, lease, long-lease (*in Dutch: erfpacht*), sublease, right to possession, adverse ownership claim or other restrictions or encumbrances of any nature whatsoever.

“Material Adverse Effect” means any fact, condition, change, violation, inaccuracy, circumstance, effect, event, or occurrence that individually or in the aggregate has had, or would be reasonably likely to have, a material adverse change in or material adverse effect on the Purchased Assets or the Business (excluding the Excluded Assets and the Excluded Liabilities), in each case taken as a whole, but excluding (i) any change or effect to the extent that it results from or arises out of (a) the filing and pendency of the Bankruptcy Cases or the financial condition of Sellers; (b) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby; (c) changes in (or proposals to change) Law, generally accepted accounting principles, or other accounting regulations or principles; or (d) any action contemplated by this Agreement or taken by Sellers at the request of, or with the consent of, Purchaser; (ii) any change or effect generally applicable to (a) the industries and markets in which Sellers operate or (b) economic or political conditions or the securities or financial markets in any country or region; (iii) any outbreak or escalation of hostilities or war or any act of terrorism; (iv) any occurrence, threat, or effects of a disease outbreak, epidemic, pandemic, or similar widespread public health concern, which results in recommendations or mandates or Governmental Order from Governmental Authorities to reduce travel, avoid large gatherings, self-quarantine, or extended shutdown of certain businesses, including any recommendations or mandates on levels or types of recreational or business activities that Sellers may hold at their locations due to the ongoing COVID-19 pandemic; (v) any objections in the US Bankruptcy Court or the CCAA Court to (a) this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby, (b) the reorganization of Sellers and any related plan of reorganization or disclosure statement, or (c) the Sale Motions, Sale Procedures Orders or Sale Orders; (vi) the assumption or rejection of any Purchased Contract or Leased Real Estate; and (vii) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions.

“Material Contract” and **“Material Contracts”** has the meaning set forth in Section 5.10(a).

“Monitor” means Alvarez & Marsal Canada Inc., or such other court-appointed monitor of the Canadian Seller in the CCAA Proceeding.

“Monitor’s Certificate” means the certificate issued by the Monitor, in substantially the form attached to the CCAA Sale Order, certifying that all conditions of Closing in favor of the Canadian Seller have been satisfied by Purchaser or waived by the Canadian Seller.

“Multiemployer Plan” means each Benefit Plan that is a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA, Section 414(f) of the IRC, or a “multi-employer pension plan” pursuant to subsection 147.1 of the Tax Act, subsection 1(3) of the PBA or as such similar terms are defined in similar pension standards legislation of Canada or a province.

“No Action Letter” means a communication in writing from the Commissioner of Competition advising that he does not, at that time, intend to make an application to the Competition Tribunal under Section 92 of the Competition Act in respect of the transactions contemplated by this Agreement.

“Order” means any judgment, order, administrative order, writ, stipulation, injunction (whether permanent or temporary), award, decree or similar legal restraint of, or binding settlement having the same effect with, any governmental Action.

“Owned Real Property” has the meaning set forth in Section 5.6(d).

“Partially Transferred Canadian Pension Plan” has the meaning set forth in Section 7.9(b)(i).

“Patent Licenses” means all written agreements providing for the grant by or to a Seller of any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary under any Patent, including the right to manufacture, make, have made, use or sell, offer for sale or otherwise exploit any invention covered in whole or in part by a Patent, in connection with the Business.

“Patents” means all of the following: (a) all letters patent, patents and patent rights, including those relating to utility patents, design patents, industrial designs or any other protectable subject matter, of the United States, Canada or of any other country, and all applications in connection therewith in the United States Patent and Trademark Office, Canadian Intellectual Property Office or in any similar office or agency of the United States, Canada, or any other country; (b) all reissues, continuations, continuations-in-part, divisionals, reexaminations or extensions thereof; and (c) all foreign equivalents to those patents or applications subsequently filed in any jurisdiction.

“PBA” means the Pension Benefits Act (Ontario) and regulations thereunder.

“PBA Reg 310/13” means Ontario Regulation 310/13 made pursuant to the PBA.

“Permits” means all approvals, authorizations, certificates, consents, franchises, variances, licenses, and permits issued by any Governmental Authority (including all applications, renewal applications, or documents filed, or fees paid, in connection therewith).

“Permitted Liens” means: (i) statutory Liens for current and future property Taxes, assessments or other similar governmental charges, including water and sewage charges, not yet due and payable, or being contested in good faith and for which adequate reserves have been taken in accordance with GAAP; (ii) present and future zoning, building codes and other land use Laws regulating the use or occupancy of any Owned Real Property or Leased Real Estate or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such Owned Real Property or Leased Real Estate which are not violated by the current use or occupancy of such Owned Real Property or Leased Real Estate, where such violation would reasonably be expected to have a Material Adverse Effect on the Business; and (iii) easements, covenants, conditions, restrictions and other similar matters affecting title to such Owned Real Property or Leased Real Estate and other title encumbrances which encumber the Owned Real Property or Leased Real Estate (as applicable) as of the date hereof and which do not, individually or in the aggregate, materially impair the use, occupancy, maintenance, repair or development of such Owned Real Property or Leased Real Estate or the operation of the Business where such impairment would have a Material Adverse Effect on the Business; and (iv) Liens securing Indebtedness.

“Person” shall be construed broadly and means any individual, partnership, limited partnership, corporation, limited liability company, association, joint stock company, estate, trust, joint venture, unincorporated organization, other entity, or a Governmental Authority.

“Petition Date” has the meaning given to it in the Recitals.

“Pre-Petition Term Lenders” means the lenders under the Pre-Petition Term Loan.

“Pre-Petition Term Loan” means that certain Credit Agreement, dated as of April 6, 2018 (as previously amended, amended and restated, supplemented, or otherwise modified, and as may be further amended, modified or supplemented from time to time), by and among H.I.G. Colors, Inc., the Canadian Seller (f/k/a Dominion Colour Corporation), DCL Holdings (USA), Inc. (f/k/a Lansco Holdings Inc.), as borrowers, the guarantors named therein, Delaware Trust Company, as administrative agent, and the lender parties thereto.

“Pre-Petition Term Loan Obligations” means the loans and other “Obligations” (as defined in the Pre-Petition Term Loan) under the Pre-Petition Term Loan.

“Preserve” means any action necessary to preserve, maintain, or otherwise protect any assets being sold or assigned pursuant to this Agreement, including, but not limited to, actions necessary to notice and/or pursue all insurance proceeds of Policy Number MPL 0156209-04, issued by Zurich-American Insurance Company to H.I.G. Colors Holdings, Inc.

“Professional Fees and Expenses” means the reasonable and documented fees and expenses accrued and unpaid by Sellers’ and Purchaser’s professionals as of the Closing Date in accordance with the DIP Budget (as defined in the US DIP Order) *less* amounts held as retainers by such professionals.

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Purchased Contracts” means all Contracts designated by Purchaser to be assumed and assigned pursuant to Section 2.5.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Advisors” means the equity holders, current and prospective leverage providers, current and prospective limited partners and investors, officers, employees, attorneys, financial advisors, Affiliates and other representatives of Purchaser.

“Quebec Pension Plan” means the government sponsored pension plan established under the Act Respecting the Quebec Pension Plan (Quebec).

“Rate of Return” has the meaning set forth in Section 7.9(a)(iv).

“Registered Intellectual Property” has the meaning set forth in Section 5.8(c).

“Regulatory Approvals” means the Competition Act Clearance (if required) and all Consents and other authorizations reasonably required to be obtained from, or any filings required to be made with, any Governmental Authority that are necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

“Rejection Damages Claims” means all claims arising from or related to the rejection of a Contract under section 365 of the US Bankruptcy Code or the disclaimer of a Contract under section 32 of the CCAA, including any administrative expense claims arising from the rejection or disclaimer of Contracts previously assumed, unless such Contract is a Purchased Contract.

“Replacement Financial Assurance” has the meaning set forth in Section 7.14.

“Representatives” has the meaning specified in Section 7.6(d).

“Required Amount” means an amount equal to (a) the Professional Fees and Expenses, plus (b) the Designated Amount, plus (c) the CCAA Cash Pool.

“Responsible Officer” means, with respect to any Person, the chief restructuring officer, chief executive officer, president, chief operating officer, chief financial officer, controller and chief accounting officer, vice president of finance or treasurer of such Person.

“Restructuring Transaction” means a sale of Sellers’ assets and business pursuant to section 363 of the US Bankruptcy Code and/or section 36 of the CCAA in the Bankruptcy Cases.

“Retention Eligible Employee” means each non-union Business Employee who is (i) an officer of Holdings or any of its Subsidiaries, or (ii) scheduled on Section 1.1 of the Seller Disclosure Schedule, as supplemented in accordance with the Original Asset Purchase Agreement.

“Salaried DB Plan” means the DCL Corporation Salaried Pension Plan registered under the PBA and the Tax Act with registration number 0989616.

“Salaried DC Plan” means the Pension Plan for the Employees of Dominion Colour Corporation registered under the PBA and the Tax Act with registration number 1141860.

“Sale” has the meaning set forth in the Recitals.

“Sale Motions” means, together, the CCAA Sale Motion and the US Sale Motion.

“Sale Orders” means, together, the CCAA Sale Order and the US Sale Order.

“Sale Procedures” means the bidding procedures governing the Sale, in substantially the form attached as Exhibit C.

“Sale Procedures Orders” means, together, the CCAA Sale Procedures Order and the US Sale Procedures Order.

“Sanctioned Person” means, at any time, (a) any Person listed in any sanctions-related list of designated Persons maintained by any applicable Governmental Authority, including the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of State, or the Government of Canada including Global Affairs Canada, (b) any Person operating, organized or resident in a country, region or territory which is itself the subject or target of any Sanctions or any Sanctions-related list or (c) any Person owned or Controlled by any such Person described in the foregoing clauses (a) or (b).

“Sanctions” means any applicable trade or economic sanctions administered or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of State, the Minister of Foreign Affairs, Global Affairs Canada, the Canada Border Services Agency, the Royal Canadian Mounted Police, the Public Prosecution Service of Canada, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority.

“Securities Act” means the Securities Act of 1933, as amended.

“Select Assumed Liabilities” means the Assumed Liabilities set forth in Section 2.3(c) (solely with respect to Cure Costs, but not obligations to provide adequate assurances), Section 2.3(e), Section 2.3(f), Section 2.3(j) (solely with respect to accrued and unpaid contribution amounts with respect to the Canadian Pension Plans that are assigned to Purchaser as of the Closing Date), and Section 2.3(n) (to the extent accrued but unpaid as of the Closing Date).

“Selected Courts” has the meaning set forth in Section 12.2(a).

“Seller Disclosure Schedule” has the meaning set forth in ARTICLE V.

“Seller Representatives” means Sellers’ directors, officers, employees, advisors, attorneys, accountants, consultants, financial advisors, bankers, or other agents or representatives.

“**Sellers**” has the meaning set forth in the Preamble.

“**Statement of Investment Policies and Procedures**” means the statement filed with FSRA pursuant to the PBA by Sellers in respect of a Canadian Pension Plan.

“**Structures**” means, collectively, buildings, structures, and fixtures on, and other improvements to, the Owned Real Property or Leased Real Estate.

“**Subsidiary**” or “**Subsidiaries**” means for any Person, any other Person or Persons of which a majority of the outstanding voting Equity Securities are owned, directly or indirectly, by such first Person.

“**Tax**” or “**Taxes**” means, whether disputed or not, (i) any federal, state, provincial, county, local or foreign taxes, charges, fees, levies or other assessments, including all net income, gross income, sales and use, goods and services (including all ETA Tax and Quebec sales tax), service, use, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipts, value added, capital stock, capital gains, windfall profits, escheat, unclaimed or abandoned property, production, business and occupation, disability, employment, payroll, license, estimated, stamp, custom duties, severance, unemployment, lease, recording registration, social security (or similar, including Canada Pension Plan contributions, employment insurance premiums and Quebec Pension Plan premiums), Medicare, alternative or add-on minimum, net worth, documentary, intangibles, conveyancing, environmental, premium, or withholding (including backup withholding) taxes, impost or charges or other compulsory payments imposed by any Governmental Authority, whether disputed or not, and includes any interest and penalties (civil or criminal) on or additions to any such taxes and (ii) liability for items in (i) of any other Person by Contract, operation of Law (including Treasury Regulation §1.1502-6) or otherwise.

“**Tax Act**” means the Income Tax Act (Canada) and the regulations thereunder.

“**Tax Proceeding**” has the meaning set forth in Section 8.3.

“**Tax Returns**” means any return, report, election, declaration, statement, information return, schedule, or other document (including any related or supporting information) filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of any Taxes or the administration of any Laws, regulations or administrative requirements relating to any Taxes or any amendment thereof.

“**Taxing Authority**” means, with respect to any Tax, a Governmental Authority that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity, including any Governmental Authority that imposes, or is charged with collecting, social security or similar charges or premiums.

“**Trade Secrets**” means all confidential and proprietary information used in the Business for commercial advantage and not generally known or reasonably ascertainable by any unauthorized Person, including know-how, trade secrets, manufacturing and production processes and techniques, research and development information, databases and data, including technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information.

“Trademark Licenses” means any written agreement providing for the grant of any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary to use any Trademark in connection with the Business.

“Trademarks” means all of the following: (i) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, slogans, brand names, and other source or identifiers (whether registered or unregistered), and all registrations and applications in connection therewith, including registrations and applications in the United States Patent and Trademark Office, Canadian Intellectual Property Office or in any similar office or agency of the United States, Canada, any state, province or territory thereof, or any other country or any political subdivision thereof; (ii) all reissues, extensions, foreign equivalents or renewals thereof; and (iii) all goodwill of the Business associated with or symbolized by any of the foregoing.

“Transaction Documents” means this Agreement and any other agreements, documents and instruments to be executed and delivered pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 8.2.

“Transferred Employee” means (i) each non-union Canadian Employee or US Employee who (A) has received an Offer from Purchaser or any of its Affiliates in accordance with Section 7.8(a) below, (B) accepts such Offer, and (C) commences employment with Purchaser and its Affiliates on or promptly following the Closing Date, (ii) each unionized Canadian Employee, other than a unionized Canadian Employee who is primarily employed at the Designated Location, and (iii) each European Employee.

“Transferred Pension Plan Participants” has the meaning set forth in Section 7.9(b)(ii).

“Treasury Regulations” means one or more Treasury regulations promulgated under the IRC by the Treasury Department of the United States.

“Trust” means a trust to be established prior to the Sale solely for the benefit of those vendors, shippers, suppliers, and/or warehouseman identified in the trust agreement governing such trust, which shall be in form and substance reasonably acceptable to Purchaser and the Committee and which form of such agreement shall be filed prior to the objection deadline to the US Sale Motion. Such trust agreement will require, among other things, that (i) any beneficiary of the Trust waive any claims in the US Bankruptcy Cases; (ii) a creditor representative be appointed solely by the Committee prior to the Sale that will control and administer the trust; and (iii) neither the Purchaser nor the DIP Lender will be eligible to receive any proceeds of the Trust. For the avoidance of doubt, the Trust will only benefit those creditors specifically provided for in such trust agreement.

“UCC” means the Uniform Commercial Code.

“UK Shares” means the entire issued share capital of DCL Corporation (Europe) Limited, being 1,467,591 ordinary shares of £1.00 each.

“US Bankruptcy Cases” has the meaning set forth in the Recitals.

“US Bankruptcy Code” has the meaning set forth in the Recitals.

“US Bankruptcy Court” has the meaning set forth in the Recitals.

“US DIP Order” means the interim Order or final Order, as then applicable, authorizing post-petition debtor-in-possession financing or the use of cash collateral to be entered by the US Bankruptcy Court.

“US Employee” means each Business Employee who is actively employed by DCL Corporation (BP), LLC, DCL Holdings (USA), Inc. or DCL Corporation (USA), LLC immediately prior to the Closing.

“US Purchased Assets” means Purchased Assets belonging to the US Sellers.

“US Sale Hearing” means the hearing scheduled by the US Bankruptcy Court to approve the Sale of the US Purchased Assets.

“US Sale Motion” has the meaning set forth in Section 7.7(a).

“US Sale Order” means an Order of the US Bankruptcy Court approving the Sale of the US Purchased Assets, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“US Sale Procedures Hearing” means the hearing scheduled by the US Bankruptcy Court to approve the Sale Procedures.

“US Sale Procedures Order” means an Order of the US Bankruptcy Court approving procedures governing the solicitation of bids for the US Sellers’ assets and business and scheduling an auction and hearing on the Sale of the US Purchased Assets, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“US Sellers” has the meaning set forth in the Recitals.

“Utility Services” means water, sewer service, electricity, waste disposal, natural gas, and other similar services from utility providers or their brokers.

Section 1.2 Schedules. References to this Agreement shall include any Exhibits, Schedules and Recitals to this Agreement and references to Sections, Exhibits and Schedules are to Sections of, Exhibits to and Schedules to, this Agreement.

Section 1.3 Information. References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

Section 1.4 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,”

“herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires. The word “or” shall not be deemed to be exclusive. The word “extent” and the phrase “to the extent” when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply “if.” All terms defined in this Agreement shall have the defined meaning when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. References in this Agreement to specific Laws or to specific provisions of Laws shall include all rules and regulations promulgated thereunder. All Exhibits and schedules annexed to this Agreement or referred to in this Agreement are incorporated in and made a part of this Agreement as if set forth in full in this Agreement. References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms of this Agreement and such Contract. Each of the parties to this Agreement has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties to this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

ARTICLE II

PURCHASED SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase, Sale, and/or Assignment of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser (or its designated Affiliate or Affiliates), pursuant to and in accordance with the Sale Orders, all of Sellers’ right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Permitted Liens), Claims and interests, other than the Assumed Liabilities. “**Purchased Assets**” means all of Sellers’ assets (other than the Excluded Assets, even if such asset is listed in this Section 2.1), including:

- (a) all cash, cash equivalents, prepayments (including all prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, except for the Excluded Cash;
- (b) all Equity Securities in the Acquired Subsidiaries (including, for the avoidance of doubt, the Dutch Shares and the UK Shares);
- (c) all Owned Real Property;
- (d) all Accounts Receivables;
- (e) all Inventory;
- (f) to the extent transferable, all insurance policies of Sellers and any claims thereunder to the extent such policies relate to the operation of the Business or to any Assumed

Liabilities, except for coverage and proceeds for any claims relating to or arising prior to the Closing Date, excluding any directors and officers insurance policy;

(g) all Leased Real Estate (and Leases thereof) and all Purchased Contracts; *provided*, that Leased Real Estate shall not be subject to exclusion pursuant to Section 2.2 or Section 2.5;

(h) any security deposits held by counterparties to the Purchased Contracts;

(i) all furniture, fixtures, equipment, marketing materials and other personal property used or usable in the operations of the Business, including, to the extent transferable, all rights to any software used in any computer equipment;

(j) all merchandise and other personal property used or usable in the Business;

(k) all amounts withheld by Sellers and their respective Subsidiaries prior to the Closing from the compensation payable to any Business Employee that is required by the terms of any Benefit Plan or applicable Law that has not, as of the Closing Date, been transferred as required by applicable Law or contributed to such Benefit Plan or the trust maintained in respect of such Benefit Plan;

(l) all assets of, or set aside in respect of, any Assumed Benefit Plans to the extent related to Liabilities assumed pursuant to Section 2.3(j);

(m) to the extent transferable pursuant to applicable law, all Licenses and Permits required for Sellers to conduct the Business as currently conducted or for the ownership, operation, use, maintenance, or repair of any of the Purchased Assets;

(n) all Books and Records (including Tax records and Tax Returns) (provided that Sellers may retain copies of Books and Records);

(o) all (i) Intellectual Property owned by any Seller and used or held for use in connection with the Business; (ii) Intellectual Property Agreements; and (iii) Incidental Licenses;

(p) all General Intangibles associated with the Business;

(q) all guarantees, representations, warranties, and indemnities associated with the operation of the business, including in respect of any Assumed Liabilities;

(r) subject to Section 7.6(d) and Section 2.1(u), all past, present, and future claims and causes of action whatsoever, including, but not limited to, Avoidance Actions and the proceeds thereof, choses in action, rights of recovery, rights of set off, and rights of recoupment (including any such item relating to the payment of Taxes) other than counterclaims and defenses related to Excluded Assets; for avoidance of doubt, these claims include, but are not limited to, all claims against equity holders, insiders, and sponsors of the Sellers, in addition to claims against the Sellers' current and former officers and directors;

(s) all prepayments, deposits, deferred assets, rights to refunds (including pre- and post-bankruptcy rights to Tax refunds), credits, rights to recover overpayments or other receivables, other than those related to Excluded Assets;

(t) all rights with respect to proofs of claim filed by or on behalf of any Seller in any bankruptcy, insolvency or restructuring case or proceeding other than the Bankruptcy Cases; and

(u) all of Sellers' rights and interests (free and clear of restrictions, conditions, or limitations, if any, in any of the organizational documents governing such rights and interests) to Preserve and prosecute past, present, and future claims and causes of action set forth in Section 2.1(r).

Solely with respect to the Dutch Shares, the Canadian Seller hereby sells to Purchaser and Purchaser hereby purchases such Dutch Shares free and clear of all Liens (other than Permitted Liens), subject to the terms and subject to the conditions set forth in this Agreement and any orders necessary to consummate the Closing. Subject to the terms and subject to the conditions set forth in this Agreement and any orders necessary to consummate the Closing, the Canadian Seller shall transfer the Dutch Shares on the Closing Date, free and clear of all Liens (other than Permitted Liens) and together with all right attached to the Dutch Shares to Purchaser, and Purchaser shall acquire and accept the Dutch Shares from the Canadian Seller through execution of the Dutch Deed of Transfer.

Section 2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, including anything to the contrary in Section 2.1 hereof, Purchaser shall not purchase or assume and shall not be deemed to have purchased or assumed, any Excluded Assets relating to the Business of Sellers or any Affiliates of Sellers, and Sellers and their Affiliates shall retain all right, title and interest to, in and under the Excluded Assets. “**Excluded Assets**” means Sellers' properties and assets set forth as follows:

(a) each Seller's Fundamental Documents;

(b) Equity Securities in any Seller;

(c) any Contracts that are not Purchased Contracts;

(d) any confidential personnel or other records pertaining to relating to employees of Sellers that are not Transferred Employees;

(e) all rights to any software used in any computer equipment included in the Purchased Assets, but only to the extent not freely transferable to Purchaser as set forth on Section 2.2 of the Seller Disclosure Schedule, as provided in accordance with the Original Asset Purchase Agreement;

(f) all equipment and other assets and items that are (i) owned by third parties or (ii) leased to any Seller or an Affiliate thereof, or are not freely assignable, saleable, and transferable to Purchaser, in each case, pursuant to a contract or agreement that is not a Purchased Contract;

(g) all assets of, or set aside in respect of, any of the Excluded Benefit Plans and any Assumed Benefit Plan (except as set forth in Section 2.1(l) above);

(h) retainers held by any professional retained by Sellers in connection with the Bankruptcy Cases, and any funds of Sellers held in escrow or reserve with respect to the fees and expenses of any professional retained by Sellers in connection with the Bankruptcy Cases;

(i) rights that accrue or will accrue to Sellers under any of the Transaction Documents with respect to the Sale;

(j) any directors and officers (or similar) insurance policies, any insurance policies of Sellers that cover directors and officers, and any rights thereunder;

(k) Excluded Employee Benefit Plans;

(l) Excluded Cash and the Adequate Assurance Account; and

(m) rights to any Tax refunds of Sellers to the extent not assignable by Law;

provided, however, that Purchaser may designate any assets of Sellers as Excluded Assets (other than any Owned Real Property or Leased Real Estate) by written notice to Sellers at least five (5) Business Days prior to the Closing Date. For the avoidance of doubt, any such designation of Excluded Assets shall not change the amount of the Credit Bid.

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) assume and be responsible for, effective as of the Closing, and thereafter pay, honor, perform and discharge as and when due, all of the Assumed Liabilities. “**Assumed Liabilities**” means the Liabilities and obligations of Sellers set forth as follows:

(a) all Liabilities of Sellers relating to or arising under (i) Purchased Contracts, including all Cure Costs, (ii) Permits included within Purchased Assets, and (iii) Intellectual Property rights included within Purchased Assets;

(b) (i) Liabilities owed to vendors who provided goods and/or services to Sellers in the ordinary course of business on or after the Petition Date; *provided, however*, that Purchaser may contest the validity of any such vendor purchase orders in the ordinary course of business; (ii) Liabilities constituting 503(b)(9) Claims which shall be paid by Purchaser (A) on or within seven (7) days upon the Closing Date or (B) if subject to a vendor agreement entered into pursuant to the Critical Vendor Order, pursuant to the terms of such agreement; and (iii) Liabilities of Sellers under the Critical Vendor Agreements;

(c) all Cure Costs and any obligation to provide adequate assurance of future performance;

(d) all Liabilities of Sellers (other than in respect of Taxes, except for Assumed Tax Liabilities) relating to, or arising in respect of, the Purchased Assets accruing, arising out of

or relating to (i) events, occurrences, acts or omissions occurring or existing after the Closing Date or (ii) the operation of the Business or the Purchased Assets after the Closing Date;

(e) the Assumed Tax Liabilities;

(f) any Liabilities for wages and salaries, vacation and other time-off and commissions accrued but unpaid in the ordinary course of business in respect of service by a Business Employee after the last day covered by the last regularly scheduled payroll date of Sellers and their respective Affiliates and Subsidiaries to occur on prior to the Closing Date and any payroll taxes associated therewith;

(g) any pay in lieu of notice, termination pay, severance pay or similar amount, in each case, that is required to be paid by applicable Law to a Retention Eligible Employee who does not receive an Offer and who is terminated by Sellers on or about the Closing Date;

(h) all Liabilities for claims of customers incurred in the ordinary course of business arising after the Filing Date; *provided, however*, that Purchaser may contest any such customer claims in the ordinary course of business;

(i) all Liabilities in respect of Transferred Employees accruing from and after the Closing Date, but only to the extent arising out of or relating to their employment by Purchaser or any of its Affiliates or with respect to Business Employees in Canada that are assumed by the operation of labour relations and minimum employment standards Laws;

(j) (i) all Liabilities under any Assumed Benefit Plan with respect to any Transferred Employee, (ii) all Liabilities under the Assumed Benefit Plan that is a self-insured short-term disability plan of the Canadian Seller, and (iii) all Liabilities under the Canadian Pension Plans that are assumed by Purchaser;

(k) all Liabilities to contribute amounts withheld by Sellers and their respective Subsidiaries prior to the Closing from the compensation payable to any Business Employee that is required by applicable Law or the terms of any Benefit Plan that has not, as of the Closing Date, been transferred as required by applicable Law or contributed to such Benefit Plan or the trust maintained in respect of such Benefit Plan;

(l) all Environmental Liabilities relating to any Owned Real Property or Leased Real Estate, including Environmental Liabilities relating to, resulting from, caused by or arising out of: (i) the ownership, operation or control of the Purchased Assets, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or after the Closing Date; (ii) the presence, Environmental Release of or exposure to any Hazardous Materials at, on or under or migrating from any real property or otherwise included in the Real Property; (iii) the presence or Environmental Release of any Hazardous Materials in concentrations in excess of Environmental Law to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or after the Closing Date; (iv) the transportation, storage, treatment, disposal, generation, manufacturing, recycling, reclamation, use or other handling of any Hazardous Materials with respect to the Purchased Assets and to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or after the Closing Date; (v) the presence, existence or human exposure to asbestos

at, on, under or within any Purchased Asset in violation of Environmental Law, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or after the Closing Date; (vi) any violations of Environmental Law, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing prior to or after the Closing Date; or (vii) the matters set forth on Section 5.15 of the Seller Disclosure Schedule;

(m) all obligations, commitments and Liabilities under any Permits that are assigned to Purchaser hereunder;

(n) all obligations and Liabilities, including on account of rent and Utility Services, accruing under any Leases;

(o) all Pre-Petition Term Loan Obligations, excluding the amount of such Pre-Petition Term Loan Obligations equaling the Credit Bid (as such Credit Bid amount may be increased pursuant to Section 3.1).

Section 2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, Purchaser shall not assume, and shall be deemed not to have assumed, any Liabilities relating to the Business of Sellers or any Affiliate of Sellers and Sellers and their Affiliates shall be solely and exclusively liable with respect to all such Liabilities, other than the Assumed Liabilities (collectively, the “**Excluded Liabilities**”), including:

- (a) any Liability of any Seller relating to any Excluded Asset;
- (b) any Liabilities of any Seller relating to or arising under vendor purchase orders arising in the ordinary course of business prior to the Filing Date and not otherwise constituting a 503(b)(9) Claim;
- (c) all Liabilities under Indebtedness for borrowed money of Sellers;
- (d) all Liabilities in relation to Taxes (or the non-payment thereof) of Sellers or their Affiliates for any taxable period other than Assumed Tax Liabilities;
- (e) all Excluded Employee Liabilities;
- (f) all Environmental Liabilities relating to, resulting from, caused by or arising out of the Excluded Assets;
- (g) all Rejection Damages Claims;
- (h) any tort Liabilities of any Seller;
- (i) all Liabilities relating to the CARES Act, including any obligation with respect to deferred payroll Taxes;
- (j) all Indemnification Claims; and

(k) all Liabilities referenced on Section 2.4(k) of the Seller Disclosure Schedule, as supplemented or amended by Purchaser in accordance with the terms of the Original Asset Purchase Agreement.

Section 2.5 Contract Designation Rights.

(a) No later than fourteen (14) days after the Petition Date, Sellers shall deliver to Purchaser a list of Contracts of each Seller with the anticipated amount of the Cure Costs associated with each Contract. Sellers shall cooperate with and provide such additional information to Purchaser in order to identify and provide to Purchaser as promptly as practicable all Material Contracts related to the Business (and the related Cure Costs), as well as Cure Costs of non-Material Contracts subject to assumption or assignment or rejection or disclaimer hereunder. Notwithstanding the foregoing, (i) prior to the Closing Date, Sellers shall supplement such list to add any Material Contracts entered into by Sellers during the pendency of the Bankruptcy Cases and (ii) on and within sixty-five (65) days after the Closing Date, Purchaser retains the right to assume any executory Contract that is not listed on Section 5.10(a) of the Seller Disclosure Schedule as of the Closing Date.

(b) No later than fourteen (14) days after the Petition Date, US Sellers shall file a motion, which shall be in form and substance acceptable to Purchaser, acting reasonably, and which motion may be the US Sale Motion, seeking, authorization and approval for certain assumption and assignment procedures including, among other things, seeking authority to (i) cause notice to be provided to all counterparties to the Contracts of the US Sellers regarding the potential assumption and assignment to Purchaser of all of the Contracts, except for any such Contracts that Purchaser previously has advised Sellers in writing that Purchaser does not wish to assume and (ii) fix the Cure Costs associated with each Contract as of the US Sale Hearing (or as of such later date acceptable to Purchaser). Sellers shall obtain entry of an order approving such motion no later than February 21, 2023.

(c) In the CCAA Sale Motion, Canadian Seller shall seek, among other things, an Order of the CCAA Court for approval of certain assumption and assignment procedures to, among other things, (i) assign to Purchaser all of the Contracts of the Canadian Seller, except for any such Contracts that Purchaser previously has advised Sellers in writing that Purchaser does not wish to assume and (ii) fix the Cure Costs associated with each Contract as of the CCAA Sale Hearing (or as of such later date acceptable to Purchaser). Canadian Seller shall obtain entry of an order approving such Order no later than March 16, 2023.

(d) Any motions filed by Sellers with, and any proposed Orders submitted by Sellers to, the US Bankruptcy Court or the CCAA Court seeking authorization after the date hereof to assign or assume or disclaim or reject any Contracts shall be satisfactory in form and substance to Purchaser. Sellers shall obtain consent from Purchaser prior to amending, modifying, or compromising Cure Costs or other material terms of any Contract.

(e) Except as otherwise provided in Section 2.3(b), for the purpose of determining whether a Contract of Sellers shall be included as a Purchased Contract or an Excluded Asset, from and after the Filing Date all Contracts shall be treated as follows:

(i) no later than the Bid Deadline, Purchaser shall notify Sellers in writing of those Contracts which Purchaser desires to be designated to be assumed by Sellers and assigned to Purchaser on the Closing Date, subject to later redesignation pursuant to Section 2.5(e)(iii) hereof;

(ii) any Contracts entered into during the pendency of the Bankruptcy Cases shall be designated to be assigned to Purchaser, unless Purchaser notifies Sellers in writing that it will not purchase such Contract prior to the Closing Date, in which case such Contract shall not be assigned to Purchaser and shall be included as an Excluded Asset; and

(iii) at any time prior to the Closing Date, Purchaser shall notify Sellers in writing of any Contracts which Purchaser does not desire to be assumed by Sellers and assigned to Purchaser, in which case any such Contracts shall not be assigned to Purchaser and shall be included as Excluded Assets and may be rejected by Sellers; *provided* that, for a period of sixty-five (65) days after the Closing Date, Purchaser may notify Sellers in writing of Contracts (other than Contracts of the Canadian Seller) that it no longer wishes to purchase and assume in the event the consents set forth in Section 2.5(h) hereof are not obtained within a reasonable period of time.

(iv) Purchaser shall provide, with respect to any Contract designated to be assumed and assigned hereunder, such information or documentation related to “adequate assurance of future performance” as shall be reasonably required in connection with the assumption and assignment of such Contract, and upon US Bankruptcy Court or CCAA Court, as applicable, approval for the assumption and assignment thereof to Purchaser, any such Contract so designated shall constitute a Purchased Asset hereunder, subject to later redesignation pursuant to Section 2.5(e)(iii) hereof. Any Contract that is not assumed and assigned as provided above or in Section 2.3(b) shall be an Excluded Asset, and shall not constitute a Purchased Asset hereunder. Except as otherwise provided in Section 2.5(h), to the extent that, prior to Closing, any Purchased Contract is not subject to an order of the US Bankruptcy Court or the CCAA Court with respect to the assumption and assignment of such Purchased Contract, any Liabilities of Sellers related to such Purchased Contract shall be the responsibility of Sellers until such Purchased Contract is either assumed by Sellers and assigned to Purchaser or rejected or disclaimed by Sellers.

(f) From and after the date hereof through the Closing, Sellers shall not reject, repudiate, disclaim or take any action (or fail to take any action that would (or would reasonably be likely to) result in rejection by operation of Law) to reject, repudiate or disclaim any material Contract without the prior written consent of Purchaser.

(g) Nothing in this Agreement shall be construed as an attempt by Sellers to assign any Contract to the extent that such Contract is not assignable under the US Bankruptcy Code, the CCAA or otherwise without the consent of the other party or parties thereto where the consent of such other party has not been given or received, as applicable.

(h) With respect to any Purchased Contract (other than a Lease for Leased Real Estate) for which the consent of a party thereto to the assignment thereof is required notwithstanding the entry or granting of the Sale Orders that shall not have been obtained at Closing and any claim, right or benefit arising thereunder or resulting therefrom, to the extent Purchaser waives the condition set forth in Section 9.2(d) (to the extent applicable), prior to the

Closing Date, Sellers and Purchaser shall use reasonable efforts to obtain as expeditiously as possible the written consent of the other party or parties to such Contract necessary for the assignment thereof to Purchaser. Until any such consent, waiver, confirmation, novation or approval is obtained, for a period of sixty-five (65) days from the Closing Date, Sellers and Purchaser shall cooperate to establish an arrangement reasonably satisfactory to Sellers and Purchaser under which Purchaser would obtain the claims, rights and benefits and assume the corresponding Liabilities and obligations thereunder (including by means of any subcontracting, sublicensing or subleasing arrangement). In such event, Sellers will hold in trust for and promptly pay to Purchaser, when received, all moneys received by them under any such Purchased Contract or any claim, right or benefit arising thereunder and Purchaser shall be solely responsible for the costs of any such Purchased Contract. Purchaser acknowledges that no adjustment to the Purchase Price shall be made for any Contracts that are not assigned. Until such written consent is obtained, Purchaser shall have the ability to designate the Contract as an Excluded Asset. Nothing in this paragraph shall be deemed a waiver of Purchaser's right to receive an effective assignment of all of the Purchased Assets at Closing nor shall any Contracts covered by this paragraph be deemed to constitute Excluded Assets solely by virtue of this paragraph.

(i) Within sixty-five (65) days after the Closing Date, US Sellers shall file with the US Bankruptcy Court and Canadian Seller shall file with the CCAA Court a final list of Purchased Contracts.

ARTICLE III PURCHASE PRICE

Section 3.1 Purchase Price. On the terms and subject to the conditions hereof, at the Closing, the aggregate consideration for the Purchased Assets shall consist of: (i) a credit bid, on a dollar-for-dollar basis, including pursuant to section 363(k) of the US Bankruptcy Code, in an aggregate amount of \$45,000,000 of the Pre-Petition Term Loan Obligations (the “**Credit Bid**”); (ii) an amount in cash sufficient for the repayment in full of the Obligations (as defined in the DIP Credit Agreement) and Pre-Petition ABL Obligations (as defined in the DIP Credit Agreement), as provided for in Section 1.4 of the DIP Credit Agreement, including cash collateralization of any outstanding letters of credit or financial assurances issued under the DIP Facility and Bank Products (as defined in the DIP Credit Agreement) in accordance with the terms thereof; (iii) the Additional Cash Consideration; and (iv) the assumption of the Assumed Liabilities (the sum of clauses (i)-(iv), the “**Purchase Price**”); *provided*, that Purchaser reserves the right, by written notice to Sellers at least three (3) Business Days prior to the Bid Deadline, to increase the Credit Bid (and therefore increase the Purchase Price) up to the full amount of the Pre-Petition Term Loan Obligations; *provided, further*, that Purchaser reserves the right to increase the Credit Bid further in connection with an Auction.

Section 3.2 Allocation of Purchase Price. Purchaser and Sellers agree that the purchase price, as determined for U.S. federal income Tax purposes, shall be allocated in accordance with Section 1060 of the IRC and the Treasury Regulations promulgated thereunder in accordance with an allocation schedule (the “**Allocation Schedule**”). Within one hundred and twenty (120) calendar days after the Closing Date, Purchaser shall deliver to Sellers a draft allocation of the purchase price, as determined for U.S. federal income Tax purposes. If, within thirty (30) calendar days of Sellers' receipt of Purchaser's proposed allocation, Sellers do not

deliver Purchaser written notice (a “**Seller Allocation Objection Notice**”) of any objections that they have to such allocation, Purchaser’s proposed allocation shall be the Allocation Schedule. If Sellers timely deliver to Purchaser a Seller Allocation Objection Notice, then Purchaser and Sellers shall work together in good faith to resolve the disputed items. If Purchaser and Sellers are unable to resolve all of the disputed items within thirty (30) calendar days of Purchaser’s receipt of the Seller Allocation Objection Notice (or such later date as Purchaser and Sellers may agree), then Purchaser and Sellers shall refer the disputed items for resolution to an accounting firm of national reputation mutually acceptable to Purchaser and Sellers, with no existing relationship with either Purchaser or Sellers and such accounting firm shall determine the Allocation Schedule. Sellers and Purchaser shall (a) use the Allocation Schedule for the purpose of making the requisite filings under Section 1060 of the IRC, and the Treasury Regulations thereunder, (b) report, and cause their respective Affiliates to report, the federal, state, and local income and other Tax consequences of the transactions contemplated herein, and in particular to report the information required by Section 1060(b) of the IRC, and file IRS Form 8594 (Asset Acquisition Statement under Section 1060 of the IRC) in a manner consistent with the Allocation Schedule unless otherwise required by a “determination” within the meaning of IRC Section 1313, and (c) promptly notify the other of the existence of any Tax audit, controversy, or litigation related to the Allocation Schedule. Notwithstanding the allocation of the purchase price agreed among the parties hereto pursuant to this Section 3.2 for the aforementioned Tax purposes, nothing in the foregoing shall be determinative of values ascribed to the Purchased Assets or the allocation of the value of the Purchased Assets for any other purpose. With respect to the Canadian Seller and the Canadian Purchased Assets, the purchase price shall be allocated among the Canadian Purchased Assets in a manner entirely consistent with Schedule Section 3.2. Purchaser and Canadian Seller shall each report an allocation of the purchase price among the Canadian Purchased Assets in a manner consistent with Schedule Section 3.2 and shall file all Tax Returns (including amended returns and claims for refunds) and elections required under the Tax Act or equivalent Canadian provincial Law in a manner consistent with such allocation. Notwithstanding the foregoing, to the extent an allocation of purchase price to specific assets are necessary as of the Closing so as to facilitate payments of Transfer Taxes required to be paid as of Closing, the parties will work together in good faith to determine those amounts prior to Closing.

Section 3.3 Withholding Rights. Purchaser and any other applicable withholding agent shall be entitled to deduct and withhold with respect to any payments made pursuant to this Agreement such amounts that are required to be deducted and withheld with respect to any such payments under the IRC, Tax Act or any other provision of applicable Law. Before withholding or deducting any amounts hereunder, the applicable withholding agent shall notify Sellers of its intent to withhold at least five (5) days before deducting or withholding any such amounts. To the extent any such amount is to be so deducted and withheld by Purchaser, such amounts shall be timely paid over to, or deposited with, the relevant Governmental Authority in accordance with the provisions of applicable Law. Any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Persons in respect of which such deduction and withholding was made.

ARTICLE IV CLOSING

Section 4.1 The Closing. The closing of the Sale (the “**Closing**”) shall take place at the offices of King & Spalding LLP, at 10:00 a.m. local time, on the first (1st) Business Day after the date upon which all conditions set forth in ARTICLE IX hereof have been satisfied or waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or at such other place, date and time as the parties may agree.

Section 4.2 Deliveries at the Closing.

(a) Sellers shall deliver or shall cause to be delivered to Purchaser the following at the Closing:

(i) bills of sale, assignment agreements and other customary transfer documents necessary to transfer to Purchaser (or its Affiliate) all right, title and interest of Sellers to or in the Purchased Assets, in form and substance reasonably acceptable to Sellers and Purchaser;

(ii) a certificate signed by a Responsible Officer of each Seller and addressed to Purchaser and the Monitor (in form and substance satisfactory to Purchaser and the Monitor, acting reasonably) certifying that the closing conditions set forth in Section 9.2(a) and Section 9.2(b) have been satisfied or waived;

(iii) certificates signed by a Responsible Officer of each Seller to which is attached (A) a certificate reflecting the incumbency and true signatures of the officers of such Seller who execute this Agreement and other Transaction Documents on behalf of such Seller and (B) true and correct copies of the resolutions of the boards of directors of each Seller with respect to the transactions contemplated by this Agreement and the Transaction Documents;

(iv) a certificate from the Secretary of State or other applicable Governmental Authority of the jurisdiction of formation or incorporation, as applicable, dated within ten (10) days of the Closing Date, with respect to the existence and good standing of Sellers (other than Dominion Colour Corporation (USA));

(v) a valid, complete and accurate IRS Form W-9 in respect of each US Seller, or, in the case of a US Seller that is disregarded as separate from its owner for U.S. federal income Tax purposes, in respect of such Seller’s regarded owner;

(vi) the applicable Tax elections required by Section 8.2 duly executed by the Canadian Seller;

(vii) assignment agreements, duly executed by an authorized officer of each applicable Seller, required to assign any Intellectual Property included in the Purchased Assets;

Seller;

(viii) an assignment and assumption agreement, duly executed by each

(ix) the Books and Records;

(x) a duly legalized power of attorney on behalf of the Canadian Seller and DCL Corporation (NL) B.V. for purposes of executing the Dutch Deed of Transfer, together with the instruction that the Dutch civil law notary (*notaris*) in the Netherlands or any of its deputies may proceed with the execution of the Dutch Deed of Transfer in substantially the form attached as Exhibit A to this Agreement;

(xi) the shareholders' register of DCL Corporation (NL) B.V. to the Dutch civil law notary (*notaris*) in the Netherlands in which the transfer of the Dutch Shares will be recorded;

(xii) a duly executed transfer into the name of Purchaser in respect of the UK Shares;

(xiii) a voting power of attorney duly executed by the Canadian Seller to allow Purchaser to vote in respect of the UK Shares;

(xiv) the statutory registers (including the register of members) of DCL Corporation (Europe) Limited;

(xv) the web-filing details for DCL Corporation (Europe) Limited and its respective Companies House authentication code;

(xvi) a copy of a resolution of the board of directors of DCL Corporation (Europe) Limited authorizing the transfer of the UK Shares and the registration of the transfer of the UK Shares;

(xvii) certificates evidencing the Acquired Subsidiaries' shares, to the extent that such Acquired Subsidiaries' shares are in certificate form, duly endorsed in blank or with stock powers or similar instruments of transfer duly executed in proper form for transfer, and, to the extent that such Acquired Subsidiaries' shares are not in certificated form, other evidence of ownership or assignment in form and substance reasonably satisfactory to Purchaser;

(xviii) written resignations, in form and substance reasonably satisfactory to Purchaser, of each of the officers and directors of each Acquired Subsidiary, as requested by Purchaser in writing not less than five (5) Business Days prior to the Closing Date; and

(xix) such other instruments as are reasonably requested by Purchaser and otherwise necessary to consummate the Sale.

(b) Purchaser shall deliver or cause to be delivered to Sellers, or their designees at the Closing:

(i) the Purchase Price;

- Closing;
- (ii) an amount equal to ETA Taxes, if any, that are required to be paid at
 - (iii) the Replacement Financial Assurance;
 - (iv) Conditions Certificates;
 - (v) a certificate signed by a Responsible Officer of Purchaser to which is attached: (A) true and correct copies of the resolutions of the board of directors of Purchaser with respect to the transactions contemplated by this Agreement and the Transaction Documents and (B) a certificate reflecting the incumbency and true signatures of the officers of Purchaser who execute this Agreement and other Transaction Documents on behalf of Purchaser;
 - (vi) a certificate from the Secretary of State or other applicable Governmental Authority of the jurisdiction of formation or incorporation, as applicable, dated within ten (10) days of the Closing Date, with respect to the existence and good standing of Purchaser;
 - (vii) the applicable Tax elections required by Section 8.2 duly executed by Purchaser;
 - (viii) an assignment and assumption agreement, duly executed by Purchaser;
 - (ix) a duly legalized power of attorney on behalf of Purchaser for purposes of executing the Dutch Deed of Transfer, together with the instruction that the Dutch civil law notary (*notaris*) in the Netherlands or any of its deputies may proceed with the execution of the Dutch Deed of Transfer in substantially the form attached as Exhibit A to this Agreement; and
 - (x) such other Instruments as are reasonably requested by Sellers and otherwise necessary to consummate the Sale and reasonably acceptable to Purchaser.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLERS

Subject to US Bankruptcy Court and CCAA Court approval of this Agreement and except as set forth in the disclosure schedule delivered by Sellers (the “**Seller Disclosure Schedule**”) to Purchaser simultaneously with the execution and delivery hereof, as may be updated in accordance with Section 7.15, Sellers jointly and severally represent and warrant to Purchaser that:

Section 5.1 Organization, Standing and Corporate Power. Each Seller and each Acquired Subsidiary is an entity duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction in which it is formed or incorporated and has the requisite power and authority to carry on its business as now being conducted. Each Seller and each Acquired Subsidiary is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure

to be so qualified or licensed (individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

Section 5.2 Compliance with Applicable Laws; Permits.

(a) Each Seller and each Acquired Subsidiary has complied for the past three (3) years and is currently in compliance, in each case, in all material respects, with each Law applicable to the conduct of the Business.

(b) Sellers and the Acquired Subsidiaries hold all Permits and Licenses necessary for the conduct of the Business as presently conducted, other than any such Permits or Licenses the absence of which would not reasonably be expected to be, individually or in the aggregate, material to the Purchased Assets or the Business (in each case, taken as a whole) (the “**Business Permits**”). Each of the Business Permits owned, held or possessed by any of the Sellers or the Acquired Subsidiaries is valid, subsisting and in full force and effect. The operation of the Business as currently conducted is not in material violation of, nor is any Seller or Acquired Subsidiary in default or material violation under, any Business Permit and, to the Knowledge of Sellers, no event has occurred which would constitute a default or violation of any material term, condition or provision of any Business Permit, in each case, that would be reasonably be expected to have a Material Adverse Effect. No suspension, cancellation or non-renewal of any Business Permit is pending or, to the Knowledge of Sellers, threatened. Each Seller and Acquired Subsidiary has complied in all material respects, and is in compliance in all material respects, with all terms and conditions of the Business Permits, except as would not reasonably be expected to have a Material Adverse Effect.

Section 5.3 Authority; Noncontravention.

(a) Subject to the US Bankruptcy Court’s entry of the US Sale Procedures Order and the US Sale Order and the CCAA Court’s granting of the CCAA Sale Procedures Order and the CCAA Sale Order, (i) each Seller has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement and (ii) the execution and delivery of this Agreement by Sellers and the consummation by Sellers of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of each Seller. This Agreement has been duly executed and delivered by each Seller and, assuming this Agreement constitutes a valid and binding agreement of Purchaser and subject to entry or granting of the Sale Orders, constitutes a valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, subject to (x) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors’ rights generally and (y) general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity.

(b) Subject to the US Bankruptcy Court’s entry of the US Sale Procedures Order and the US Sale Order and the CCAA Court’s granting of the CCAA Sale Procedures Order and the CCAA Sale Order, the execution and delivery by each Seller of this Agreement or any other Transaction Documents to which a Seller is a party does not, and the consummation by Sellers of the transactions contemplated by this Agreement or any other Transaction Documents to which a Seller is a party, and compliance by Sellers with the provisions of this Agreement or any

other Transaction Documents to which a Seller is a party, shall 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, cancellation, modification or acceleration of any obligation or to a loss of a benefit under, or result in the creation of any Lien upon any of the properties or assets of any Seller under (i) the Fundamental Documents of any Seller or an Acquired Subsidiary or (ii) subject to the governmental filings and other matters referred to in Section 5.6(c), any Laws applicable to any Seller or an Acquired Subsidiary or its respective properties or assets other than, in each case, any such conflicts, violations, defaults, rights, losses or Liens that (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect.

(c) No Consent of any Governmental Authority, or any third party pursuant to any Material Contract, is required by or with respect to any Seller in connection with the execution and delivery of this Agreement by such Seller, or the consummation by such Seller of the transactions contemplated by this Agreement, except for (i) the Consents set forth in Section 5.3(c) of the Seller Disclosure Schedule, (ii) the entry or granting of the Sale Orders by the US Bankruptcy Court and the CCAA Court, as applicable, (iii) compliance with any applicable requirements of the Exchange Act, Securities Act or the Competition Act, and (iv) such other Consents as to which the failure to obtain or make (individually or in the aggregate) would not reasonably be expected to be materially adverse to the Business.

Section 5.4 Acquired Subsidiaries.

(a) Capitalization.

(i) The Canadian Seller has full legal and beneficial title (*juridisch en economisch gerechtigde tot*) to the Acquired Subsidiaries' shares. The Dutch Shares constitute the whole of the issued and outstanding share capital of DCL Corporation (NL) B.V., and the UK Shares constitute the whole of the issued and outstanding share capital of DCL Corporation (Europe) Limited.

(ii) Each of the Dutch Shares is fully paid-up and upon execution of the Deed of Transfer will be free and clear of any Liens.

(iii) Each of the UK Shares is fully paid-up and free and clear of any Liens.

(iv) Except for the Transaction Documents, there are no options, warrants, rights, agreements, pledges, calls, puts, rights to subscribe, conversion rights or other arrangements or commitments to which DCL Corporation (NL) B.V. is a party or which is binding upon DCL Corporation (NL) B.V. providing for the issuance, disposition or acquisition of any of its capital or any rights or interests exercisable therefor, and there are no equity appreciation, phantom equity, profit sharing or similar rights with respect to DCL Corporation (NL) B.V. DCL Corporation (NL) B.V. is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or revoke any shares in its capital. There are no outstanding depositary receipts (*certificaten*) in relation to the Dutch Shares.

(v) Other than the obligations resulting from the Transaction Documents and the restrictions set out in the constitutional documents of DCL Corporation (NL)

B.V., there are: (i) no obligations with respect to any of the Dutch Shares restricting the transfer of any such shares or the payment of dividends, (ii) no agreements or arrangements binding on the Canadian Seller that require approval or notice for transfer of any of the Dutch Shares or the payment of dividends and (iii) no agreements or arrangements (including proxies) in relation to the voting rights connected to any of the Dutch Shares.

(vi) Except for the Acquired Subsidiaries' shares, there are no outstanding securities or other similar equity ownership interests of any class or type of or in any of the Acquired Subsidiaries. There are no outstanding options, warrants, calls, purchase rights, subscription rights, exchange rights or other rights, convertible exercisable or exchangeable securities, agreements or commitments of any kind pursuant to which any of the Acquired Subsidiaries is or may become obligated to (i) issue, deliver, transfer, sell or otherwise dispose of any of its securities, or any securities convertible into or exercisable or exchangeable for its securities, or (ii) redeem, purchase or otherwise acquire any outstanding securities of any of the Acquired Subsidiaries.

(vii) Holdings owns 100% of the issued and outstanding capital stock of H.I.G. Colors, Inc., a Delaware corporation ("**Colors**"). Colors owns (i) 100% of the issued and outstanding membership interest of DCL Corporation (BP), LLC, a Delaware limited liability company, and (ii) 100% of the issued and outstanding capital stock of DCL Holdings (USA), Inc., a Delaware corporation ("**Holdings USA**"). Holdings USA owns 100% of the issued and outstanding membership interests of DCL Corporation (USA), LLC, a Delaware limited liability company.

(b) No Subsidiaries. None of the Acquired Subsidiaries has any Subsidiary, and none of the Acquired Subsidiaries owns or has the right to acquire, directly or indirectly, any outstanding capital stock of, or other equity interests in, any other Person.

Section 5.5 [Reserved].

Section 5.6 Real Properties.

(a) Except as set forth in Section 5.6(a) of the Seller Disclosure Schedule, Sellers and the Acquired Subsidiaries (i) have good and valid title in and to all Owned Real Property, (ii) have good and valid leasehold interest in and to all Leased Real Estate and (iii) have good and valid title to all other Purchased Assets constituting Structures or otherwise have the right to use such other Purchased Assets pursuant to a valid and enforceable lease, license or similar contractual arrangement, in each case free and clear of any Liens, other than Permitted Liens.

(b) Except as set forth in Section 5.6(b) of the Seller Disclosure Schedule, the Owned Real Property and Leased Real Estate constitutes all of the real property assets used by Sellers and the Acquired Subsidiaries for the conduct of the Business in substantially the same manner in all material respects as such Business is being operated as of the date hereof. Except as set forth in Section 5.6(b) of the Seller Disclosure Schedule or as disclosed by registered title to the Owned Real Property (provided same is a Permitted Lien), to the Knowledge of Sellers, there are no facts or conditions affecting any Owned Real Property or Leased Real Estate that could reasonably be expected, individually or in the aggregate, to interfere with the current use,

occupancy or operation of such Owned Real Property or Leased Real Estate in any material respect. Except as set forth in Section 5.6(b) of the Seller Disclosure Schedule, only Sellers and the Acquired Subsidiaries conduct the Business and the Business is not conducted through any other divisions or any direct or indirect Subsidiary or Affiliate of any Seller.

(c) Section 5.6(c) of the Seller Disclosure Schedule sets forth a complete and correct list of all of the real property leased, licensed or otherwise granted to Sellers and the Acquired Subsidiaries and each Lease with respect thereto (and all interests leased pursuant to such Leases, the “**Leased Real Estate**”), including the addresses thereof and all written amendments or modifications to the Leases. Sellers have delivered to Purchaser true, correct and complete copies of all Leases, including all written amendments or modifications thereto, and the Leases are unmodified and in full force and effect. No Seller nor Acquired Subsidiary is a sublessor or grantor under any sublease or other instrument granting to another Person any right to the possession, lease, occupancy or enjoyment of the Leased Real Estate, except as set forth on Section 5.3(c) of the Seller Disclosure Schedule. With respect to each Lease, except as set forth in Section 5.6(c) of the Seller Disclosure Schedule and except with respect to any Bankruptcy-Related Default:

(i) except with respect to any Bankruptcy-Related Defaults, the Leases are in full force and effect and are valid, binding and enforceable against the applicable Seller and Acquired Subsidiary, to the Knowledge of Sellers, any counterparty to such Leases in accordance with their respective terms;

(ii) no amount payable under any Lease is past due except as set forth in Section 5.6(c) of the Seller Disclosure Letter;

(iii) each Seller and the Acquired Subsidiary is in compliance in all material respects with all commitments and obligations on its part to be performed or observed under each Lease and has no Knowledge of Sellers of the failure by any other party to any Lease to comply in all material respects with all of its commitments and obligations thereunder;

(iv) no Seller nor Acquired Subsidiary has received any written notice (A) of a default (which has not been cured), offset or counterclaim under any Lease, or, any other written communication calling upon it to comply with any provision of any Lease or asserting noncompliance, or asserting such Seller or the Acquired Subsidiary has waived or altered its rights thereunder, and no event or condition has happened or presently exists which constitutes a default or, after notice or lapse of time or both, would constitute a default under any Lease on the part of any Seller or the Acquired Subsidiary or, to the Knowledge of Sellers, any other party, or (B) of any Action against any party under any Lease which if adversely determined would result in such Lease being terminated; and

(v) no Seller nor the Acquired Subsidiary has assigned, subleased, sublicensed, mortgaged, pledged or otherwise encumbered or transferred its interest, if any, under any Lease, other than Permitted Liens; and

(vi) to the extent that any Lease is within the period prescribed in such Lease for exercise of any renewal, each Seller and each Acquired Subsidiary has timely exercised any option to extend or renew the term thereof.

(d) Section 5.3(d) of the Seller Disclosure Schedule sets forth each parcel of real property owned by each Seller and each Acquired Subsidiary and used in or necessary for the conduct of the Business as currently conducted (together with all Structures and all easements, rights-of-way and other rights and privileges appurtenant thereto, collectively, the “**Owned Real Property**”), including with respect to each property, the address location and use. Each Seller has delivered to Purchaser copies of the deeds and other instruments (as recorded) by which such Seller or Acquired Subsidiary acquired such parcel of Owned Real Property, and copies of any title insurance policies, opinions, abstracts and surveys, in each case in the possession of such Seller or Acquired Subsidiary with respect to such parcel. With respect to each parcel of Owned Real Property:

(i) the applicable Seller or Acquired Subsidiary has good and marketable fee simple title as legal and beneficial owner, free and clear of all Liens, except Permitted Liens;

(ii) such Seller or Acquired Subsidiary has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and

(iii) there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(e) Except as disclosed in Section 5.6(c) and Section 5.6(d) of the Seller Disclosure Schedule, (i) to the Knowledge of Sellers, there are no pending or threatened expropriation or condemnation proceedings by or before any Governmental Authority with respect to any Owned Real Property or Leased Real Estate and (ii) no Seller nor Acquired Subsidiary has received any written notice from any Governmental Authority of any zoning, ordinance, building, fire, health or safety code or other legal violation in respect of any Owned Real Property or Lease that could reasonably be expected to have a Material Adverse Effect.

(f) Except as disclosed in Section 5.6(c) and Section 5.6(d) of the Seller Disclosure Schedule, to the Knowledge of the Sellers, no improvements constituting a part of the Owned Real Property or Leased Real Estate encroach on any real property not owned, leased or licensed by Sellers to the extent that removal of such encroachment could reasonably be expected to materially impair the manner and extent of the current use, occupancy and operation of such improvements.

(g) Except as disclosed in Section 5.6(c) and Section 5.6(d) of the Seller Disclosure Schedule and except with respect to any Bankruptcy-Related Default, Sellers and the Acquired Subsidiaries are in possession of the Owned Real Property and Leased Real Estate, respectively, and enjoy peaceful and undisturbed possession of such real property in all material respects

(h) This Agreement shall be effective to create an interest in the Owned Real Property only if the subdivision control provisions of the *Planning Act* (Ontario) are complied with on or before the Closing. To the Knowledge of the Sellers, completion of the transactions contemplated by this Agreement do not require any Consent under the *Planning Act* (Ontario).

Section 5.7 Tangible Personal Property. Except as set forth in Section 5.7 of the Seller Disclosure Schedule and other than the Excluded Assets, Sellers have good and valid title to, or have good and valid leasehold interests in, all material items of tangible personal property that is included in the Purchased Assets, free and clear of all Liens other than Permitted Liens.

Section 5.8 Intellectual Property; Information Security.

(a) The operation of the Business as currently conducted by Sellers or the Acquired Subsidiaries in connection therewith, does not conflict with, infringe, misappropriate, or otherwise violate, and in the last three (3) years has not conflicted with, infringed, misappropriated or otherwise violated, the Intellectual Property rights of any third party. No Action has been asserted or is pending or, to the Knowledge of Sellers, threatened against any Seller or Acquired Subsidiary with respect to the foregoing.

(b) Sellers and the Acquired Subsidiaries exclusively own all right, title and interest in and to all Intellectual Property owned or purported to be owned by them (the “**Owned Intellectual Property**”) that is material to the Business free and clear of all Liens other than Permitted Liens and, to the Knowledge of Sellers, Sellers and the Acquired Subsidiaries have the valid and enforceable right to use all other Intellectual Property material to the Business subject only to the terms of the Intellectual Property Agreements, if applicable. Neither this Agreement, nor the consummation of the transactions contemplated herein, will result in the grant, by Sellers or any Acquired Subsidiary to any Person, of any ownership interest, license, or claim, right or protection from any Action with respect to any Intellectual Property. Except as set forth in an Intellectual Property Agreement listed on Section 5.8(c)(ii) of the Seller Disclosure Schedule, no material restrictions exist in connection with the disclosure, use, license or transfer of the Owned Intellectual Property, and after giving effect to this Agreement and the transactions contemplated herein, Purchaser and the Acquired Subsidiaries will acquire or retain, as applicable, upon the Closing Date all rights in Intellectual Property used in connection with the Business as previously held by Sellers and the Acquired Subsidiaries immediately prior to the Closing, without the requirement of any additional fees, payments or remuneration.

(c) Section 5.8(c) of the Seller Disclosure Schedule identifies (i) all registrations and applications for (A) the Intellectual Property included in the Purchased Assets and (B) Owned Intellectual Property of each Acquired Subsidiary (collectively, the “**Registered Intellectual Property**”), and (ii) the Intellectual Property Agreements to which any Seller or Acquired Subsidiary is a party.

(d) The Registered Intellectual Property is subsisting and has not been adjudicated to be invalid or unenforceable in whole or part, and to the Knowledge of Sellers, is valid and enforceable.

(e) To the Knowledge of Sellers, no Person is engaging in any activity that infringes, misappropriates, or otherwise violates the Intellectual Property that is material to the Business or any Seller's or Acquired Subsidiary's rights therein, and no Seller or Acquired Subsidiary has sent any written notice to any Person or asserted in writing or threatened in writing to assert any Action alleging same in the last three (3) years.

(f) No Owned Intellectual Property is subject to any settlement agreement, consent agreement, decree, order, injunction, judgment or ruling materially restricting the use of any Registered Intellectual Property or that would materially impair the validity or enforceability of such Owned Intellectual Property.

(g) The internet domain names set forth on Section 5.8(c) of the Seller Disclosure Schedule are registered to and controlled by one or more Sellers or Acquired Subsidiaries.

(h) Sellers and the Acquired Subsidiaries have taken commercially reasonable actions to, and have implemented and maintained commercially reasonable policies and processes to, protect and maintain (i) the confidentiality of any material Trade Secrets included in the Purchased Assets, and (ii) the performance, security and integrity of the systems, networks, software, hardware, websites, and other information technology assets and infrastructure used in connection with the Business, and, to the Knowledge of Sellers, in the past three (3) years there have been no material failures, malfunctions, breaches, unauthorized access to, or use or disclosure of the same.

Section 5.9 Litigation. Except for such matters listed in Section 5.9 of the Seller Disclosure Schedule and except for such environmental, health or safety matters addressed in Section 5.15, as of the date hereof there is no Action pending or, to the Knowledge of Sellers, threatened against Sellers or the Acquired Subsidiaries that (individually or in the aggregate) would reasonably be expected to have a Material Adverse Effect, nor is there any Governmental Order outstanding against any Seller or Acquired Subsidiary that (individually or in the aggregate) would reasonably be expected to have a Material Adverse Effect.

Section 5.10 Material Contracts; Debt Instruments.

(a) Section 5.10(a) of the Seller Disclosure Schedule identifies all the following types of Contracts (each a "**Material Contract**", and collectively with the Leases identified in Section 5.6(c) of the Seller Disclosure Schedule and the Intellectual Property Agreements identified in Section 5.8(c) of the Seller Disclosure Schedule, the "**Material Contracts**") in effect as of the date hereof that are related to the Purchased Assets or the Business generally and to which any Seller or Acquired Subsidiary is a party:

(i) joint venture, partnership, limited liability company or other similar Contracts other than the Fundamental Documents of any Seller or Acquired Subsidiary;

(ii) material Leases for personal property;

(iii) any Contract relating to any outstanding commitment for capital expenditures in excess of \$100,000 individually or \$300,000 in the aggregate;

(iv) Contracts (or series of related Contracts) relating to the acquisition or disposition of any Person or business (whether by merger, sale of stock, sale of assets or otherwise) within the past five (5) years;

(v) Contracts that (A) limit the freedom of any Seller or Acquired Subsidiary or the Business to compete in any line of business or with any Person or in any geographic area or (B) contains exclusivity obligations or restrictions binding on any Sellers or Acquired Subsidiaries or the Business;

(vi) any sales, distribution, agency or marketing Contract (or series of related Contracts) involving in excess of \$50,000 in any annual period;

(vii) any Contract (or series of related Contracts) relating to the purchase by any Sellers or Acquired Subsidiaries of any products or services under which the undelivered balance of such products or services is in excess of \$150,000, other than Contracts with individual Business Employees;

(viii) Contracts (including any “take-or-pay” or keepwell agreement) under which (A) any Person has directly or indirectly guaranteed any liabilities or obligations of any Sellers or Acquired Subsidiaries or (B) any Sellers or Acquired Subsidiaries have directly or indirectly guaranteed liabilities or obligations of any other Person; or

(ix) Contracts with any Business Employee earning base salary over \$200,000 per annum or providing for change of control, retention or severance Liabilities in excess of such Liabilities arising from applicable Laws.

(b) Except with respect to any Bankruptcy-Related Default or payment default and except as to matters which would not reasonably be expected to have a Material Adverse Effect, each Material Contract included in the Purchased Assets is a legal, valid, binding and enforceable agreement of the applicable Sellers or Acquired Subsidiaries and is in full force and effect, and no Seller, Acquired Subsidiary nor, to the Knowledge of Sellers, any other party thereto is in default or breach under the terms of, or has provided any written notice to terminate or modify, any such Material Contract. To the Knowledge of Sellers, no Seller or Acquired Subsidiary is a party to a Material Contract that is an oral Contract.

(c) Complete and correct copies of (i) each Material Contract (including all waivers thereunder), (ii) all Contracts for Indebtedness, (iii) Contracts relating to any interest rate, currency or commodity derivatives or hedging transaction; and (iv) all current form Contracts related to the Business have been made available to Purchaser.

Section 5.11 Employees; Labor Matters.

(a) All of the information included on the Business Employee List, when provided, will be true and accurate as of a date that is on or within ten (10) Business Days prior to the date of provision. Sellers shall update and deliver to Purchaser an updated Business Employee List (i) at least five (5) Business Days prior to an Auction and (ii) on or before two (2) Business Days following the entry of the Sale Orders to reflect any terminations and new hires and reallocations permitted or consented to by Purchaser pursuant to Section 7.1(b)(xiii) below.

(b) Sellers are and have been for the past three (3) years in compliance in all material respects with all applicable Laws relating to Business Employees and employment or engagement of labor, including all applicable Laws relating to wages, hours, overtime, employment standards, immigration, collective bargaining, employment discrimination, civil or human rights, accessibility, safety and health, workers' compensation, pay equity, classification of employees and independent contractors, and the collection and payment of payroll deductions, withholding and/or social security Taxes. Each of Seller and Acquired Subsidiary has met in all material respects all requirements required by Law or regulation relating to the employment of foreign citizens, including all requirements of Form I-9 Employment Verification, and no Seller nor Acquired Subsidiary currently employs, or has ever employed, any Person who was not permitted to work in the jurisdiction in which such Person was employed. Sellers and the Acquired Subsidiaries have complied in all material respects with all Laws that could require overtime to be paid to any Business Employee.

(c) None of Sellers, Acquired Subsidiaries, or any of their respective Subsidiaries and Affiliates is delinquent in payment to any Business Employee for any material wages, fees, salaries, commissions, bonuses, or other direct compensation for service performed by them or amounts required to be reimbursed to such Business Employee or in any material payments owed upon any termination of such Business Employee's employment or engagement.

(d) Except as set forth on Section 5.11(d) of the Seller Disclosure Schedule, none of the Sellers nor Acquired Subsidiaries are a party to or otherwise bound by any collective bargaining agreement, voluntary recognition agreement, or other agreement with a labor union, works council or similar employee or labor organization applicable to any Business Employee, none of the Sellers or Acquired Subsidiaries are engaged in any labor negotiation with any labor union, works council or similar employee or labor organization applicable to any Business Employee, and, to the Knowledge of Sellers, there are no activities or proceedings of any labor union, works council or similar employee or labor organization to further organize any such Business Employees. Additionally, (i) there is no unfair labor practice charge or complaint pending before any applicable Governmental Authority relating to Sellers, Acquired Subsidiaries, or any Business Employee; (ii) there is no labor strike, material slowdown, material dispute, or material work stoppage or lockout pending or, to the Knowledge of Sellers, threatened against or affecting any of the Sellers or Acquired Subsidiaries, and none of the Sellers nor Acquired Subsidiaries has in the past three (3) years experienced any strike, material slowdown or material work stoppage, lockout or other collective labor action by or with respect to any Business Employee; (iii) there is no representation claim or petition pending before any applicable Governmental Authority; and (iv) there are no charges with respect to or relating to any of the Sellers or Acquired Subsidiaries pending before any applicable Governmental Authority responsible for the prevention of unlawful employment practices.

(e) To the Knowledge of Sellers, no current Business Employee is bound by any contract (including licenses, covenants or commitments of any nature) or subject to any judgment, decree or order of any Governmental Authority that would materially interfere with the use of such Business Employee's best efforts to promote the interests of Sellers or that would materially conflict with Sellers' business as currently conducted.

(f) No current Business Employee who is not treated as an employee for income Tax purposes by Sellers or Acquired Subsidiaries is an employee under applicable Laws or for any purpose, including, without limitation, for Tax withholding purposes or Benefit Plan purposes, and none of the Sellers nor Acquired Subsidiaries has any Liability by reason of any such individual, in any capacity, being improperly excluded from participating in any Benefit Plan. Each employee of Sellers and the Acquired Subsidiaries has been properly classified by Sellers as “exempt” or “non-exempt” under applicable Law.

Section 5.12 Benefits Plans and ERISA Compliance.

(a) Section 5.12(a) of the Seller Disclosure Schedule sets forth a true and complete list of each material Benefit Plan (a “**Company Benefit Plan**”); *provided*, that such schedule shall not be required to include any employment Contract with a Business Employee earning a base salary of less than \$200,000 per annum that does not provide for change of control, retention or severance Liabilities in excess of such Liabilities arising from applicable Laws (it being understood and agreed that such Contracts shall nonetheless be considered Company Benefit Plans for all purposes hereunder). With respect to each Company Benefit Plan, Sellers have provided to Purchaser or its counsel a true and complete copy, to the extent applicable, of: (i) each writing constituting a part of such Company Benefit Plan and all amendments thereto, and a written description of any material unwritten Company Benefit Plan; (ii) the most recent annual report and accompanying schedules; (iii) the current summary plan description, employee booklet or other communication to employees or former employees relating to the Company Benefit Plan and any summaries of material modifications; (iv) the most recent annual financial statements and actuarial reports; (v) the most recent determination or opinion letter received by any of the Sellers from the IRS or the Canada Revenue Agency regarding the tax-qualified status of such Company Benefit Plan; (vi) the most recent written results of all required compliance testing; and (vii) copies of any material non-ordinary course correspondence with the IRS, U.S. Department of Labor, FSRA or other Governmental Authority. There has been no amendment to, announcement by any of the Sellers or the Acquired Subsidiaries relating to any Company Benefit Plan which would increase materially the expense of maintaining such plan above the level of the expense incurred therefor for the most recent fiscal year.

(b) Each Company Benefit Plan (and each related trust, insurance contract or fund) has been established, administered and funded in accordance with its express terms in all material respects, and in compliance in all material respects with all applicable Laws, including ERISA, the IRC, the PBA and the Tax Act. There are no pending or, to the Knowledge of Sellers, threatened actions, claims or lawsuits against or relating to the Company Benefit Plans (other than routine benefits claims). To the Knowledge of Sellers, neither Sellers nor any “party in interest” or “disqualified person” with respect to a Company Benefit Plan has engaged in a non-exempt “prohibited transaction” within the meaning of Section 4975 of the IRC or Section 406 of ERISA. To the Knowledge of Sellers, no fiduciary (within the meaning of Section 3(21) of ERISA) has breached any fiduciary duty with respect to a Company Benefit Plan or otherwise has any Liability in connection with acts taken (or the failure to act) with respect to the administration or investment of the assets of any Company Benefit Plan.

(c) To the Knowledge of Sellers, no Company Benefit Plan is presently under audit or examination (nor has written notice been received of a potential audit or examination) by

any Governmental Authority. Other than as a result of the Bankruptcy Cases, all material payments required to be made by any of the Sellers or the Acquired Subsidiaries under, or with respect to, any Company Benefit Plan (including employer and employee contributions, distributions, reimbursements, premium payments or intercompany charges) with respect to all prior periods have been timely made or accrued for in Sellers' and the Acquired Subsidiaries' Books and Records. There is not now, nor, do any circumstances exist that could give rise to, any requirement for the posting of security with respect to a Benefit Plan or the imposition of any Lien on the assets of any of the Sellers or Acquired Subsidiaries under ERISA, the IRC, the PBA or the Tax Act.

(d) With respect to each Company Benefit Plan that is intended to qualify under Section 401(a) of the IRC, such Company Benefit Plan, and its related trust, has at all times since its adoption been so qualified and has received a current determination letter (or is the subject of a current opinion letter in the case of any prototype plan) from the IRS on which Sellers can rely that it is so qualified and that its trust is exempt from Tax under Section 501(a) of the IRC, and nothing has occurred with respect to the operation of any such plan which could reasonably be expected to cause the loss of such qualification or exemption or the imposition of any material Liability, penalty or Tax under ERISA or the IRC. No stock or other securities issued by any of the Sellers or Acquired Subsidiaries forms or has formed any part of the assets of any Benefit Plan that is intended to qualify under Section 401(a) of the IRC or of the assets held in any of the Funding Arrangements for the Canadian Pension Plans.

(e) No Company Benefit Plan is, and none of the Sellers, Acquired Subsidiaries nor any ERISA Affiliate have ever sponsored, established, maintained, contributed to or been required to contribute to, or in any way has any Liability (whether on account of an ERISA Affiliate or otherwise), directly or indirectly, with respect to any plan that is, (i) subject to Title IV or Section 302 of ERISA or Section 412, 430 or 4971 of the IRC or a "defined benefit" plan within the meaning of Section 414(j) of the IRC or Section 3(35) of ERISA (whether or not subject thereto), (ii) a Multiemployer Plan, (iii) a plan that has two or more contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA, (iv) a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA), or (v) a plan maintained in connection with any trust described in Section 501(c)(9) of the IRC. None of the Sellers, Acquired Subsidiaries nor any ERISA Affiliate has withdrawn at any time within the preceding six years from any Multiemployer Plan, or incurred any withdrawal Liability which remains unsatisfied, and no events have occurred and no circumstances exist that could reasonably be expected to result in any such Liability to any of the Sellers or Acquired Subsidiaries.

(f) No event has occurred and no condition exists that would reasonably be expected to subject Sellers or the Acquired Subsidiaries to any (i) Tax, penalty, fine, (ii) Liens (other than Liens that arise by operation of Law in Canada in respect of required employer contributions to the Canadian Pension Plans that are accrued but not yet due), or (iii) other liability imposed by ERISA, the IRC, the PBA, the Tax Act or other applicable Laws, in the case of (i), (ii) or (iii), in respect of any employee benefit plan maintained, sponsored, contributed to, or required to be contributed to by any ERISA Affiliate (other than Sellers or Acquired Subsidiaries).

(g) None of the Company Benefit Plans provide, and none of the Sellers nor Acquired Subsidiaries has any current or potential obligation to provide, medical, health, life or

other welfare benefits after the termination of a Business Employee's employment or engagement, as applicable, except as may be required by Section 4980B of the IRC and Section 601 of ERISA or any other applicable Law. Except as disclosed on Section 5.12(g) of the Seller Disclosure Schedule, no Company Benefit Plan that provides group health benefits is a self-insured arrangement by any of the Sellers or funded through a trust. None of the Sellers nor Acquired Subsidiaries has incurred, or is reasonably expected to incur or to be subject to, any material Tax or other penalty with respect to the reporting requirements under Sections 6055 and 6056 of the IRC, as applicable, or under Section 4980B, 4980D or 4980H of the IRC. Except for the Canadian Pension Plans, none of the Company Benefit Plans provides any retirement, pension or supplemental pension benefits to any Canadian employees or former Canadian employees of Sellers.

(h) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with another event) (i) result in any payment becoming due, or increase the amount of any compensation or benefits due, to any Business Employee or with respect to any Company Benefit Plan; (ii) increase any benefits otherwise payable under any Company Benefit Plan; (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits, or the forgiveness of indebtedness of any Business Employee; or (iv) result in an obligation to fund or otherwise set aside assets to secure to any extent any of the obligations under any Company Benefit Plan. No Person is entitled to receive any additional payment (including any Tax gross-up or other payment) from any of the Sellers or the Acquired Subsidiaries as a result of the imposition of the excise Taxes required by Section 4999 of the IRC or any Taxes required by Section 409A of the IRC.

(i) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with another event) result in any payment or benefit (whether in cash or property or the vesting of property) to any "disqualified individual" (as such term is defined in U.S. Treasury Regulation Section 1.280G-1) that could, individually or in combination with any other such payment, constitute an "excess parachute payment" (as defined in Section 280G(b)(1) of the IRC).

(j) Each Benefit Plan that is a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the IRC) is in documentary compliance with, and has been administered in compliance with, Section 409A of the IRC and applicable guidance thereunder in all material respects and no amount under such Benefit Plan is or has been subject to the interest and additional Tax set forth under Section 409A(a)(1)(B) of the IRC.

(k) All data necessary to administer each Company Benefit Plan is in the possession of Sellers or their agents and is in a form which is sufficient for the proper administration of the Company Benefit Plan in accordance with its terms and all Laws and such data is complete and correct, in each case, except as would not reasonably be expected to be materially adverse to the Business.

(l) With respect to the Canadian Pension Plans:

(i) Other than the Canadian Pension Plans, no other Company Benefit Plan is a "registered pension plan" as defined in subsection 248(1) of the Tax Act;

(ii) Except for the Salaried DB Plan and the Hourly DB Plan, none of the Canadian Pension Plans contains a “defined benefit” provision as defined in subsection 147.1(1) of the Tax Act;

(iii) All employer contributions required to be made to the Canadian Pension Plans to the date hereof have been made or properly accrued in accordance with the terms of such plans and Laws. All employee contributions to the Canadian Pension Plans required to the date hereof have been properly withheld by Sellers and have been fully paid into the Funding Arrangement for each respective Canadian Pension Plan;

(iv) To the Knowledge of Sellers, nothing has occurred which would result in the revocation of the registration of any of the Canadian Pension Plans under the Tax Act and the PBA or any applicable provincial pension legislation. All amounts paid by Sellers under the provisions of the Canadian Pension Plans will be deductible for income tax purposes; and

(m) Neither the Salaried DB Plan nor the Hourly DB Plan had a going concern unfunded liability, a solvency deficiency or a wind-up deficiency, as at December 31, 2021, calculated on a basis using the methods and assumptions contained in the actuarial valuation reports filed in respect of such plans with the FSRA pursuant to the PBA as at December 31, 2021.

(n) All Benefit Plans subject to the Laws of any jurisdiction outside of the United States or Canada or that covers any Business Employee residing or working outside of the United States or Canada (each, a “**Foreign Benefit Plan**”) (i) if they are intended to qualify for special tax treatment, meet requirements for such treatment in all material respects and, to the Knowledge of Sellers, there are no existing circumstances or events that have occurred that could reasonably be expected to affect adversely the special tax treatment with respect to such Foreign Benefit Plan, (ii) if they are intended to be funded and/or book-reserved, are fully funded and/or book reserved, as appropriate, based upon reasonable actuarial assumptions, and (iii) if intended or required to be qualified, approved or registered with a Governmental Authority, is and has been so qualified, approved or registered and nothing has occurred that could reasonably be expected to result in the loss of such qualification, approval or registration, as applicable.

Section 5.13 [Reserved].

Section 5.14 Insurance. Section 5.12 of the Seller Disclosure Schedule sets forth all material insurance policies maintained by Sellers and the Acquired Subsidiaries with respect to the Purchased Assets. All such policies are in full force and effect and Sellers and Acquired Subsidiaries have complied with the terms thereof in all material respects.

Section 5.15 Environmental Matters.

(a) Except as set forth in Section 5.15 of the Seller Disclosure Schedule (as updated pursuant to the terms of the Original Asset Purchase Agreement):

(i) Each Seller, Acquired Subsidiary, and the Purchased Assets are, and have for the past three (3) years have been, in compliance with all applicable Environmental Laws in all material respects (which compliance includes obtaining, maintaining and complying with all

Environmental Permits in connection with the operation of the Business and the ownership or use of the Purchased Assets);

(ii) There are no Environmental Claims pending or, to the Knowledge of Sellers, threatened against Seller or the Acquired Subsidiaries in connection with the conduct or operation of the Business, or the ownership or use of the Purchased Assets, and Sellers and Acquired Subsidiaries are not subject to any pending Actions or orders or threatened Actions or orders for Environmental Liabilities, and, to the Knowledge of Sellers, there are no past or present actions, activities, circumstances, conditions, events or incidents that could form the basis of any Environmental Claim in connection with the conduct or operation of the Business or the ownership or use of the Purchased Assets or otherwise result in any Environmental Liabilities;

(iii) To the Knowledge of Sellers, there are currently no investigations of the conduct or operation of the Business or the ownership or use of the Purchased Assets, the Owned Real Property, the Leased Real Estate, or any other real property, pending or threatened that would reasonably be expected to result in material Environmental Liabilities;

(iv) There has been no Environmental Release of Hazardous Materials by any Seller, any Affiliates of any Seller, or to the Knowledge of Sellers by any other Person in connection with the Business or Purchased Assets, in contravention of Environmental Law that could, after the Closing Date, materially prevent, impede, or increase the costs associated with the ownership, lease, operation, performance, or use of the Purchased Assets, the Business, or any of the Owned Real Property or Leased Real Estate or any other assets of Sellers or the Acquired Subsidiaries as currently conducted;

(v) There has been no generation, treatment, storage, disposal, or transport of Hazardous Materials in contravention of Environmental Laws by the Business, and to the Knowledge of Sellers, no Hazardous Materials have been disposed of on any of the Purchased Assets, the Owned Real Property or Leased Real Estate, in violation of applicable Environmental Laws;

(vi) Sellers and the Acquired Subsidiaries have not received an Environmental Notice that any of the Purchased Assets, the Business, Owned Real Property, Leased Real Estate or any other real property currently or formerly owned, leased or operated by any Seller or Acquired Subsidiary in connection with its business operations (including soils, groundwater, surface water, and Structures located thereon) has been contaminated with any Hazardous Materials which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or the terms of any Environmental Permit by, Sellers, the Acquired Subsidiaries, or any of the Purchased Assets;

(vii) No Seller nor Acquired Subsidiary has assumed any liability or agreed to indemnify any Person for any material liability or obligation arising under or relating to Environmental Laws; and

(viii) To the Knowledge of Sellers, neither the conduct nor operation of the Business or the ownership or use of the Purchased Assets has given rise to exposure of employees or any other Person to, or an Environmental Release in excess of any applicable limits

or standards under Environmental Laws that that would reasonably be expected to result in any material Environmental Liabilities.

(b) Each Seller and Acquired Subsidiary has made available to Purchaser copies of all material environmental reports, compliance audits, health and safety audits and inspections, site assessments, notices of violation, written complaints or written claims in connection with the conduct or operation of the Business or the ownership or use of the Purchased Assets and any real property currently or formerly owned, leased, or operated by such Person in connection with the conduct or operation of the Business or the ownership or use of the Purchased Assets, in each case which are in the possession or under the reasonable control of Sellers and related to compliance with or liability under Environmental Laws, Environmental Permits, and Hazardous Materials.

(c) No Seller nor Acquired Subsidiary is required by any Environmental Law, as a result of the transactions contemplated hereby, (i) to perform a site assessment for Hazardous Materials, (ii) to remove or remediate Hazardous Materials, or (iii) to give notice to or receive approval from any Governmental Authority pursuant to Environmental Laws.

Section 5.16 No Brokers. Except as set forth in Section 5.14 of the Seller Disclosure Schedule, no Person has acted, directly or indirectly, as a broker or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

Section 5.17 Taxes.

(a) Except as set forth in Section 5.17 of the Seller Disclosure Schedule, (i) all material Tax Returns required to be filed by or on behalf of any Seller or Acquired Subsidiary have been duly and timely filed, and all such Tax Returns are true, correct and complete in all material respects, (ii) other than with respect to US federal Income Taxes for 2021 and 2022 taxable years, all material Taxes due and payable by any Seller or Acquired Subsidiary, whether or not shown on any such Tax Return, have been timely paid, and (iii) there are no Liens for Taxes with respect to the Purchased Assets, other than Permitted Liens.

(b) No Seller nor Acquired Subsidiary is the subject of any Action with respect to Taxes or its Tax Returns nor has any such Action been threatened in writing (or, to the Knowledge of Sellers, otherwise).

(c) Each Seller and Acquired Subsidiary has timely withheld and paid, or caused to be paid, all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any Person or Governmental Authority and all IRS Forms W-2 and Forms 1099 (or any other applicable form) with respect thereto have been properly and timely distributed.

(d) No Seller nor Acquired Subsidiary has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency which waiver or extension remains outstanding. There are no pending or threatened audits, investigations, disputes, notices of deficiency, claims or other proceedings for or relating to any liability for Taxes.

(e) No Seller nor Acquired Subsidiary is a party to any “closing agreement” as described in Section 7121 of the IRC (or any similar provision of state, local or foreign Law) or any other agreement with any Governmental Authority with respect to Taxes. No private letter ruling, technical advice memoranda or similar rulings have been requested or issued by any Governmental Authority with respect to any Seller or Acquired Subsidiary.

(f) No Seller nor Acquired Subsidiary is a party to any Tax allocation, indemnification or sharing agreement. No Seller nor Acquired Subsidiary (i) has been a member of an affiliated group filing a consolidated federal income Tax Return, or (ii) has liability for the Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by Contract, or otherwise.

(g) No claim has been made in writing by any Governmental Authority in a jurisdiction where a Seller or Acquired Subsidiary does not file Tax Returns that such Seller or Acquired Subsidiary is or may be subject to taxation by that jurisdiction.

(h) The U.S. federal income tax classification and place of Tax residence of each Seller and Acquired Subsidiary is listed in Section 5.15 of the Disclosure Schedule.

(i) The Canadian Seller is not a non-resident of Canada within the meaning of the Tax Act.

(j) The Canadian Seller is a registrant for purposes of Part IX of the ETA and its registration number is 122221641 RT0001.

(k) Each Seller and Acquired Subsidiary is duly registered for the purposes of value added tax in the jurisdictions it is required to register, if any, and has complied in all material respects with all requirements concerning value added Taxes in such jurisdictions.

(l) No Seller nor Acquired Subsidiary has been a party to or otherwise involved in any transaction, scheme or arrangement or series of transactions, schemes of arrangements that is or forms part of a scheme for the avoidance of Tax or of which the main purpose or objective (or one of the main purposes or objectives) is to obtain a Tax advantage or which can reasonably be considered as such, or meets any hallmark set out in Annex IV of the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU (DAC6).

(m) The Canadian Seller has duly and timely collected all material amounts on account of all transfer taxes, including HST/GST and provincial or territorial property or sales taxes, required by applicable Law to be collected by it and has duly and timely remitted to the appropriate Governmental Authority any such material amounts required by applicable Law to be remitted by it where the failure to do so would be capable of forming or resulting in a Lien on or other claim against or seizure of all or any part of the Purchased Assets of the Canadian Seller.

Section 5.18 Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.

(a) No Seller, Acquired Subsidiary, director, manager, officer, nor, to the Knowledge of Sellers, any employee, agent or third party acting on behalf of Sellers or the Acquired Subsidiaries, is a Sanctioned Person. Sellers and Acquired Subsidiaries (i) maintain and

comply with an economic sanctions compliance program reasonably designed to ensure compliance with applicable Sanctions and (ii) do not, directly or, to the Knowledge of Sellers, indirectly, conduct business in any manner that would result in a violation of applicable Sanctions.

(b) No Seller, Acquired Subsidiary, director, manager, officer, nor, to the Knowledge of Sellers, any employee or agent of Sellers, has materially violated, been found in violation of or been charged or convicted under, or is under investigation by any Governmental Authority for possible violation of, any applicable Anti-Corruption Laws, EX-IM Laws or Sanctions.

(c) No Seller, Acquired Subsidiary, director, manger, officer, nor, to the Knowledge of Sellers, any employee or agent of Sellers or the Acquired Subsidiaries, has taken any action, directly or indirectly, in violation by such persons of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “**FCPA**”), COFPOA and the rules and regulations thereunder, including making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, loan, reward, advantage, benefit of any kind or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA and COFPOA) or any foreign political party or official thereof or any candidate for foreign political office, in contravention of the FCPA or COFPOA. Each Seller and Acquired Subsidiary has conducted its business during the past three (3) years in material compliance with the FCPA and COFPOA and has instituted and maintains written policies and procedures designed to ensure continued compliance therewith.

(d) Each Seller and Acquired Subsidiary has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable Law) to ensure that such Seller, Acquired Subsidiary and each of its direct or indirect subsidiaries is and will continue to be in compliance with all applicable money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority (collectively, the “**Anti-Money Laundering Laws**”); and (i) the operations of Sellers and the Acquired Subsidiaries are and have been conducted at all times during the past three (3) years in compliance with Anti-Money Laundering Laws, and (ii) as of the date hereof, no Action by or before any court or Governmental Authority involving Sellers with respect to the Anti-Money Laundering Laws is pending or threatened in writing.

(e) No Seller or Acquired Subsidiary is in violation of applicable EX-IM Laws. During the past three (3) years, each Seller and Acquired Subsidiary has conducted its business in compliance with the EX-IM Laws and has instituted and maintains policies and procedures to ensure continued compliance therewith.

Section 5.19 Investment Canada Act. Neither the Canadian Seller nor any entity it controls carries on a “cultural business” within the meaning of the Investment Canada Act.

Section 5.20 No Other Representations and Warranties. Sellers acknowledge that the representations and warranties contained in ARTICLE VI are the only representations or warranties given by Purchaser and that all other express or implied representations and warranties

are disclaimed. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS ARTICLE V, THE CONSENT OF A PARTY TO THE CLOSING SHALL CONSTITUTE A WAIVER BY SUCH PARTY OF ANY CONDITIONS TO CLOSING NOT SATISFIED AS OF THE CLOSING DATE, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT (WHICH REPRESENTATIONS AND WARRANTIES SHALL NOT SURVIVE CLOSING), SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS, INCLUDING INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PURCHASED ASSETS, THE PHYSICAL CONDITION OF ANY PERSONAL OR REAL PROPERTY COMPRISING A PART OF THE PURCHASED ASSETS OR WHICH IS THE SUBJECT OF ANY LEASE OR CONTRACT TO BE ASSIGNED TO PURCHASER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS, THE ZONING OF ANY SUCH REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE TITLE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS, THE BUSINESS OR THE ASSUMED LIABILITIES OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS AND ASSUMPTION OF THE ASSUMED LIABILITIES, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, UPON THE CLOSING DATE, PURCHASER WILL ACCEPT THE PURCHASED ASSETS AND ASSUMED LIABILITIES AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as of the date hereof that:

Section 6.1 Corporate Existence and Qualification. Purchaser (a) is a Delaware corporation duly formed, validly existing and in good standing under the laws of its jurisdiction of formation and has all requisite power and authority to carry on its business as it is now being conducted and (b) is duly qualified to conduct business and is in good standing in each other

jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not reasonably be expected to prevent, hinder or impair the ability of Purchaser to perform its obligations under this Agreement.

Section 6.2 Corporate Power, Authorization, Enforceable Obligations. The execution, delivery and performance by Purchaser of the Transaction Documents to which it is a party: (a) are within Purchaser's organizational power; (b) have been duly authorized by all necessary organizational action; (c) do not contravene any provision of its Fundamental Documents; and (d) do not violate any Laws. This Agreement has been, and each of the other Transaction Documents to the extent Purchaser is a party thereto shall be, duly executed and delivered by Purchaser, and this Agreement constitutes, and each other Transaction Document when executed by Purchaser shall constitute, a legal, valid and binding obligation of Purchaser enforceable against it in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and (ii) general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity.

Section 6.3 Consents and Approvals. Except for any such requirements, the failure of which to be obtained or made would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the Sale, and assuming the truth and correctness of the representations and warranties of Sellers set forth in Section 5.6(d) hereof, no Consent of any Governmental Authority or any third party is required to be made or obtained by Purchaser in connection with the execution, delivery, and performance by Purchaser of this Agreement or any of the other Transaction Documents to which Purchaser is a party, except for the Competition Act Clearance (if required).

Section 6.4 Financial Ability.

(a) Purchaser has, and on the Closing Date will have, access to sufficient cash on hand to allow Purchaser to perform all of its obligations under this Agreement, including (i) payment or satisfaction of Cure Costs and other Assumed Liabilities required to be paid on the Closing Date and (ii) all fees and expenses to be paid by Purchaser related to the transactions contemplated by this Agreement. Purchaser is capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the US Bankruptcy Code and section 11.3(3)(b) of the CCAA with respect to adequate assurance of future performance under the Purchased Contracts.

(b) Purchaser has the legal right on behalf of the Pre-Petition Term Lenders to make a credit bid pursuant to section 363 of the US Bankruptcy Code in order to pay the Credit Bid portion of the Purchase Price, pursuant to the Bid Direction Letter or other evidence satisfactory to Sellers that Purchaser is authorized to made the Credit Bid on behalf of the Pre-Petition Term Lenders.

Section 6.5 No Brokers. No Person has acted, directly or indirectly, as a broker for Purchaser in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

Section 6.6 Sales Tax. If applicable, Purchaser, or its Affiliate designee, is, or will be prior to the Closing, registered under the ETA and the corresponding provisions of any applicable provincial sales or value-added tax laws, as applicable, with respect to ETA Tax or any applicable similar provincial or retail sales tax, in each case, for Canadian Tax purposes. Purchaser, or its Affiliate designee, has provided, or will provide at the Closing, the Canadian Seller with its registration numbers for such taxes.

Section 6.7 Investment Canada Act. Purchaser is a “free trade investor” that is not a “state-owned enterprise” within the meaning of the Investment Canada Act.

Section 6.8 No Other Representations and Warranties. Purchaser acknowledges that the representations and warranties contained in ARTICLE V are the only representations or warranties given by Sellers and that all other express or implied representations and warranties are disclaimed. Purchaser is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of properties and assets such as the Purchased Assets and assumption of liabilities such as the Assumed Liabilities as contemplated hereunder. Purchaser has undertaken such investigation and has been provided with and has evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Purchaser acknowledges that Sellers have given Purchaser reasonable and open access to the key employees, documents and facilities of the Business. Purchaser acknowledges and agrees that the Purchased Assets are being sold on an “as is, where is” basis and Purchaser agrees to accept the Purchased Assets and the Assumed Liabilities in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Seller, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Purchaser acknowledges that Sellers make no representation or warranty with respect to (a) any projections, estimates or budgets delivered to or made available to Purchaser of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future prospects or operations of the Business or (b) any other information or documents made available to Purchaser or its counsel, accountants or advisors with respect to the Business, except as expressly set forth in this Agreement. Purchaser acknowledges and agrees with the provisions of Section 5.16 herein.

ARTICLE VII COVENANTS

Section 7.1 Conduct of Business Pending Closing.

(a) Except (i) as otherwise expressly contemplated by this Agreement, the other Transaction Documents or Section 7.1(a) of the Seller Disclosure Schedule, (ii) as required by any Governmental Order relating to COVID-19, or (iii) with the prior written consent of Purchaser or approval of the US Bankruptcy Court or the CCAA Court, as applicable, during the period from and after the date hereof until the earlier of termination of this Agreement or the Closing Date, Sellers shall, and shall cause the Acquired Subsidiaries to, conduct the Business in all material respects in the ordinary course of business, including meeting all obligations post-Filing Date

relating to the Business as they become due. Except (A) as otherwise expressly contemplated by this Agreement, the other Transaction Documents or Section 7.1(a) of the Seller Disclosure Schedule, (B) as required by any Governmental Order relating to COVID-19, (C) as may be required in connection with or as a result of the Bankruptcy Cases or any Governmental Order, or (D) with the prior written consent of Purchaser, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, Sellers shall, and shall cause the Acquired Subsidiaries to, use commercially reasonable efforts to (i) preserve and maintain their relationships with their customers, suppliers, unions, partners, lessors, licensors, licensees, contractors, distributors, agents, officers, employees and other Persons with which they have significant business relationships material to the Business except in relation to the Contracts of the Business that are determined not to become Purchased Contracts in accordance with this Agreement; *provided* that nothing herein shall prevent Sellers or the Acquired Subsidiaries from commencing or defending any Action against or by any such Person in connection with the claims of such Person in the Bankruptcy Cases; (ii) preserve and maintain the Purchased Assets, ordinary wear and tear excepted; (iii) preserve the ongoing operations of the Business; (iv) maintain the Books and Records in all material respects in the ordinary course of business; (v) comply in all material respects with all applicable Laws (including Environmental Laws); (vi) not enter into any business, arrangement or otherwise take any action that would reasonably be expected to have a Material Adverse Effect on the ability of Sellers, the Acquired Subsidiaries or Purchaser to obtain any approvals of any Governmental Authority for this Agreement and the transactions contemplated hereby; and (vii) not dispose of any Owned Real Property or Leased Real Estate and, except in the ordinary course of business or as previously disclosed to or known by Purchaser, not modify, amend or terminate any of the Leases, and (viii) to the extent permitted after the filing of the Bankruptcy Cases, the DIP Orders, or by Order of the US Bankruptcy Court or the CCAA Court, as applicable, pay all applicable Taxes as such Taxes become due and payable. Purchaser acknowledges that the Designated Location has been placed into an idle state and employees primarily employed at the Designated Location have been placed on temporary layoff, and in the case of salaried employees primarily employed at the Designated Location, temporarily redeployed by the Canadian Seller.

(b) Without limiting the generality of the foregoing, except as otherwise expressly contemplated by this Agreement, the other Transaction Documents, Section 7.1(b) of the Seller Disclosure Schedule or with the prior written consent of Purchaser or approval of the US Bankruptcy Court or the CCAA Court, as applicable, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, each Seller shall not, and shall cause the Acquired Subsidiaries not to, do any of the following:

(i) with respect to the Equity Securities of Holdings, declare, set aside or pay any dividends (payable in cash, stock, property or otherwise) on, make any other distributions in respect of such Equity Securities, or redeem any of such Equity Securities;

(ii) issue, deliver, sell, pledge or otherwise encumber or subject to any Lien the Equity Securities of any Seller or Acquired Subsidiary;

(iii) amend their Fundamental Documents;

(iv) form any Subsidiary;

(v) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business, corporation, partnership, joint venture, association or other business organization or division thereof, of another Person;

(vi) sell, assign, license, transfer, convey, lease, encumber, allow to lapse or expire or otherwise dispose of any Purchased Assets, other than in the ordinary course of business;

(vii) other than with respect to the DIP Facility, incur any Indebtedness for borrowed money or make any payments in respect of any Indebtedness for borrowed money;

(viii) cancel or compromise any material debt or claim or waive or release any material right, in each case, that is a Purchased Asset or Assumed Liability;

(ix) pay, loan or advance any amount to, or sell, transfer or lease any properties or assets (real, personal or mixed, tangible or intangible) to, purchase any properties or assets from, or enter into any (A) Material Contract, (B) Contracts for material Indebtedness, or (C) Contract relating to any interest rate, currency or commodity derivatives or hedging transaction with any of Sellers' executive officers or directors (or immediate family members thereof), other than payment of compensation and benefits in the ordinary course of business, including reimbursement of otherwise reimbursable legal fees and expenses of Sellers' directors;

(x) other than in accordance with Section 2.5 hereof, assume, reject or amend, restate, supplement, modify, waive or terminate any (A) Material Contract, (B) Contract for Indebtedness, (C) Contract relating to any interest rate, currency or commodity derivatives or hedging transaction, (D) material Permit or (E) Intellectual Property right or enter into any settlement of any claim that (1) is outside the ordinary course of business, (2) delays the Closing, (3) relates to a Material Contract, or (4) subjects any Seller to any material non-compete or other similar material restriction on the conduct of its Business that would be binding following the Closing;

(xi) fail to maintain and keep in full force and effect all existing insurance policies, other than (A) expiration of insurance policies that expire by their terms (in which event Sellers shall use reasonable efforts to renew or replace such insurance policies with insurance policies offering commensurate levels of coverage) or (B) immaterial changes to such insurance policies made in the ordinary course of business;

(xii) adopt or change any method of accounting (except as required by changes in GAAP), make, change or revoke any Tax election, change any annual Tax accounting period, file any amended Tax Return, enter into any closing agreement, settle or compromise any Tax claim or assessment, surrender any right to claim a Tax refund, consent to the extension or waiver of the limitations period applicable to any Tax claim or assessment, except as required by Law;

(xiii) other than as required by a Benefit Plan set forth on Section 5.9(a) of the Seller Disclosure Schedule, applicable Law or as explicitly contemplated hereunder or with respect to Excluded Employees, (A) increase the compensation or benefits of any Business

Employee, other than increases in the ordinary course of business to Business Employees who are not Retention Eligible Employees, (B) accelerate the vesting or payment of any compensation or benefits of any Business Employee, (C) enter into, amend or terminate any Benefit Plan (or any plan, program, agreement or arrangement that would be a Benefit Plan if in effect on the date hereof) or grant, amend or terminate any awards thereunder, (D) fund any payments or benefits that are payable or to be provided under any Benefit Plan, (E) terminate without “cause” (as determined consistent with past practice) any Retention Eligible Employee, (F) hire or engage any new Business Employee, other than in replacement of a departed Business Employee (other than a Retention Eligible Employee) in the ordinary course of business, (G) make or forgive any loan to any Business Employee (other than advancement of expenses in the ordinary course of business consistent with past practices), (H) enter into, amend or terminate any collective bargaining agreement or other agreement with a labor union, works council or similar employee or labor organization (or enter into negotiations to do any of the foregoing), (I) recognize or certify any labor union, works council, bargaining representative, or any other similar organization as the bargaining representative for any Business Employee, (J) implement or announce any employee layoffs, furloughs, reductions in force, reductions in compensation, hour or benefits, work schedule changes or similar actions that could implicate the U.S. Worker Adjustment and Retraining Notification Act or any similar state, local or foreign law, or (K) waive or release any noncompetition, nonsolicitation, nondisclosure, noninterference, nondisparagement, or other restrictive covenant obligation of any Business Employee; or

(xiv) agree or commit to take any of the foregoing actions.

Section 7.2 Access to Information. Until the Closing Date, Sellers shall, and shall cause the Acquired Subsidiaries to, (a) afford to the Purchaser Advisors access during normal business hours and upon advance notice to the Purchased Assets and Sellers’ and Acquired Subsidiaries’ properties, respectively, (including access to existing environmental reports and for purposes of conducting environmental assessments), Books and Records and Contracts; (b) make available or cause to make available to the Purchaser Advisors copies of all such Contracts, Books and Records and other existing documents and data as the Purchaser Advisors may request, including any financial data filed with the US Bankruptcy Court or the CCAA Court or otherwise provided to any lender under any Indebtedness of Sellers; and (c) make available or cause to make available to the Purchaser Advisors during normal business hours and upon advance notice the appropriate management personnel of Sellers and Acquired Subsidiaries (and shall use reasonable efforts to cause their attorneys, accountants and other professionals to be made available) for discussion of the Business, the Purchased Assets, the Assumed Liabilities and personnel as Purchaser may request, in each case so long as such access does not unreasonably interfere with the operations of Sellers or the Acquired Subsidiaries; *provided, however*, that nothing in this Section 7.2 or otherwise shall require Sellers to furnish to the Purchaser Advisors any confidential materials prepared by Sellers’ financial advisors or legal advisors or any materials subject to any attorney-client or other privilege or to the extent disclosure thereof would result in a violation of Law or breach of an agreement or other obligation; *provided, further, however*, that Sellers shall, and shall cause the Acquired Subsidiaries to, use reasonable efforts in cooperating with any requests for, and use reasonable efforts to obtain any, waivers that would enable any otherwise required disclosure to the other party to occur without so jeopardizing any such privilege or contravening such applicable Law, agreement, or other obligation.

Section 7.3 Consents. Sellers shall, and shall cause the Acquired Subsidiaries to, use commercially reasonable efforts to cooperate with Purchaser's efforts to solicit and obtain all Consents or Orders required for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, including with respect to any Contracts designated to be Purchased Contracts in accordance with Section 2.5 hereof; *provided, however*, that Sellers and the Acquired Subsidiaries shall not be obligated to bear any out-of-pocket expenses in connection with such efforts.

Section 7.4 Competition Act Clearance. Unless agreed by the parties that the Competition Act Clearance is not required:

(a) Without limiting the generality of Section 7.3, as soon as reasonably practicable: (i) Purchaser shall, with the assistance of and, in consultation with, Sellers, promptly file a submission with the Commissioner of Competition requesting an ARC under section 102 of the Competition Act in respect of the transactions contemplated by this Agreement and, in lieu thereof, request a No Action Letter in furtherance of obtaining the Competition Act Clearance; and (ii) unless otherwise agreed to by the parties, each of Purchaser and Sellers shall file a pre-merger notification form with the Commissioner of Competition pursuant to section 114(1) of the Competition Act.

(b) Purchaser shall pay 100% of all filing fees incurred in connection with the Competition Act Clearance.

(c) In connection with obtaining the Competition Act Clearance, each party shall and shall ensure each of its respective Affiliates:

(i) use its commercially reasonable efforts to obtain Competition Act Clearance as promptly as possible;

(ii) cooperate and provide information and assistance that is reasonably requested by the other party to obtain the Competition Act Clearance and in respect of any notification, application, filing or response to information requests or submission related to the Competition Act Clearance, and to consult with the other party on the preparation of all applicable notifications, information documentation and submissions supplied to or filed with any Governmental Authority, and provide reasonable opportunity to the other party to comment on such applications, notifications, information, documentation and submissions to be supplied to or filed with any Governmental Authority;

(iii) respond promptly to any requests for information from any Governmental Authority (including in respect of any supplementary information requests);

(iv) keep the other party reasonably informed as to the status of and proceedings relating to obtaining the Competition Act Clearance, including providing the other party with a copy or summary of all communications with or received from a Governmental Authority; and

(v) not independently participate in any meeting or discussion with any Governmental Authority in respect of the Competition Act Clearance without giving the other

party reasonable prior notice of the meeting or the discussion and, to the extent permitted by the Governmental Authority, the opportunity to attend and participate.

(d) Notwithstanding any requirement in this Section 7.4 or any other provisions in this Agreement, to the extent that any information provided by any party is deemed to be competitively sensitive by such party, such information shall be provided only to external counsel for the other party on an external counsel only basis, provided that a redacted version of such information is also provided to such other party.

Section 7.5 [Reserved]

Section 7.6 Further Assurances.

(a) At any time and from time to time after the date hereof, Sellers and Purchaser agree to use their respective reasonable efforts to cooperate with each other and (i) at the reasonable request of the other party, execute and deliver any Instruments or documents and (ii) take, or cause to be taken, all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder as promptly as practicable; *provided, however,* that notwithstanding anything to the contrary in this Agreement, (i) Sellers shall be entitled to take any actions as are required in connection with the discharge of the fiduciary duties of Sellers' board of directors, board of managers, or such similar governing body, including to terminate this Agreement, and (ii) Sellers' obligations pursuant to this Section 7.6 shall only continue until the later of one hundred twenty (120) days following the Closing and when the applicable Bankruptcy Case is terminated in respect of such Seller.

(b) Following the Closing, for the purposes of Sellers (i) preparing or reviewing Tax Returns, (ii) monitoring or enforcing rights or obligations under this Agreement, (iii) defending third-party lawsuits or complying with the requirements of any Governmental Authority, or (iv) any other reasonable business purpose, including assistance with the administration, wind-down, conversion, and closing of the Bankruptcy Cases (or any subsequent proceedings), the review of claims in connection with any claims process, the dissolution of Sellers, and related tax and other administrative matters, (x) upon reasonable notice, Purchaser shall permit Sellers, their counsel, and their other professionals reasonable access to all premises, properties, personnel, Books and Records, and Contracts or Leases, which access shall include (1) the right to copy such documents and records as they may reasonably request at Sellers' cost, and (2) Purchaser's copying and delivering such documents or records as reasonably requested, (y) Purchaser shall provide reasonable access to Purchaser's personnel during regular business hours to assist Sellers in their post-Closing activities (including preparation of Tax Returns and requirements in the Bankruptcy Cases), provided that such access does not unreasonably interfere with Purchaser's operations and (z) Purchaser shall provide reasonable access to Purchaser's employees and systems during regular business hours to assist Sellers in the administration or wind-down of the Sellers and managing payments and benefits to non-Transferred Employees, in each case of (y) or (z), at no expense to Sellers.

(c) If, following the Closing, Sellers (or their Affiliates or Seller Representatives) receive any money, check, note, draft, instrument, payment or other property as

proceeds of the Purchased Assets or any part thereof, each such Person shall receive all such items for, and as the sole and exclusive property of, Purchaser and, upon receipt thereof, shall notify Purchaser in writing of such receipt and shall remit the same (or cause the same to be remitted) to Purchaser in the manner specified by Purchaser.

(d) Within two (2) Business Days following the Closing, Purchaser (on behalf of itself and its Affiliates) shall (i) pay to the Trust \$500,000 in cash, (ii) assign to the Trust all claims and causes of action included in the US Purchased Assets against equity holders, insiders, sponsors and current and former officers and directors (“**Representatives**”) of the US Sellers (the “**Assigned Claims**”); *provided, however*, the Assigned Claims shall exclude any claims against or in respect of the CCAA Cash Pool and the Excluded Avoidance Actions, and (iii) assign to the Trust all of the US Sellers’ rights and interests (free and clear of restrictions, conditions, or limitations, if any, in any of the organizational documents governing such rights and interests) to Preserve and prosecute past, present, and future Assigned Claims. Purchaser agrees to not pursue or cause to be pursued, and as of the Closing shall release (A) any Avoidance Actions (excluding any Avoidance Actions that constitute Assigned Claims) other than a defense (to the extent permitted under applicable Law) against any claim or cause of action raised by any such party, and (B) any claims and causes of action against Sellers’ Representatives that are not Assigned Claims. For the avoidance of doubt, nothing herein shall preclude or otherwise impair the Trust from Preserving and/or pursuing any Assigned Claim against any or all Representatives of the US Sellers, in such capacity, if such Representative also was, is, or becomes a Representative of the Canadian Seller.

(e) Prior to the Closing, Sellers shall use commercially reasonable efforts to, and to cause their respective directors, officer and employees to, at Purchaser’s reasonable request in writing (including via e-mail), provide cooperation to Purchaser in connection with the Debt Financing. Purchaser shall promptly, upon request by Sellers, reimburse Sellers for any reasonable and documented out-of-pocket expenses (including reasonable and documented attorney’s fees) incurred by Sellers in connection with the cooperation of Sellers contemplated by this Section 7.6(e). Purchaser shall indemnify and hold harmless, Sellers, and their respective directors, managers, officers, employees and representatives, from and against any and all liabilities or losses suffered or incurred by them in connection with the arrangement of the Debt Financing and any information utilized in connection therewith, except in the event such liabilities or losses arose out of or result from the gross negligence or willful misconduct by or of Sellers or any of their respective directors, managers, officers, employees and representatives. Purchaser acknowledges and agrees that, notwithstanding Sellers’ obligations under this Section 7.6(e), Sellers’ obligations under this Section 7.6(e) shall be deemed satisfied unless Sellers have materially and intentionally breached its obligations under Section 7.6(e) and such breach is a proximate cause of the Debt Financing not being consummated. Purchaser acknowledges and agrees that the obtaining of Debt Financing is not a condition to its obligations under this Agreement.

(f) At the Closing, the Designated Amount allocated to the Canadian Seller and the CCAA Cash Pool shall be delivered by the Canadian Seller to the Monitor.

Section 7.7 Bankruptcy Covenants.

(a) Sale Procedures. Not later than the date that is two (2) Business Days following the Petition Date, US Sellers shall file a motion seeking entry of the US Sale Procedures Order with the US Bankruptcy Court (the “**US Sale Procedures Motion**”), which shall be in a form and substance acceptable to Purchaser, acting reasonably. US Sellers shall use reasonable efforts to obtain entry by the US Bankruptcy Court of the US Sale Procedures Order (with such changes thereto as Purchaser shall approve or request in its discretion, acting reasonably) within forty-five (45) days after the Petition Date. Not later than the date that is one (1) Business Day following the CCAA Filing Date, Canadian Seller shall file a motion seeking the granting of the CCAA Sale Procedures Order with the CCAA Court (the “**CCAA Sale Procedures Motion**”), which shall be in a form and substance acceptable to Purchaser in its discretion, acting reasonably. Canadian Seller shall use reasonable efforts to obtain from the CCAA Court the CCAA Sale Procedures Order (with such changes thereto as Purchaser shall approve or request in its discretion, acting reasonably) within forty-five (45) days after the CCAA Filing Date. Subject to entry of and in accordance with any provisions of the Sale Procedures Orders, Sellers shall hold an Auction on the Sale no later than March 14, 2023, obtain entry of the Sale Orders no later than March 16, 2023 and consummate the Sale transaction no later than March 17, 2023. Sellers shall comply with all of the terms and conditions contained in the Sale Procedures, including the occurrence of the events by the dates and times listed therein which terms and conditions are expressly incorporated by reference herein as if set forth in full. From the time of execution and delivery by each Seller and Purchaser of this Agreement until its termination, Sellers and Seller Representatives shall not be subject to any restrictions with respect to the solicitation or encouragement of any entity concerning an Alternative Restructuring Proposal in accordance with the Sale Procedures.

(b) Court Approval.

(i) US Sellers shall serve a copy to each applicable Taxing Authority of the US Sale Motion, proposed US Sale Order and proposed US Sale Procedures Order, or notice of such motions and Order in addition to instructions on how to obtain copies of such motion and proposed Order, in each jurisdiction where the US Purchased Assets are subject to Tax at least twenty-one (21) days prior to the US Sale Hearing. Canadian Seller shall serve a copy to each applicable Taxing Authority and such other Persons required by Purchaser of the motion seeking the granting of the CCAA Sale Order (the “**CCAA Sale Motion**”) and the proposed CCAA Sale Order, or notice of such motion and Order in addition to instructions on how to obtain a copy of such motion and proposed Order at least fourteen (14) days prior to the CCAA Sale Hearing.

(ii) Sellers shall use reasonable efforts to obtain entry or granting by the US Bankruptcy Court and the CCAA Court, as applicable, of the US Sale Order and the CCAA Sale Order, respectively, no later than March 16, 2023.

(iii) If the Sale Procedures Orders or Sale Orders or any other Orders of the US Bankruptcy Court or the CCAA Court relating to this Agreement shall be appealed by any party (or a petition for certiorari or motion or application for leave to appeal, reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Order), Sellers shall diligently defend against such appeal, petition, motion or application and shall use their reasonable efforts to obtain an expedited resolution of any such

appeal, petition, motion or application; *provided* that Sellers consult with Purchaser at Purchaser's request regarding the status of any such proceedings or Actions.

(iv) Sellers shall diligently consult with Purchaser and its representatives to obtain Purchaser's consent concerning the forms of the Sale Procedures Orders and the Sale Orders, use reasonable efforts to consult with the Committee, Purchaser, and their representatives upon the Committee's or Purchaser's request concerning any other Orders of the US Bankruptcy Court or the CCAA Court and the Bankruptcy Cases, and provide Purchaser and the Committee with copies of requested motions, applications, pleadings, notices, proposed Orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the US Bankruptcy Court or the CCAA Court, as applicable. Sellers further covenant and agree that, after the Closing, the terms of any reorganization plan or plan of compromise or arrangement submitted to the US Bankruptcy Court or the CCAA Court for confirmation or sanction shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including any transaction contemplated by or approved pursuant to the Sale Procedures Orders or the Sale Orders.

Section 7.8 Employee Matters.

(a) Not less than five (5) days prior to the Closing Date, Purchaser shall, or shall cause its Affiliates to, make an offer of employment (an "**Offer**") to each US Employee and each non-union Canadian Employee, such Offer to be conditional and effective on the Closing and containing such terms and conditions as determined by Purchaser in its sole discretion, subject to (i) the obligations set forth in Section 7.8(b), and (ii) with respect to any Canadian Employees covered by a collective bargaining agreement set forth on Section 5.11(d) of the Seller Disclosure Schedule, the terms of such collective bargaining agreement; *provided*, that, notwithstanding anything herein to the contrary, in no event shall Purchaser be required to extend an Offer to any Excluded Employee. Notwithstanding the foregoing, in respect of any non-union Canadian Employee who is on an approved short-term or long-term disability leave of absence on Closing and is not receiving benefits pursuant to an Assumed Benefit Plan, the effective date of employment may not be the Closing Date, but rather the terms of the Offer shall specify that the offer is conditional upon the Employee being capable of returning to work and the date on which such Employee returns to work shall be the date of employment and the date that the employee becomes a Transferred Employee.

(b) As soon as practicable after the Purchaser becomes the Successful Bidder under the Sales Procedures, and no later than five (5) calendar days thereafter, the Canadian Seller shall provide written notice to all Excluded Employees primarily employed at the Designated Location that the Designated Location will be permanently closed and that their employment will terminate, or in the case of unionized Canadian Employees which are primarily employed at the Designated Location, that they will be permanently/indefinitely laid off, in each case effective immediately prior to Closing. For the period beginning on the Closing Date and ending on the earlier of (x) December 31, 2023 and (y) the date on which the employment of such Transferred Employee terminates for any reason, Purchaser shall, or shall cause its Affiliates to, provide each non-unionized Transferred Employee with (i) a base salary or hourly wage rate, as applicable, that is no less than the base salary or hourly wage rate, as applicable, provided to such Transferred

Employee immediately prior to the Closing Date, (ii) commission and incentive compensation opportunities that are no less favorable in the aggregate than the commission and annual cash incentive compensation opportunities (exclusive of any equity-based compensation opportunities and any change of control and retention-related opportunities) provided to such Transferred Employee immediately prior to the Closing Date, and (iii) qualified welfare and retirement benefits that are comparable in the aggregate to those qualified welfare and retirement benefits (exclusive of any defined benefit pension, retiree medical and deferred compensation benefits) provided to such Transferred Employee by Sellers immediately prior to the Closing Date. With respect to Transferred Employees covered by a collective bargaining agreement set forth on Section 5.11(d) of the Seller Disclosure Schedule, Purchaser shall, or shall cause its Affiliates to, comply with the terms and conditions of the applicable collective bargaining agreement.

(c) Purchaser shall, or shall cause its Affiliates to, use commercially reasonable efforts to cause service rendered by Transferred Employees prior to the Closing Date to be taken into account for all purposes (including eligibility to participate, vesting and benefit accruals) under all compensation and Benefit Plans, programs and policies that are established and maintained by Purchaser or any of its Affiliates for the benefit of such Transferred Employees (“**Buyer Benefit Plans**”) after the Closing Date, except for purposes of vesting under any new equity-based compensation plan, program, agreement or arrangement, for purposes of benefit accruals under any defined benefit pension plan, deferred compensation or retiree health or welfare plan or arrangement, to the extent that such service is not recognized under any such plan, program or policy for other employees of Purchaser or its Affiliates, to the extent that such service was not recognized by Sellers under a comparable Benefit Plan in which such Transferred Employee participated immediately prior to the Closing or to the extent such credit would result in a duplication of benefits.

(d) Purchaser shall, or shall cause its Affiliates to, use commercially reasonable efforts to: (i) cause Transferred Employees to not be subject to any pre-existing condition or limitation under any Buyer Benefit Plans providing group health benefits for any condition for which such employee would have been entitled to coverage under the corresponding Benefit Plan in which such employee participated immediately prior to the Closing Date; and (ii) cause such Transferred Employees to be given full credit for eligible co-payments made, and deductibles satisfied, prior to the Closing Date under the corresponding Company Benefit Plan in which such Transferred Employee participated immediately prior to the Closing for purposes of satisfying the applicable deductible, coinsurance and maximum out-of-pocket provisions under the Buyer Benefit Plan in which such Transferred Employee participates in the year in which the Closing occurs; provided, that Purchaser’s obligations pursuant to clause (ii) above is conditioned upon Sellers providing Purchaser with all information as is reasonably necessary for Purchaser to provide such credit in a format reasonably acceptable to Purchaser or its insurer, as applicable, promptly (and in all events within five (5) Business Days) following receipt of a request for such information by Purchaser.

(e) Sellers shall cause the waiver of any covenant prohibiting a Business Employee from engaging in certain activities or taking certain actions during, or for a period of time following a termination of, his or her employment with Sellers, including any non-compete, non-solicit, non-interference, non-disparagement or confidentiality covenants, in each case, to the extent necessary for each Business Employee to be permitted to commence employment with

Purchaser or any of its Affiliates and for such Business Employee to provide such services as may be requested from time to time by Purchaser or any of its Affiliates (whether as an employee or otherwise).

(f) During the period commencing on the date hereof and ending at the Closing, Sellers shall provide Purchaser and its Affiliates with reasonable access to the Business Employees during normal business hours, and will deliver such notices and other communications, in each case, as is reasonably requested from time to time by Purchaser or any of its Affiliates.

(g) Nothing herein is intended to, and shall not be construed to, create any third party beneficiary rights of any kind or nature, including, without limitation, the right of any Business Employee or other individual to seek to enforce any right to compensation, benefits, or any other right or privilege of employment with Sellers or Purchaser or any of their respect Affiliates. For the avoidance of doubt, no Business Employee or other Person shall be a third-party beneficiary in respect of this Section 7.8. Nothing in this Section 7.8 shall be construed or interpreted to be an amendment to any Benefit Plan or Buyer Benefit Plan.

(h) Except for Assumed Benefit Plans, Purchaser shall not assume any of the Benefit Plans or any liability for accrued benefits or any other liability under or in respect of any of the Benefit Plans. The Transferred Employees shall, as of the Closing Date cease to accrue further benefits under the Excluded Benefit Plans.

Section 7.9 Assignment and Assumption of Canadian Pension Plans.

(a) Transfer of Assumed Canadian Pension Plans.

(i) As soon as practicable after the Closing Date, but effective as of the Closing Date, Sellers shall assign to Purchaser and Purchaser shall assume the Canadian Pension Plans which are included in the Assumed Benefit Plans, including all rights, obligations, trust fund assets and other assets held pursuant to the Funding Arrangements therefor, and liabilities thereunder (each such Canadian Pension Plan that is included as an Assumed Benefit Plan is herein called an “**Assumed Canadian Pension Plan**”). In order to effect such assignment and assumption of the Assumed Canadian Pension Plans, Sellers and Purchaser agree to take such steps, prepare and execute such documents (including any required actuarial valuation report), notify the members and former members of such Assumed Canadian Pension Plans and any Unions representing them and seek such approvals of the applicable Governmental Authorities as may be necessary or desirable, as soon as practicable. Notwithstanding the foregoing, Purchaser’s administrative responsibility for the Assumed Canadian Pension Plans shall become effective only upon the assignment to Purchaser by Sellers of the rights and obligations of Sellers under the Assumed Canadian Pension Plans’ Funding Arrangements, including, without limitation, all of Sellers’ rights in respect of the assets held in the Funding Arrangements, in accordance with Section 7.9(a)(iii).

(ii) Subject to the approval of the applicable Governmental Authorities and Section 7.8(a)(i), Sellers shall assign to Purchaser and Purchaser shall accept all of the rights and obligations of Sellers under the Funding Arrangements established for the Assumed Canadian

Pension Plans, including all of Sellers' rights in respect of the assets held in such Funding Arrangements.

(iii) Subject to Section 7.9(a)(i), Sellers agree to administer the Assumed Canadian Pension Plans until the date on which the rights and obligations of Sellers under the Funding Arrangements, including all of Sellers' rights in respect of the assets held in the Funding Arrangements, are assigned to Purchaser (the "**Pension Plan Assignment Date**") in the same manner as it is being administered at the Closing Date but for the account of, and at the expense of, either the Funding Arrangements for the Assumed Canadian Pension Plans or, where such charge to the Funding Arrangement is not permitted by applicable Law, Purchaser. For greater certainty, Sellers shall not be obligated to pay any amounts to or in respect of the Assumed Canadian Pension Plans and the Funding Arrangements therefor after the Closing Date except for the account of and at the expense of Purchaser. Until the Pension Plan Assignment Date and subject to any other agreements which Sellers and Purchaser may make following the Closing, Sellers agree to receive and deposit contributions, if any, by Purchaser and the participants in the Assumed Canadian Pension Plans to the Funding Arrangements therefor.

(iv) From the Closing Date to the Pension Plan Assignment Date, Sellers shall ensure that all funds held in the Funding Arrangements of the Assumed Canadian Pension Plans are invested in accordance with the Statement of Investment Policies and Procedures ("**SIP&P**") adopted by Sellers in respect to each Assumed Canadian Pension Plan and filed with FSRA pursuant to the PBA. Sellers agree to provide written notice to Purchaser of any changes Sellers make to such SIP&P that come into effect between the Closing Date and the Pension Plan Assignment Date. Sellers shall provide Purchaser written notice of the investment rate of return on the assets held in the Funding Arrangements of the Assumed Canadian Pension Plans (the "**Rate of Return**"). Such written notice shall be provided to Purchaser on a quarterly basis, not later than 30 days following the end of each calendar quarter. Provided Sellers and the trustee or other funding agent for the Assumed Canadian Pension Plans comply with such SIP&P and Laws, neither Sellers nor the trustee or other funding agent of the Assumed Canadian Pension Plans shall be liable for the investment performance of the assets held in the Funding Arrangements for the Assumed Canadian Pension Plans or responsible for any loss in the value of the assets to be transferred to Purchaser as the result of such investment performance.

(v) The expenses attributable to the assignment of the liability and responsibility of Sellers under the Assumed Canadian Pension Plans and the Funding Arrangements therefor to Purchaser shall be paid to the extent permissible from the assets of the Assumed Canadian Pension Plans. Purchaser shall be responsible for all expenses incurred by it with respect to the assumption of the liability, rights and responsibility under the Assumed Canadian Pension Plans and the Funding Arrangements therefor.

(vi) As soon as practicable after the Closing Date, Sellers shall provide to Purchaser such information and records, and access to such personnel, as may reasonably be required to administer the Assumed Canadian Pension Plans, to the extent that such information and records are not then in the possession of Purchaser or any of its authorized representatives.

(b) Partial Transfer of Canadian Pension Plans.

(i) Notwithstanding that one or more of the Canadian Pension Plans has not been designated by Purchaser in a writing to Sellers as an Assumed Benefit Plan, Purchaser may, in a writing to Sellers prior to the date of the CCAA Sale Hearing, designate that it intends to assume that portion of Sellers' liability and responsibility under a particular Canadian Pension Plan that is an Excluded Benefit Plan in respect of the Transferred Employees who are participants in that plan. The provisions of this Section 7.9(b) shall apply to the transfer of the assets and liabilities from such Canadian Pension Plan so designated. Each such Canadian Pension Plan that is so designated by Purchaser pursuant to this Section 7.9(b)(i) is herein called a "**Partially Transferred Canadian Pension Plan**".

(ii) As soon as practicable after the Closing Date, but effective as of the Closing Date, Sellers shall assign to Purchaser and Purchaser shall assume all of Sellers' liability and responsibility under and pursuant to each Partially Transferred Canadian Pension Plan in respect of those Transferred Employees who are participants therein (the "**Transferred Pension Plan Participants**"). In order to effect such assignment and assumption, Sellers agree to take such steps, prepare and execute such documents, notify the members and former members of each such Partially Transferred Canadian Pension Plan including the Transferred Pension Plan Participants and any Unions representing them and seek such approvals of the applicable Governmental Authorities as may be necessary or desirable, as soon as practicable, including without limitation in compliance with PBA Reg 310/13 and the applicable guidance issued in connection with such Regulation by FSRA. As soon as practicable after the Closing Date, but effective as of the Closing Date, Purchaser shall establish and register with the applicable governmental agencies, or shall otherwise cause to be provided, a pension plan for the Transferred Pension Plan Participants (the "**Purchaser's Plan**") which shall contain benefit provisions which are equivalent in all material respects to those provided under the Partially Transferred Canadian Pension Plan which are applicable to the Transferred Pension Plan Participants. Purchaser shall also establish or otherwise provide a Funding Arrangement for Purchaser's Plan. Purchaser's Plan shall provide that for the purposes of eligibility for membership, vesting and continued benefit accrual, service by Transferred Pension Plan Participants recognized under the Partially Transferred Canadian Pension Plan shall be deemed to be continuous unbroken service with Purchaser. Purchaser further agrees to provide Sellers with such documentation and information as may be reasonably required to satisfy Sellers that Purchaser's Plan and the Funding Arrangement therefor have been properly established or otherwise provided, as applicable, in accordance with this Section 7.9(b).

(iii) If either the Hourly DB Plan or the Salaried DB Plan is one of the Partially Transferred Canadian Pension Plans, the provisions of this Section 7.9(b)(iii) shall apply. Immediately following the Closing Date, Sellers shall cause the actuary for the Hourly DB Plan or the Salaried DB Plan, as the case may be, to calculate the actuarial present value of the accrued benefits of Transferred Pension Plan Participants who are participants in such plan at the Closing Date (the "**Assumed DB Liabilities**"), determined on a solvency basis, recognizing service credited under such plan to the Closing Date. Such calculation shall be made in compliance with the requirements of the PBA including, without limitation, PBA Reg 310/13, and, to the extent permissible, using the same actuarial methods and assumptions used in the last actuarial valuation prepared as at December 31, 2021 and filed with FSRA in respect of the Hourly DB Plan or Salaried DB Plan and applying the provisions of such plan as at the Closing Date. Similarly, Sellers shall cause the actuary for the Hourly DB Plan or the Salaried DB Plan, as the case may be, to calculate the amount of assets to be transferred from the Hourly DB Plan or the Salaried DB

Plan, as the case may be, to Purchaser's Plan in respect of such Assumed DB Liabilities, pursuant to section 9 of PBA Reg 310/13 (the "**Assumed DB Assets**"). Sellers shall provide Purchaser with a copy of the report of the actuary for the Hourly DB Plan or the Salaried DB Plan on the calculation of the Assumed DB Liabilities and Assumed DB Assets and shall provide access to the actuary for such plan to confirm the calculation of the Assumed DB Liabilities and Assumed DB Assets, including access to all information, documents or records of Sellers pertaining to the Hourly DB Plan or the Salaried DB Plan necessary for such purpose. If the applicable Governmental Authorities require some variation from the foregoing calculation of the Assumed DB Liabilities and the Assumed DB Assets, the calculation will be modified by the actuary for the Hourly DB Plan or the Salaried DB Plan in accordance with the requirements of such Governmental Authorities. Sellers agree to cause the trustee of the trust fund for the Hourly DB Plan or the Salaried DB Plan to notionally segregate assets in the trust fund for such plan having a value equal to the Assumed DB Assets, as such value may be modified in accordance with the requirements of such Governmental Authorities, effective as of the Closing Date.

(iv) If the Hourly DC Plan or the Salaried DC Plan is one of the Partially Transferred Canadian Pension Plan, the provisions of this Section 7.9(b)(iv) shall apply. Immediately following the Closing Date, Sellers shall direct the funding agent for each such plan to notionally segregate assets in the Funding Arrangement for such plan attributable to the account balances for the Transferred Pension Plan Participants who are participants in such plan (the "**Assumed DC Assets**"). Concurrently, Sellers shall provide notice to Purchaser of such direction to the funding agent, and Sellers shall provide Purchaser with such details of the calculation of the Assumed DC Assets as Purchaser may reasonably require.

(v) Subject to Section 7.9(b)(ii), (iii) and (iv), Sellers agree to administer each Partially Transferred Canadian Pension Plan in respect of Transferred Pension Plan Participants, until the date on which the transfer of the Assumed DB Assets or the Assumed DC Assets to the Funding Arrangement to be established or otherwise provided for Purchaser's Plan has been completed in accordance with Section 7.9(b)(vi) (the "**Partial Plan Transfer Date**"), in the same manner as it is being administered at the Closing Date but for the account of, and at the expense of, Purchaser or the Assumed DB Assets or Assumed DC Assets, as applicable, subject to any Laws and government regulations and policies. For greater certainty, Sellers shall not be obligated to pay any amounts to or in respect of each Partially Transferred Canadian Pension Plan and the Funding Arrangement therefor in respect of Transferred Pension Plan Participants after the Closing Date except for the account of, and at the expense of, Purchaser. Until the Partial Plan Transfer Date and subject to any other agreements which Sellers and Purchaser may make after the Closing, Sellers agree to receive and deposit contributions, if any, by Purchaser to the Funding Arrangement for the Partially Transferred Canadian Pension Plan and to credit such contributions to the Assumed DB Assets or Assumed DC Assets, as applicable. Until the Partial Plan Transfer Date, the Funding Arrangement for each Partially Transferred Canadian Pension Plans shall continue to be invested under the supervision of Sellers and the trustee or funding agent for each Partially Transferred Canadian Pension Plan, and the Assumed DB Assets and Assumed DC Assets shall be adjusted to reflect the investment performance of such Funding Arrangement. Sellers and the trustee or funding agent for each Partially Transferred Canadian Pension Plan shall act in a fiduciary capacity with reasonable diligence and prudence and in good faith in so doing and, provided they so act, neither Sellers nor the trustee or funding agent of each Partially Transferred Canadian Pension Plan shall be liable for the investment performance of the Assumed

DB Assets or Assumed DC Assets or responsible for any loss in the value of the Assumed DB Assets or Assumed DC Assets as the result of investment performance.

(vi) The fees of the actuary for each Partially Transferred Canadian Pension Plan, in respect of the assignment of the liability and responsibility under each Partially Transferred Canadian Pension Plan for Transferred Pension Plan Participants to Purchaser's Plan and for the transfer of the value of the Assumed DB Assets and Assumed DC Assets, as adjusted, to the Funding Arrangement to be arranged or otherwise provided by Purchaser therefor, shall be paid to the extent permissible from the assets of the applicable Partially Transferred Canadian Pension Plan. Purchaser shall be responsible for all expenses incurred in respect of the establishment of Purchaser's Plan and the trust fund or other Funding Arrangement therefor.

(c) Successor Plan Administrator. The obligations of Sellers set forth in Section 7.9(a) and Section 7.9(b) include certain obligations of Sellers to be performed by them in their capacities as administrators of the Canadian Pension Plans. If a successor administrator is appointed at any time for any of the Canadian Pension Plans, as contemplated pursuant to the provisions of the PBA, the obligations of any Sellers in their respective capacities as administrators of any of the Canadian Pension Plans shall be binding upon the successor administrator appointed in respect of that Canadian Pension Plan, which shall carry out such obligations pursuant to Section 7.9(a) and Section 7.9(b) as the successor administrator to Sellers.

Section 7.10 Non-Transferrable Insurance. Except as otherwise provided in this Agreement, and to the extent that any insurance policies that are not transferable at the Closing in accordance with the terms thereof cover any loss, Liability, claim, damage or expense relating to any Purchased Assets or Assumed Liabilities and such insurance policies continue after the Closing to permit claims to be made thereunder with respect to events occurring prior to the Closing, (a) Sellers shall hold such insurance policies in trust for the benefit of Purchaser and Purchaser shall have coverage thereunder and (b) Purchaser and Sellers shall cooperate with the other, as applicable, at the sole cost and expense of Purchaser, in good faith in submitting and pursuing such claims for the benefit of Purchaser and its Affiliates. Further, and except as otherwise provide in this Agreement, Sellers shall pay over to Purchaser promptly any insurance proceeds paid or recovered thereunder with respect to such claims. In the event Purchaser determines to purchase replacement coverage with respect to any such insurance policy, Sellers shall reasonably cooperate with Purchaser to terminate such insurance policy and shall, at the option of Purchaser, promptly pay over to Purchaser any refunded or returned insurance premiums received by Sellers in connection therewith or cause such premiums to be applied by the applicable carrier to the replacement coverage arranged by Purchaser.

Section 7.11 Use of Name. Each Seller agrees, and agrees to cause each of its Affiliates, (a) within thirty (30) calendar days after the Closing Date, to amend their respective corporate entity names and Fundamental Documents (including in connection with the Bankruptcy Cases or in any other legal case or proceeding in which any Seller is a party and for the purpose of winding up Sellers and their estates) that are required to change their respective entity names to a new name that is, in Purchaser's reasonable judgment, sufficiently dissimilar to each Seller's respective present name and/or any Trademark used in connection with the Business so as to avoid confusion and make their respective present name available to Purchaser, (b) within ninety (90) calendar days after the Closing Date, to cease all use of the Trademarks "DCL," "Dominion Colour" and

any other Trademark used in connection with the Business, or any name or Trademark that contains or comprises any such Trademarks or is an abbreviation, translation, transliteration or derivative thereof, an acronym therefor or otherwise confusingly similar thereto for any purpose; *provided, however*, that Sellers may use “f/k/a DCL Corporation” or such similar description in the title of the CCAA Proceeding or the US Bankruptcy Cases.

Section 7.12 License Approvals. At Purchaser’s sole cost and expense, Sellers shall assist Purchaser with the preparation, filing and prosecution of each application, petition or other filing with any Governmental Authority with respect to obtaining the necessary Consents and approvals pertaining to transfer of any Licenses to Purchaser (“**License Approvals**”), including (i) making reasonably available to Purchaser the Sellers’ employees responsible for managing the Licenses and Sellers’ License counsel (subject to compliance with ethical rules) to assist and consult with Purchaser on the License Approvals, and (ii) participating in any legal proceedings reasonably requested by Purchaser to obtain such Licenses. Sellers shall promptly provide to Purchaser any necessary information for obtaining the Licenses, and shall direct all persons employed by, related to or under control of Sellers whose cooperation is reasonably necessary or convenient to Purchaser’s application for Licenses in Purchaser’s name, and shall provide any Licenses of Sellers for surrender when directed by Purchaser to do so.

Section 7.13 Trademarks and Patents. Prior to the Closing Date, Sellers shall (i) execute and record all documents, including all applicable filings with the United States Patent and Trademark Office and with the registries and other governmental authorities in all applicable foreign jurisdictions, and take all other actions necessary or desirable to validate, perfect and record ownership of all Registered Intellectual Property included in the Purchased Assets by Purchaser or its designee, and to ensure that the chain of title of all such Registered Intellectual Property reflects all prior acquisitions and transfers of each item of such Registered Intellectual Property as well the as assignment to Purchaser contemplated by this Agreement, such that Purchaser or its designee shall be identified in the records of each applicable registry or governmental authority as a current owner of record of each such item of Registered Intellectual Property without defects in chain of title and (ii) use commercially reasonable efforts to execute and record all documents (at Purchaser’s expense), including all applicable filings with the United States Patent and Trademark Office and with the registries and other governmental authorities in all applicable foreign jurisdictions, and take all other actions necessary or desirable to release all existing and prior security interests recorded against all such Registered Intellectual Property.

Section 7.14 Replacement Financial Assurance. Purchaser acknowledges and agrees that it shall replace each Financial Assurance with a new financial assurance satisfactory to the applicable Governmental Authority or other Person holding such Financial Assurance (collectively, the “**Replacement Financial Assurance**”) or take any other action, to the satisfaction of the applicable Governmental Authority or Person holding such Financial Assurance, so that such Financial Assurance is returned to the relevant Seller or an Affiliate thereof or is otherwise cancelled at or prior to Closing.

Section 7.15 Supplement to Seller Disclosure Schedule. From time to time prior to the Closing, Sellers shall have the right (but not the obligation) to supplement or amend the Seller Disclosure Schedule hereto (each, a “**Schedule Supplement**”). Any disclosure in such Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation

or warranty contained in this Agreement; *provided, however*, that if any such Schedule Supplement discloses a matter that would lead to a failure to satisfy the condition in Section 9.2(a), Purchaser shall have ten (10) days following delivery of such Schedule Supplement to terminate this Agreement, and if Purchaser does not terminate this Agreement within such ten (10) day period, such Schedule Supplement shall thereafter be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement to which such Schedules Supplement relates; *provided, further, however*, that Sellers and Purchaser may supplement or amend Sections 1.1, 2.2(e), 5.8, 5.10(a), 5.12(a), 5.15, 5.17, 7.1(a), 7.1(b), 9.2(d) in accordance with the terms of the Original Asset Purchase Agreement.

ARTICLE VIII TAX MATTERS

Section 8.1 Pre-Closing Taxes. Purchaser shall not be obligated to pay any Taxes (except for any Assumed Tax Liabilities) imposed by any Governmental Authority on any of the Sellers or the Business, or with respect to the Purchased Assets, in each case due or owing with respect to any taxable period (or portion thereof) ending on or prior to the Closing Date.

Section 8.2 Transfer Taxes. Notwithstanding Section 8.1, any and all stamp, duty, stamp duty, transfer, documentary, registration, ETA Taxes, business and occupation and other similar Taxes imposed by any Governmental Authority in connection with the Sale contemplated by this Agreement (the “**Transfer Taxes**”) shall be paid by Purchaser. Purchaser and Sellers shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation; provided further that the parties shall reasonably cooperate in availing themselves of any available Tax elections or exemptions from any collection of (or otherwise reduce) any such Transfer Taxes.

(a) Purchaser and the Canadian Seller shall, to the extent applicable, jointly make election(s) under subsection 167(1) of the ETA in respect of the sale of the Canadian Purchased Assets, in the prescribed form, such that no ETA Tax is payable in respect of such sale. Purchaser shall timely file such election forms with the appropriate Governmental Authority in the prescribed manner. Notwithstanding such election, in the event that it is determined by a Governmental Authority that the Canadian Seller is liable to pay, collect or remit any ETA Taxes in respect of the sale of the Canadian Purchased Assets, Purchaser shall forthwith pay such ETA Taxes, plus any applicable interest and penalties, to the Canadian Seller for remittance to the appropriate Governmental Authority.

(b) At the request of Purchaser, Purchaser and Canadian Seller shall, to the extent applicable, jointly make an election pursuant to section 22 of the Tax Act and the corresponding provisions of any applicable Canadian provincial income tax statute, in respect of the Canadian Seller transferring its Accounts Receivable (excluding, for certainty, any Excluded Assets) to Purchaser as part of the Canadian Purchased Assets. Purchaser and Canadian Seller agree to jointly make the necessary election(s) and to execute and file within the prescribed time the prescribed election form(s) required to give effect to the foregoing.

(c) At the request of Purchaser, Purchaser and Canadian Seller shall, to the extent applicable, jointly make an election under Section 20(24) of the Tax Act and the

corresponding provisions of any applicable Canadian provincial income tax statute, in respect of amounts for future obligations and shall timely file such election(s) with the appropriate Governmental Authority. To the extent applicable for Canadian Tax purposes, Canadian Seller and Purchaser acknowledge that a portion of the Purchased Assets was transferred to Purchaser as payment by Canadian Seller to Purchaser for the assumption by Purchaser of any such future obligations of the Canadian Seller.

Section 8.3 Cooperation on Tax Returns and Tax Proceedings. Purchaser and Sellers shall cooperate fully and in good faith as and to the extent reasonably requested by the other party, in connection with the preparation and filing of Tax Returns and any Action with respect to Taxes (each, a “**Tax Proceeding**”) imposed on or with respect to the Purchased Assets or the Business. Such cooperation shall include the retention and (upon the other party’s request) the prompt provision of records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Sellers and their Affiliates shall (a) abide by all record retention agreements entered into with any Governmental Authority and (b) give Purchaser thirty (30) days’ written notice prior to transferring, destroying or discarding any Tax records and, if Purchaser so requests, shall allow Purchaser to take possession of such Tax records. For greater certainty, Purchaser agrees that applicable former employees of the Sellers will provide reasonable assistance to Sellers in the preparation of Sellers’ financial statements for their respective fiscal year ends at no cost to Sellers. A Seller’s obligations under this Section 8.3 shall terminate upon the dissolution of such Seller.

ARTICLE IX CONDITIONS

Section 9.1 Conditions to Each Party’s Obligations. The respective obligations of Purchaser and Sellers to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived, to the extent permitted by applicable Law, by both Sellers and Purchaser in writing:

(a) No Injunctions or Restraints. No Governmental Order or other Law preventing consummation of the Sale shall be in effect or shall not have become final and non-appealable and remain in effect for five (5) Business Days after notice of such Governmental Order or other Law has been received by Sellers and Purchaser.

(b) No DIP Facility Acceleration. No acceleration of the obligations evidenced by the DIP Credit Agreement shall have occurred and be continuing.

(c) Entry or Granting of Orders. The US Bankruptcy Court shall have entered the US Sale Procedures Order and the US Sale Order, and each shall be acceptable to Purchaser. The CCAA Court shall have granted the CCAA Initial Order, the CCAA Amended and Restated Initial Order, the CCAA Sale Procedures Order and the CCAA Sale Order, and each shall be acceptable to Purchaser.

(d) Competition Act Clearance. Competition Act Clearance, if required, shall have been obtained.

Section 9.2 Conditions to the Obligations of Purchaser. The obligation of Purchaser to consummate the Sale shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions unless waived in writing, in whole or in part, by Purchaser:

(a) Representations and Warranties of Sellers. (i) Ignoring for purposes of this Section 9.2(a) any qualifications as to materiality or Material Adverse Effect contained in Article V, the representations and warranties of Sellers set forth in this Agreement (other than the Fundamental Representations of Sellers) shall be true and correct as of the date of the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), except in the case where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Material Adverse Effect, and (ii) the Fundamental Representations of Sellers shall be true and correct (other than *de minimis* inaccuracies) as of the date of the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date).

(b) Performance of Obligations. Each Seller shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Deliverables. Purchaser shall have been furnished with the documents set forth in Section 4.2(a).

(d) Consents. Purchaser shall have received all Consents set forth in Section 9.2(d) of the Seller Disclosure Schedule.

(e) No Material Adverse Effect. From the date of the Original Asset Purchase Agreement, no Material Adverse Effect shall have occurred.

(f) Designated Amount. As of the Closing, the Designated Amount shall not have been greater than the amount set forth in the definition thereof.

(g) SER Merger Code. Purchaser shall have received confirmation from Sellers that the consultation process with the secretariat of the Social and Economic Council and the trade union (if any) in the sense of the SER Merger Code has been completed in full compliance with applicable Law.

(h) Excess Availability. The Excess Availability (as defined in the DIP Credit Agreement, but also reflecting outstanding Obligations under the DIP Facility immediately prior to Closing) based on the borrowing base for the week prior to the week in which Closing is to occur shall not have been less than \$469,000.

(i) Designated Location. The Designated Location shall be delivered to Purchaser in a condition in which (i) operations of such facility have been ceased and (ii) such facility has been placed in a safe and secure idle state by the Canadian Seller.

Section 9.3 Conditions to the Obligations of Sellers. The obligation of Sellers to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived in writing, in whole or in part, by Sellers:

(a) Representations and Warranties of Purchaser. (i) The representations and warranties of Purchaser set forth in this Agreement (other than the Fundamental Representations of Purchaser) shall be true and correct as of the date of the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), provided that the condition set forth in this Section 9.3(a)(i) shall be deemed satisfied unless any failures to be so true and correct would be reasonably likely to, individually or in the aggregate, materially adversely affect Purchaser's ability to consummate the transactions contemplated by this Agreement, and (ii) the Fundamental Representations of Purchaser shall be true and correct (other than *de minimis* inaccuracies) as of the date of the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date).

(b) Performance of Obligations. Purchaser shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Excluded Cash. Sellers shall have received the Excluded Cash and Additional Cash Consideration. For the avoidance of doubt, that US Sellers shall have received \$1,425,000 and the Monitor, on behalf of the Canadian Seller, shall have received \$575,000, of the Designated Amount, free and clear of all Liens and claims, including the Liens and claims of Purchaser, DIP Lenders, and Pre-Petition Term Lenders; *provided, however*, that, (i) the Designated Amount delivered to the Monitor, on behalf of the Canadian Seller, shall be subject to the administration charge granted in the CCAA Proceeding, and (ii) the CCAA Cash Pool shall be subject to the Liens and claims in the estate of the Canadian Seller in the CCAA Proceeding, other than the Liens and claims of the Purchaser and its Affiliates, DIP Lenders and their Affiliates, Pre-Petition Term Lenders and their Affiliates, and the US Sellers.

(d) Deliverables. Sellers shall have been furnished with the documents set forth in Section 4.2(b).

Section 9.4 Monitor's Certificate.

(a) Upon receipt of each of the Conditions Certificates, the Monitor shall (i) issue forthwith its Monitor's Certificate concurrently to Sellers and Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the Court (and shall provide a true copy of such filed certificate to Sellers and Purchaser).

(b) The parties hereto acknowledge and agree that the Monitor shall be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon

receiving the Conditions Certificates, and the Monitor will be relying exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions and shall have no liability to Seller or Purchaser or any other Person as a result of filing the Monitor's Certificate upon receiving such Confirmation Certificates.

ARTICLE X TERMINATION PROCEDURES

Section 10.1 Termination. This Agreement may be terminated and the Sale contemplated in this Agreement may be abandoned at any time prior to the Closing Date, notwithstanding the fact that any requisite authorization and approval of the Sale shall have been received, as follows; *provided*, that if a Party does not exercise a right to terminate this Agreement within five (5) Business Days of receipt of written notice from the other Party, in accordance with Section 12.5, of the circumstances creating such right to terminate, such Party shall be deemed to have waived the ability to terminate this Agreement for such circumstances:

- (a) by the mutual written consent of Purchaser and Sellers;
- (b) by Sellers, if Purchaser has breached any of its obligations under this Agreement or the Sale Orders, which breach would result in a failure of a conditions set forth in Section 9.1 or Section 9.3 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) days after the delivery of written notice by Sellers to Purchaser of such breach, and (ii) the End Date;
- (c) by Purchaser or Sellers, if the Closing has not occurred by March 17, 2023 (the "**End Date**"); *provided*, that Purchaser and Sellers may mutually agree to extend such date; *provided, further*, that the right to terminate this Agreement under this Section 10.1(c) shall not be available to any party who shall have been the cause of, or whose action or inaction shall have resulted in, the failure of the Closing to occur by such date;
- (d) by Purchaser or Sellers, if there shall be any Governmental Order or other Law that makes consummation of the Sale illegal or otherwise prohibits restrains, or enjoins the consummation of the Sale and such Governmental Order or other Law shall have become final and non-appealable and remain in effect for five (5) Business Days after notice of such Governmental Order or other Law has been received by Sellers and Purchaser; *provided*, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any party who shall have been the cause of, or whose action or inaction shall have resulted in, the Governmental Order or other Law prohibiting, restraining, or enjoining the Sale;
- (e) by Purchaser or Sellers upon the US Bankruptcy Court's or the CCAA Court's approval of Sellers' entry into or pursuit of an Alternative Restructuring Proposal; *provided*, that Sellers shall have the right to terminate this Agreement pursuant to this Section 10.1(e) only if they have complied in all material respects with the requirements of Section 7.7 hereof;
- (f) by Sellers, if required in connection with the discharge of its or its directors or managers fiduciary duties in accordance with Section 7.6(a);

(g) by Purchaser, if any Seller has breached any of its obligations under this Agreement or the Sale Orders, which breach would result in a failure of a conditions set forth in Section 9.1 or Section 9.2 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) days after the delivery of written notice by Purchaser to Sellers of such breach, and (ii) the End Date;

(h) by Purchaser, if (i) the US Bankruptcy Cases are converted to cases under chapter 7 of the US Bankruptcy Code, a trustee or examiner with expanded powers is appointed pursuant to the US Bankruptcy Code or the US Bankruptcy Court enters an Order pursuant to section 362 of the US Bankruptcy Code lifting the automatic stay with respect to any material portion of the Purchased Assets or (ii) the CCAA Proceeding is converted to a receivership or a bankruptcy under the BIA, a trustee in bankruptcy, receiver, receiver and manager or liquidator is appointed in respect of the Canadian Seller or its assets or business or if the CCAA Court grants an Order lifting the stay of proceeds with respect to any material portion of the Purchased Assets;

(i) [RESERVED];

(j) by Purchaser, upon (i) delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined in the US DIP Order), (ii) the DIP Agent exercising remedies under Section 9.1(a), (b), or (c) (except, for the avoidance of doubt, any such direction made in accordance with the Bid Procedures Order) of the DIP Credit Agreement, (iii) an Event of Default (as each is defined in the DIP Credit Agreement) pursuant to Section 8.14(d) (except any violation, breach, or default of a Financing Order arising from any Event of Default other than 8.14(i) or 8.14(m) (as modified for purposes of this clause (j)) shall not constitute an Event of Default for purposes of this clause (j)), 8.14(i), or 8.14(m) (provided that (A) references in Section 8.14(m)(i) or (ii) therein to 15% shall be deemed to refer to 19% for purposes of this clause (j) and references to 80% shall be deemed to refer to 76% for purposes of this clause (j), and (B) the budget attached to the final US DIP Order shall be used for the purposes of conducting the Section 8.14(m) testing for this clause (j)) of the DIP Credit Agreement (or a waiver of any Event of Default arising under Section 8.14(d), (i), or (m) of the DIP Credit Agreement (to the extent that it would constitute an Event of Default for purposes of the rights of Purchaser to terminate this Agreement under this clause (j)), without the consent of Purchaser), (iv) if the DIP Orders or the DIP Credit Agreement are modified in any respect materially adverse to the interests of Purchaser without the consent of Purchaser; provided, that the Purchaser shall not have any termination right arising out of (a) any variance from the budget attached to the interim US DIP Order which occurred prior to the date of this Agreement or (b) any Event of Default (as defined in the DIP Credit Agreement) previously disclosed to Purchaser in writing;

(k) by Purchaser, if for any reason whatsoever, Purchaser is unable to Credit Bid as part of the Purchase Price, in any amount Purchaser deems fit, for the Purchased Assets;

(l) by Purchaser, if the Sale Procedures Orders (including the Sale Procedures) or the Sale Orders are modified in any material respect without the consent of Purchaser;

(m) by Purchaser, if Sellers are unable to assign a Material Contract that Purchaser has elected to purchase and assume;

- (n) by Purchaser, if the condition set forth in Section 9.2(f) is not capable of being satisfied;
- (o) by Purchaser, if the Exit Costs exceed \$2,900,000;
- (p) by Purchaser, if the Select Assumed Liabilities exceed \$6,500,000; or
- (q) by Purchaser, if the amount necessary to conduct an orderly wind down of Sellers after the Closing Date exceeds the limitation amount set forth in the definition of Designated Amount.

In the event of termination of this Agreement as permitted by Section 10.1, this Agreement shall become void and of no further force and effect, except for the provisions of ARTICLE XII, which shall remain in full force and effect, and nothing in this Agreement shall be deemed to release or relieve any party from any Liability for any fraud or willful breach by such party of the terms and provisions of this Agreement.

ARTICLE XI NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND CERTAIN COVENANTS

Section 11.1 No Survival of Representations and Warranties and Certain Covenants. None of the representations and warranties of Sellers or Purchaser contained in ARTICLE V and ARTICLE VI hereof, respectively, including the Seller Disclosure Schedule or any certificate or instrument delivered in connection herewith at or prior to the Closing, and none of the covenants contained in ARTICLE VII to be performed on or prior to the Closing shall survive the Closing other than Section 7.11(a). The Confidentiality Agreement and the parties' respective covenants and agreements set forth herein that by their specific terms contemplate performance after Closing shall survive the Closing indefinitely unless otherwise set forth herein.

ARTICLE XII MISCELLANEOUS

Section 12.1 Governing Law. This Agreement and all claims and causes of action that may be based on, arise out of, or relate to this Agreement or the negotiation, execution, or performance of this Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware (without giving effect to any choice or conflict of laws principles), except to the extent that the Laws of such state are superseded by the US Bankruptcy Code or the CCAA, as applicable.

Section 12.2 Jurisdiction; Forum; Service of Process; Waiver of Jury. With respect to any Action arising out of or relating to this Agreement, each Seller and Purchaser hereby irrevocably:

- (a) consents to the exclusive jurisdiction of (i) the US Bankruptcy Court, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement relating to the US Sellers and (ii) the CCAA Court, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement relating to the

Canadian Seller. After US Sellers are no longer subject to the jurisdiction of the US Bankruptcy Court, the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States District Court for the District of Delaware (“**Selected Courts**”) for any Action arising out of or relating to this Agreement or the other Transaction Documents and the transactions contemplated hereby and thereby (and agrees not to commence any Action relating hereto or thereto except in such courts) and waives any objection to venue being laid in the Selected Courts whether based on the grounds of forum non conveniens or otherwise, provided that the CCAA Court shall have jurisdiction over the Canadian Purchased Assets and the Canadian Assumed Liabilities;

(b) consents to service of process in any Action by the mailing of copies thereof by registered or certified mail, postage prepaid, or by recognized international express carrier or delivery service, to Sellers or Purchaser at their respective addresses referred to in Section 12.5 hereof; *provided, however*, that nothing herein shall affect the right of any party hereto to serve process in any other manner permitted by law, and

(c) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS.

Section 12.3 Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement may be made by any party at any time, whether or not by operation of law, without the other party’s prior written consent; *provided, however*, that if Purchaser is the Successful Bidder under the Sales Procedures, Purchaser may, without the consent of the other parties hereto, assign any of its rights, interests and obligations under this Agreement to one or more Affiliates of Purchaser or, with respect to the Assigned Claims and other rights to be assigned to the Trust pursuant to Section 7.6(d)(ii) and/or (iii), to the Trust, which assignment will not relieve Purchaser of any obligations hereunder. Except as specifically provided for herein, only the parties to this Agreement or their permitted assigns shall have rights under this Agreement.

Section 12.4 Entire Agreement; Amendment. This Agreement, the Confidentiality Agreement and the other Transaction Documents constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and supersede all prior agreements relating to the subject matter hereof. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, modified, supplemented, waived, discharged or terminated other than by a written instrument signed by Sellers and Purchaser expressly stating that such instrument is intended to amend, modify, supplement, waive, discharge or terminate this Agreement or such term hereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 12.5 Notices. All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by electronic mail (with receipt confirmed), nationally recognized

overnight courier or first class registered or certified mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below or such other address as may hereafter be designated in writing by such party to the other party:

- (a) if to Sellers or Seller, to:

Dominion Colour Corporation
1 Concorde Gate
Suite 608, Toronto, Ontario, Canada
M3C 3N6
Attention: Scott Davido, CRO
Email: scott.davido@ankura.com

with a copy (that shall not constitute notice) to:

King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309
Attention: Jeff Dutson, Rahul Patel
Email: jdutson@kslaw.com, rpatel@kslaw.com

-and-

Blake Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9
Attention: Linc Rogers, Milly Chow
Email: linc.rogers@blakes.com; milly.chow@blakes.com

- (b) if to Purchaser, to:

c/o Blackstone Alternative Credit Advisors LP
345 Park Avenue
31st Floor
New York, NY 10154
Attn: Randy Kessler
Email: randall.kessler@blackstone.com

with copies (that shall not constitute notice) to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099
Attention: Matthew Feldman, Jeffrey Pawlitz, Victor Okasmaa, and
Morgan McDevitt

Email: mfeldman@willkie.com, jpawlit@willkie.com,
vokasmaa@willkie.com, and mmcdevitt@willkie.com

-and-

Cassels Brock & Blackwell LLP
40 King Street West
Suite 2100, Scotia Plaza
Toronto, ON M5H 3C2
Attention: Ryan Jacobs, Joseph Bellissimo, and Colin Ground
Email: rjacobs@cassels.com, jbellissimo@cassels.com, and
cground@cassels.com

All such notices, requests, consents and other communications shall be deemed to have been given or made if and when delivered personally or by overnight courier to the parties at the above addresses or sent by electronic transmission, with confirmation received, to the e-mail addresses specified above (or at such other address for a party as shall be specified by like notice).

Section 12.6 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to Sellers or Purchaser upon any breach or default of any party under this Agreement, shall impair any such right, power or remedy of Sellers or Purchaser nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, Permit, Consent or approval of any kind or character on the part of Sellers or Purchaser of any breach or default under this Agreement, or any waiver on the part of any such party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, in equity, or otherwise afforded to Sellers or Purchaser shall be cumulative and not alternative.

Section 12.7 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. Signed facsimile, email in pdf format or other electronically signed copies of this Agreement shall legally bind the parties to the same extent as original documents.

Section 12.8 Severability. In the event that any one or more of the provisions of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force to the maximum extent permitted by Law and effect without said provisions; *provided* that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party. Any provision held invalid or unenforceable only in part or degree will remain in full force to the maximum extent permitted by Law to the extent not held invalid or unenforceable.

Section 12.9 Titles and Subtitles. The table of contents, titles, subtitles, and section headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 12.10 No Public Announcement. Absent the prior written consent of the other party, neither Sellers nor Purchaser shall make any press release, public announcement or securities filing with any Governmental Authority concerning the transactions contemplated by the Transaction Documents, except as and to the extent that any such party shall be obligated to make any such disclosure by this Agreement or by applicable Law, and then only after giving the other party hereto adequate time to review such disclosure and consider in good faith the comments of the other party hereto and consultation as to such comments with such party as to the content of such disclosure; *provided, however*, that nothing in this Section 12.10 shall restrict the parties hereto from making disclosures to the US Bankruptcy Court or CCAA Court or in filings in the US Bankruptcy Court or CCAA Court; *provided, further, however*, that, to the extent practicable, the disclosing party provides the non-disclosing party with copies of all such filings or disclosures concerning the transactions contemplated by the Transaction Documents, to be delivered to such non-disclosing party at least two (2) Business Days in advance of any such filing or disclosure and that the disclosing party shall consider in good faith any comments made by the non-disclosing party to such filings or disclosures. Notwithstanding anything to the contrary herein or in the Confidentiality Agreement, the parties hereto and each of their respective employees, representatives or other agents, are permitted to disclose to any and all Persons the tax treatment and tax structure of the transactions and all materials of any kind (including opinions or other tax analyses) that are or have been provided to such parties related to such tax treatment and tax structure; *provided, however*, that the foregoing permission to disclose the tax treatment and tax structure does not permit the disclosure of any information that is not relevant to understanding the tax treatment or tax structure of the transactions (including the identity of any party and the amounts paid in connection with the transactions); *provided, further, however*, that the tax treatment and tax structure shall be kept confidential to the extent necessary to comply with securities Laws.

Section 12.11 Specific Performance. Subject to ARTICLE X, Sellers and Purchaser agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the parties fail to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that, subject to ARTICLE X, (a) Sellers or Purchaser will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the parties' respective covenants and agreements under this Agreement that survive the Closing, without the requirement of posting a bond or other security, and without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Sellers nor Purchaser would have entered into this Agreement. The remedies available to Sellers or Purchaser pursuant to this Section 12.11 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Seller or Purchaser from seeking to collect or collecting damages. In no event will this Section 12.11 be

used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

Section 12.12 Free and Clear Transfer. Pursuant to section 363(f) of the US Bankruptcy Code and section 36 of the CCAA, upon the granting of the applicable Sales Orders, the transfer of the Purchased Assets shall be free and clear of any and all Liens (other than Permitted Liens, but excluding clause (iv) thereof), including any Liens or claims arising out of any bulk transfer Laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Orders.

Section 12.13 Non-Recourse. All claims, obligations, liabilities, or causes of action that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement or the other Transaction Documents, or the negotiation, execution or performance of this Agreement or any other Transaction Documents (including any representation or warranty made in connection with or as an inducement to this Agreement or any other Transaction Documents) or the transactions contemplated hereby or thereby may be made only against (and are those solely of) the Persons that are expressly identified as parties to this Agreement and the other Transaction Documents. No other Person, including any of their past, present or future Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to any of the foregoing shall have any liabilities for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or the other Transaction Documents, or the negotiation, execution, performance, or breach thereof.

Section 12.14 Action by US Sellers. Holdings shall be entitled to act on behalf of each US Seller for any action required or permitted to be taken by any US Seller under this Agreement.

Section 12.15 Third Party Beneficiaries. Except as otherwise set forth herein, the terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

SELLERS:

H.I.G. Colors Holdings Inc.

DocuSigned by:
By: Scott Davido
Name: Scott Davido
Title: CRO

H.I.G. Colors, Inc.

DocuSigned by:
By: Scott Davido
Name: Scott Davido
Title: CRO

DCL Holdings (USA), Inc.

DocuSigned by:
By: Scott Davido
Name: Scott Davido
Title: CRO

DCL Corporation (USA), LLC

DocuSigned by:
By: Scott Davido
Name: Scott Davido
Title: CRO

DCL Corporation (BP), LLC

DocuSigned by:
By: Scott Davido
Name: Scott Davido
Title: CRO

Dominion Colour Corporation (USA)

DocuSigned by:
By: Scott Davido
Name: Scott Davido
Title: CRO

DCL Corporation

DocuSigned by:
By: Scott Davido
Name: Scott Davido
Title: CRO

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

PURCHASER:

Pigments Holdings, Inc.

By: 

Name: Marisa Beeney

Title: President and Secretary

EXHIBIT A
DUTCH DEED OF TRANSFER

DEED OF TRANSFER DCL CORPORATION (NL) B.V.

On this, the *[date]*, appeared before me, *[civil law notary]*, civil law notary in *[place]*:
[NautaDutilh employee, under proxy], acting for the purposes of this Deed as the holder of written powers of attorney from:

1. **DCL Corporation**, a corporation under the laws of Ontario, Canada, having its registered office at 515 Consumers Road, Suite 700, M2J 4Z2 Toronto, Ontario, Canada, registered with the Corporate Registry (Department of Justice) of Ontario, under number 001993321 (the "Seller")¹;
2. **BXC Pigments Holdings, Inc**, a corporation under the laws of the State of Delaware, the United States of America, having its registered office at Corporation Trust Center 1209 Orange Street, 19801 DE, Wilmington, The United States of America, registered with the Delaware Secretary of State under number 7177706 (the "Purchaser")²; and
3. **DCL Corporation (NL) B.V.**, a private company with limited liability under Dutch law, having its corporate seat in Maastricht, with address: Sortieweg 39, 6219 NT Maastricht, and trade register number: 14124987 (the "Company")³.

The person appearing before me, acting in the above capacities, declared the following:

DEFINITIONS

Article 1

In this Deed the following definitions shall apply:

Articles of Association	the Company's articles of association.
Deed	this deed of transfer.
Parties	the parties to this Deed.
Purchase Agreement	the purchase agreement concluded between, among other parties, the Seller and the Purchaser dated the <i>[date]</i> day of <i>[month]</i> two thousand and twenty-two, a copy of which will be attached to this Deed as an <u>annex</u> .
Purchase Price	[the purchase price for the Shares as specified in [section 3.2 of] the Purchase Agreement.] ⁴
Shares	six hundred thousand (600,000) ordinary shares in the capital of the Company, having a nominal value of one euro (EUR 1.00) each and numbered 1 up to and including 600,000. ⁵

PURCHASE AGREEMENT

Article 2

Under the Purchase Agreement, the Seller has sold the Shares to the Purchaser and the Purchaser has purchased the Shares from the Seller.

CONDITIONS PRECEDENT AND SUBSEQUENT

Article 3

To the extent that the Purchase Agreement is subject to any conditions precedent (*opschortende voorwaarden*) and/or conditions subsequent (*ontbindende voorwaarden*) which have not yet been

¹ Seller to confirm company details.

² Purchaser to confirm company details.

³ Company to confirm that the Company has registered its UBO (to the extent required) and provide the notary with a copy of the UBO extract and accompanying UBO information. If the UBO extract is not available, please provide the notary with the confirmation of registration from the Dutch chamber of commerce.

⁴ Please provide the purchase price to be allocated to the Shares.

⁵ Please provide the notary with the original up-to-date shareholders register of the Company, preceded by a scan per email.

fulfilled or waived, the Seller and the Purchaser hereby waive all such conditions.

ACQUISITION OF SHARES

Article 4

The Seller acquired the Shares by means of a transfer on the legal basis (*titel*) of liquidation distribution, as is evidenced by a deed executed on the nineteenth day of June two thousand and eighteen before Martijn Gerardus Petrus van Ansem, assigned civil law notary (*toegevoegd notaris*) authorised to execute deeds in the protocol of Robert-Jan Eduard Zwaan, civil law notary in The Hague. The transfer was acknowledged by the Company on the same date, as is evidenced by that same notarial deed.

PURCHASE PRICE AND PAYMENT

Article 5

5.1 The Shares have been sold and purchased for the Purchase Price.

5.2 [The Seller has received the Purchase Price and hereby grants the Purchaser a discharge in respect of the payment thereof.]⁶

SHARE TRANSFER RESTRICTIONS

Article 6

The Articles of Association provide that the transferability of shares is not subject to any restrictions.

TRANSFER

Article 7

In fulfilment of the Purchase Agreement, the Seller hereby transfers the Shares to the Purchaser and the Purchaser hereby accepts the Shares from the Seller.

REPRESENTATIONS AND WARRANTIES

Article 8

The representations and warranties that have been given in connection with the transfer of the Shares are set out in the Purchase Agreement.

ACCOUNT AND RISK

Article 9

The Shares shall be for the account and risk of the Purchaser with effect from the date of this Deed.

RESCISSION

Article 10

The Parties waive the right to rescind, or commence legal proceedings to rescind, on any ground whatsoever, the Purchase Agreement and any other agreements underlying the present transfer of the Shares.

ACKNOWLEDGEMENT AND REGISTRATION

Article 11

The Company has taken cognisance of and hereby acknowledges the transfer of the Shares and will immediately enter the transfer in its register.

COSTS

Article 12

The costs of this Deed and of its implementation shall be borne by the [Purchaser].⁷

CHOICE OF LAW AND JURISDICTION

Article 13

This Deed shall be governed by and construed in accordance with the laws of the Netherlands. Any dispute arising in connection with this Deed shall be submitted to the exclusive jurisdiction of the

⁶ Manner of payment to be confirmed. The draft provides for payment of the purchase price for the shares directly from the Purchaser to the Seller. An alternative option is payment of the purchase price for the shares through the notarial third party account.

⁷ To be confirmed.

competent court in Amsterdam.

CIVIL LAW NOTARY

Article 14

14.1 The Parties are aware that the undersigned civil law notary works with NautaDutilh N.V., the firm that has advised the Purchaser in this transaction.

14.2 With reference to the Code of Conduct (*Verordening beroeps- en gedragsregels*) laid down by the Royal Notarial Professional Organisation (*Koninklijke Notariële Beroepsorganisatie*), the Parties hereby explicitly consent to:

- a.** the undersigned civil law notary executing this Deed; and
- b.** the Purchaser being assisted and represented by NautaDutilh N.V. in relation to the Purchase Agreement, this Deed and any agreements that may be concluded, or disputes that may arise, in connection therewith.

FINAL STATEMENTS

The person appearing has been authorised to act under three (3) powers of attorney in the form of private instruments, which will be attached to this Deed as an annex.

The person appearing is known to me, civil law notary.

This Deed was executed in [*place*] on the date mentioned in its heading.

After I, civil law notary, had conveyed and explained the contents of the Deed in substance to the person appearing, the person appearing declared to have taken note of the contents of the Deed, to be in agreement with the contents and not to wish them to be read out in full. Following a partial reading, the Deed was signed by the person appearing and by me, civil law notary.

EXHIBIT B
BID DIRECTION LETTER

CREDIT BID DIRECTION LETTER

Delaware Trust Company,
as administrative agent and collateral agent
251 Little Falls Drive
Wilmington, DE 19808
Attn: Loan Administration – DCL Holdings (USA), Inc.

Re: H.I.G. Colors, Inc., et. al.: Credit Bid Direction Letter

This Credit Bid Direction Letter dated as of December 21, 2022 (this “Agreement”), is made among: (a) Pigments Holdings, Inc., a Delaware corporation (the “Purchaser”); (b) the lenders signatory hereto (collectively, the “Directing Lenders”); and (c) Delaware Trust Company, in its capacity as administrative agent and collateral agent for the Lenders (in such capacities, the “Agent”, and together with Purchaser and the Directing Lenders, collectively, the “Parties”). All capitalized terms used herein and not otherwise defined shall have the meaning ascribed thereto in the Credit Agreement.

RECITALS

WHEREAS, reference is made to that certain Credit Agreement, dated as of April 6, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Credit Agreement”, and the debt facilities contemplated thereby, the “Term Facility”), by and among H.I.G. Colors, Inc., a Delaware corporation and certain affiliates as guarantors, DCL Corporation, a corporation existing under the laws of Ontario, Canada (f/k/a Dominion Colour Corporation) (“DCL Canada”), DCL Holdings (USA), Inc. (f/k/a Lansco Holdings Inc.), as borrowers (collectively, the “Company”), the lenders from time to time party thereto (each a “Lender”, and collectively, the “Lenders”), the Agent and the other parties party thereto from time to time;

WHEREAS, reference is made to (i) that certain U.S. Security Agreement, dated as of April 6, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “US Security Agreement”) by and among the grantors party thereto from time to time and the Agent and (ii) that certain Canadian Security Agreement, dated as of April 6, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “CAN Security Agreement”) by and among the grantors party thereto from time to time and the Agent;

WHEREAS, the Company has filed a bankruptcy case under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (Case Nos. XXX through XXX) and intends to sell all or substantially all of its assets (the “Assets”) pursuant to Section 363 of the Bankruptcy Code (the “US Bankruptcy Sale”);

WHEREAS, DCL Canada has applied to the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario for an initial order granting DCL Canada relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) and,

in connection with that process, intends to sell the Assets pursuant to Section 36 of the CCAA (the “Canadian Bankruptcy Sale” and together with the US Bankruptcy Sale, the “Bankruptcy Sale”);

WHEREAS, reference is made to that certain Interim Order (I) Authorizing Debtors and Debtors in Possession to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Liens and Super-Priority Claims, and (D) Grant Adequate Protection; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief (the “Interim DIP Order”);

WHEREAS, the Directing Lenders desire to credit bid for the Assets at the Bankruptcy Sale (the “Credit Bid Acquisition”);

WHEREAS, Purchaser was formed as an acquisition vehicle by the Directing Lenders to facilitate the Credit Bid Acquisition; and

WHEREAS, immediately following the execution of this Agreement by the Parties, Purchaser shall enter into that certain Asset Purchase Agreement, dated as of December 21, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “APA”), between Purchaser and the Company, pursuant to which Purchaser agrees, that it or its designee(s) will acquire and assume from the Company certain of the Company’s assets and assume certain of the Company’s liabilities (collectively, the “Sale”) in exchange for, among other consideration, a credit bid of the obligations due and owing to the Lenders under the Term Facility (collectively, the “Obligations”).

NOW, THEREFORE, to the facilitate the Credit Bid Acquisition and in consideration of the foregoing premises, the mutual covenants, obligations and agreements herein contained and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. Agent’s Authority.

- 1.1. Pursuant to Section 17(a) of the US Security Agreement, upon the occurrence and during the continuance of an Event of Default, the Agent shall, at the instruction of the Required Lenders, exercise in respect of the Collateral, in addition to other rights and remedies provided for in the US Security Agreement, in the other Loan Documents or otherwise available to it, all the rights and remedies of a secured party on default under the UCC or any other applicable law or in equity.
- 1.2. Pursuant to Section 18(a) of the CAN Security Agreement, upon the occurrence and during the continuance of an Event of Default, the Agent shall, at the instruction of the Required Lenders, exercise in respect of the Collateral, in addition to other rights and remedies provided for in the CAN Security Agreement, in the other Loan Documents or otherwise available to it, all the rights and remedies of a secured party on default under the PPSA, the *Mortgages Act* (Ontario) or any other applicable law or in equity.
- 1.3. Pursuant to Paragraph 5.11(c) of the Interim DIP Order, the Agent (either directly or via an acquisition vehicle), on behalf of the Lenders and at the direction of the

Required Lenders, shall have the right to “credit bid” all or any portion of the amount of claims that are Pre-Petition Term Loan Obligations (as defined in the Interim DIP Order) arising under the terms of the Loan Documents, during any sale of all or substantially all of the Company’s assets, including without limitation, sales occurring pursuant to Section 363 of the Bankruptcy Code or included as part of any restructuring plan subject to confirmation under Section 1129(b)(2)(A)(ii)-(iii) of the Bankruptcy Code.

- 1.4. Pursuant to Section 9.01(a) of the Credit Agreement, the Agent (i) agreed to take, upon the written request of the Required Lenders, any action of the type specified in the Loan Documents as being within the Agent’s rights, duties, powers or discretion; provided that the Agent is fully justified in failing or refusing to take any such action unless it shall first be indemnified to its satisfaction by the Lenders against any and all liabilities, losses, costs and expenses (including attorneys’ fees and expenses) which may be incurred by it by reason of taking or continuing to take any such action, and (ii) shall in all cases be fully protected in acting, or in refraining from acting in accordance with written instructions signed by the Required Lenders, and such instructions and any action taken or failure to act pursuant thereto shall be binding on all of the Lenders.

2. Direction to Agent.

- 2.1. The Directing Lenders, which constitute the Required Lenders under the Credit Agreement, each hereby authorizes and directs the Agent to take the following actions in connection with the Credit Bid Acquisition pursuant to the Bankruptcy Sale (collectively, the “Direction”):
 - (a) Pursuant to Section 17(a) of the US Security Agreement, Section 18(a) of the CAN Security Agreement, the other Security Documents and Section 5.11(c) of the Interim DIP Order, conditionally assign (pursuant to an Assignment Agreement in the form attached hereto as Exhibit A (the “Assignment Agreement”)) to the Purchaser, a special purpose vehicle created by the Directing Lenders, the limited right to credit bid on behalf of all Lenders up to \$90,502,324.67 aggregate principal amount of Loans in connection with the Credit Bid Acquisition; provided, however that the Purchaser may assign (or otherwise designate) its rights and obligations under the APA to one or more of its Affiliates (a “Purchaser Reorganization”) and, in such case, all references to the “Purchaser” in this Agreement and the Assignment Agreement shall be automatically amended to apply instead to such Affiliate(s);
 - (b) Promptly upon the delivery by the Purchaser to the Agent of a certificate and instruction substantially in the form of Exhibit B (the “Certification”) hereto notifying the Agent that the purchase of the Assets has been completed, to decrement on the Register the aggregate principal amount of Loans stated in the Certification, which decremented amount shall be allocated pro rata among all Lenders;

- (c) To not object to, or impede entry or implementation of, the Sale Order to be entered by the courts in connection with the Bankruptcy Sale, that is in a form satisfactory to the Directing Lenders (the “Sale Order”), and solely to the extent required by the courts, to consent to the entry of the Sale Order and to take such actions as may be reasonably necessary to facilitate the approval and entry of the Sale Order by the courts; and
- (d) From time to time after the date hereof to execute, deliver and/or file such further agreements, instruments and other documents (including, without limitation, in connection with (i) the conveyance, transfer or release of the Obligations (or any part thereof) pursuant to this Agreement or (ii) a Purchaser Reorganization (as defined below)), in each case in form and substance reasonably satisfactory to the Directing Lenders and the Agent, and take such other actions as the Directing Lenders may direct in order to consummate the transactions contemplated by this Agreement.

2.2. The Agent is hereby authorized and directed to carry out the Direction; provided that the Directing Lenders may, from time to time, desire to direct the Agent to take certain other or additional actions on their behalf under and pursuant to the Credit Agreement, the US Security Agreement, the CAN Security Agreement, the other Loan Documents (including, for greater certainty, the other Security Documents) and related documentation relating to the transactions contemplated by this Agreement (each such direction, an “Additional Direction”). Each Additional Direction shall be in writing satisfactory to the Agent and explicitly refer to this Agreement. Each Additional Direction shall be deemed a “Direction” under this Agreement and the terms of this Agreement shall apply thereto.

3. Agent’s Exculpation.

3.1. The Directing Lenders hereby agree that the Agent shall have no liability for any act taken or not taken in furtherance of this Agreement, the Direction and the transactions contemplated hereby, and hereby ratify and confirm that the indemnities and reimbursement obligations contained in Section 10.03(c) of the Credit Agreement are applicable to the Direction, this Agreement and the actions taken or not taken by the Agent pursuant hereto. For the avoidance of doubt, and without limiting the generality of the foregoing, the Directing Lenders confirm that any right to indemnity or reimbursement referenced in the foregoing sentence shall be applicable to losses resulting from, arising out of or in any manner connected with, directly or indirectly, (a) a determination that the Agent, or any officer, director, employee, shareholder or agent of the Agent breached its or their duty under the Credit Agreement, the US Security Agreement, the CAN Security Agreement, any other related transaction document or applicable law as a result of relying upon and complying with this Agreement or giving effect to the Direction, (b) the enforcement of this Agreement, (c) any proceedings or efforts in which any Person that is not a Directing Lender seeks to restrain the Agent from fulfilling the Direction, or (d) any actions or omissions of the Purchaser. If the indemnity furnished to the Agent in connection with any Direction shall, in the opinion of the

Agent, be insufficient or become impaired, the Agent may call for additional indemnity and cease, or not commence, actions pursuant to the Direction until such additional indemnity is furnished.

- 3.2. The Directing Lenders hereby agree to use reasonable efforts to cause all fees, costs and expenses of the Agent, including, but not limited to, the fees and costs of its counsel and other external agents it employs in connection therewith, related to or arising out of the negotiation, preparation and performance of this Agreement or the Direction ("Transaction Costs") to be paid under the Interim DIP Order; *provided, however*, that to the extent any Transaction Costs are not paid under the Interim DIP Order, the Agent may, in its sole discretion, collect such amounts pursuant to the Credit Agreement, including without limitation, in connection with any indemnification provided to the Agent under the Credit Agreement, the US Security Agreement, the CAN Security Agreement or any related transaction document.
- 3.3. In no event shall the Agent be liable for any actions or omissions of the Purchaser.
- 3.4. Nothing in this Agreement shall be construed to require the Agent to take any action in conflict with applicable law, the Credit Agreement, the US Security Agreement, the CAN Security Agreement, any Loan Document, any related transaction document or the Interim DIP Order or which would expose the Agent to liability, financial or otherwise, or which could be construed to be unduly prejudicial to any Lenders who are not signatories to this Agreement.
4. Representations and Warranties of the Directing Lenders. The Directing Lenders each represents and warrants on behalf of itself that the following statements are true, correct and complete as of the date hereof and as of the date of the closing of the sale of the Assets (the "Closing Date"):
 - 4.1. Organization and Good Standing; Power and Authority. It is an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization. It has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its obligations under, this Agreement.
 - 4.2. Authorization. The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary organizational actions on its part.
 - 4.3. Binding Obligation. This Agreement is a legally valid and binding obligation of such Directing Lender, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability (collectively, the "Enforceability Exceptions").

- 4.4. No Conflicts. The execution, delivery, and performance by it of this Agreement do not and will not (a) violate any provision of law, rule or regulation applicable to it or by which it is bound, (b) conflict with its organizational or governance documents, or (c) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, any material contractual obligation by which it or any of its property is bound.
- 4.5. Ownership of the Indebtedness. It is the legal and beneficial owner of the principal amounts (plus all accrued and unpaid interest thereon) under the Term Facility held by it, free and clear of any lien, security interest, encumbrance or other adverse claim and all of the Directing Lenders collectively constitute the Required Lenders.
5. Representations and Warranties of Purchaser. Purchaser represents and warrants to each of the other Parties that the following statements are true, correct and complete as of the date hereof and as of the Closing Date:
- 5.1. Organization and Good Standing; Power and Authority. Purchaser is an entity duly organized, validly existing, and in good standing under the laws of the jurisdiction of its organization. Purchaser has all requisite power and authority to enter into this Agreement and to carry out the transactions contemplated by, and perform its obligations under, this Agreement.
- 5.2. Authorization. The execution and delivery of this Agreement and the performance of its obligations hereunder have been duly authorized by all necessary organizational actions on the part of Purchaser.
- 5.3. Binding Obligation. This Agreement is the legally valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except as enforcement may be limited by the Enforceability Exceptions.
- 5.4. No Conflicts. The execution, delivery, and performance by Purchaser of this Agreement do not and will not (a) violate any provision of law, rule or regulation applicable to Purchaser or by which Purchaser is bound, (b) conflict with Purchaser's organizational or governance documents, or (c) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under, any material contractual obligation by which Purchaser or any of its property is bound.
6. Miscellaneous.
- 6.1. Successors and Assigns. All covenants, rights, obligations and other agreements of any Party contained in this Agreement are binding upon, and shall inure to the benefit of, such Party and its successors and permitted assigns, whether so expressed or not. This Agreement shall not be assigned by any Party without the prior written consent of the other Parties. Without limiting the foregoing, each Directing Lender agrees that it shall not transfer or assign all or any portion of its interest as a Lender in any Loan under the Credit Agreement unless the assignee of

such interest, in a writing acceptable to the Agent, agrees to become a party to and be bound by this Agreement.

- 6.2. Waiver; Amendment. Neither this Agreement nor any provision hereof shall be waived, amended, supplemented, discharged or terminated except by an instrument in writing executed by the Parties.
- 6.3. Severability. If any provision of this Agreement or the application of any such provision to any person or circumstance shall be declared illegal, void or unenforceable in any respect by a court of competent jurisdiction, all other provisions of this Agreement shall not be affected and shall remain in full force and effect.
- 6.4. Section Headings. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 6.5. GOVERNING LAW, JURISDICTION. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW OR CONFLICTS PROVISION THEREOF. EACH PARTY HEREBY IRREVOCABLY AND UNCONDITIONALLY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY FEDERAL OR STATE COURTS LOCATED IN THE BOROUGH OF MANHATTAN IN THE CITY OF NEW YORK OVER ANY ACTION OR PROCEEDING ARISING OUT OF THIS AGREEMENT, AND THE PARTIES HEREBY IRREVOCABLY AGREE THAT ALL CLAIMS IN RESPECT OF SUCH ACTION OR PROCEEDING MAY BE HEARD IN ANY SUCH COURT. THE PARTIES FURTHER WAIVE ANY OBJECTION TO VENUE IN ANY SUCH COURT AND ANY OBJECTION TO ANY ACTION OR PROCEEDING ON THE BASIS OF FORUM NON CONVENIENS. THE PARTIES HERETO IRREVOCABLY AGREE TO WAIVE ALL RIGHTS TO TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING.
- 6.6. Counterparts. This Agreement may be executed with counterpart signature pages or in any number of counterparts, each of which when so executed and delivered shall be deemed to be an original and all of which together shall be deemed to be one and the same agreement. Delivery of any such executed counterpart signature page or counterpart by facsimile transmission, PDF file or other electronic transmission will be deemed to be delivery of an original executed counterpart signature page or counterpart.
- 6.7. Specific Performance. The Parties acknowledge and agree that each would be damaged irreparably if any of the provisions of this Agreement are not performed in accordance with their specific terms or otherwise are breached. Accordingly, the Parties agree that each Party shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically

this Agreement in any action instituted in any court of the United States or any state thereof having jurisdiction over the Parties to this Agreement and the matter, in addition to any other remedy to which any Party may be entitled, at law, in equity or otherwise.


- 6.8. Third Party Rights. Nothing in this Agreement is intended or shall be construed to confer upon or give any person, other than the Parties and their respective successors and permitted assigns any rights.
- 6.9. Entire Agreement. This Agreement together with the Exhibits hereto and the Credit Agreement and other Loan Documents, sets forth the entire understanding of the Directing Lenders, the Purchaser and the Agent relating to the subject matter hereof, and all prior understandings, written or oral, are superseded by this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have duly executed this Agreement as of the date first above written.

PURCHASER:

PIGMENTS HOLDINGS, INC.,
as Purchaser

By:  _____

Name: Marisa Beeney

Title: President and Secretary

AGENT:

DELAWARE TRUST COMPANY,
as Administrative Agent and Collateral Agent

By: 
Name: Adam Berman
Title: Vice President

DIRECTING LENDERS:**GSO AIGUILLE DE GRANDS MONTETS
FUND II LP**

By: Blackstone Alternative Credit Advisors LP,
as investment manager

By: _____
 Name: Marisa Beeney
 Title: Authorized Signatory

BLACKSTONE PRIVATE CREDIT FUND

By: Blackstone Credit BDC Advisors LLC, as
investment advisor

By: _____
 Name: Marisa Beeney
 Title: Authorized Signatory

**EMERALD DIRECT LENDING 1 LIMITED
PARTNERSHIP**

By: Blackstone Credit BDC Advisors LLC, as
administrator

By: _____
 Name: Marisa Beeney
 Title: Authorized Signatory

GSO ORCHID FUND LP

By: GSO Orchid Associates LLC, its general partner

By: _____

Name: Marisa Beeney

Title: Authorized Signatory

BCRED TWIN PEAKS LLC

By: Blackstone Private Credit Fund LP, its sole member

By: Blackstone Credit BDC Advisors LLC, as investment advisor

By: _____

Name: Marisa Beeney

Title: Authorized Signatory

EXHIBIT A
FORM OF ASSIGNMENT AGREEMENT

ASSIGNMENT AGREEMENT

Dated: December 21, 2022

THIS ASSIGNMENT AGREEMENT (this “Agreement”) is made and entered into as of December 21, 2022 between Delaware Trust Company, as administrative agent and collateral agent (the “Assignor”) and Pigments Holdings, Inc. (the “Assignee”).

Reference is made to that certain: (i) Credit Agreement, dated as of April 6, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Credit Agreement”, and the debt facilities contemplated thereby, collectively, the “Term Facility”), by and among H.I.G. Colors, Inc., a Delaware corporation and certain affiliates as guarantors, DCL Corporation, a corporation existing under the laws of Ontario, Canada (f/k/a Dominion Colour Corporation), DCL Holdings (USA), Inc. (f/k/a Lansco Holdings Inc.), as borrowers (collectively, the “Company”), the lenders from time to time party thereto (each a “Lender”, and collectively, the “Lenders”), the Agent and the other parties party thereto from time to time, (ii) U.S. Security Agreement, dated as of April 6, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “US Security Agreement”) by and among the grantors party thereto from time to time and the Agent, (iii) that certain Canadian Security Agreement, dated as of April 6, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “CAN Security Agreement”) by and among the grantors party thereto from time to time and the Agent, (iv) Interim Order (I) Authorizing Debtors and Debtors in Possession to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, (C) Grant Liens and Super-Priority Claims, and (D) Grant Adequate Protection; (II) Modifying the Automatic Stay; (III) Scheduling a Final Hearing; and (IV) Granting Related Relief (the “Interim DIP Order”) and (iv) Credit Bid Direction Letter, dated December 21, 2022 (the “Direction Letter”) by and among the lenders signatory thereto, the Assignor and the Assignee. Capitalized terms used but not otherwise defined herein shall have the meanings assigned to such terms in the Credit Agreement, the US Security Agreement or the CAN Security Agreement, as applicable,

On December 21, 2022, the Company and certain of its affiliates (collectively, the “Debtors”) (i) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101 et seq., in the United States Bankruptcy Court for the District of Delaware and intends to sell all or substantially all of its assets (the “Assets”) pursuant to Section 363 of the Bankruptcy Code (the foregoing, collectively, the “US Bankruptcy Case”) and/or (ii) applied to the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario for an initial order granting DCL Canada relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) and, in connection with that process, intends to sell the Assets pursuant to Section 36 of the CCAA (the foregoing, collectively, the “Canadian Bankruptcy Case”) and together with the US Bankruptcy Case, the “Bankruptcy Case”). Upon the filing of the Bankruptcy Case, all Commitments automatically terminated and all Loans then outstanding, together with all accrued and unpaid interest thereon, all fees and all other amounts due under the Credit Agreement and the other Loan Documents became due and payable in full.

In connection with the Bankruptcy Case, pursuant to Section 17(a) of the US Security Agreement, Section 18(a) of the CAN Security Agreement and Paragraph 5.11(c) of the Interim

DIP Order, and in accordance with the Required Lenders' direction contained in the Direction Letter, the Assignor hereby conditionally assigns, and the Assignee hereby accepts, the limited right to credit bid on behalf of all Lenders up to \$90,502,324.67 aggregate principal amount of Loans (such amount, the "Bid Amount") in connection with the bidding for the Assets of the Debtors by the Assignee (the "Assigned Interest").

It is expressly acknowledged and agreed by the Assignee that the assignment herein shall be conditioned upon: (i) the Assignee bidding for the purchase of the Assets, and (ii) the Assignee becoming the winning bidder of the Assets. In the event that either the Assignee does not bid for the purchase of the Assets or the Assignee is not the winning bidder for the Assets, then the Assigned Interest provided for in the foregoing paragraph shall immediately become void and all such rights previously assigned shall automatically, without any action on the part of any party, revert back to the Assignor and, in such event, the Assignee shall no longer have any right or interest in and to the Assigned Interest.

In addition, the assignment of the Assigned Interest shall only be applicable for the single purpose of bidding on the Assets in connection with the Bankruptcy Case, and once the Bankruptcy Case has concluded, the assignment of the Assigned Interest contained in this Agreement shall immediately terminate without any action on the part of any party. Notwithstanding the foregoing, and for the avoidance of doubt, in no event shall the Assignor be, or be deemed to be, the owner of any of the Assets, regardless of whether the Assignee or any other person is the winning bidder at the Bankruptcy Case.


Each of the parties hereto agree that: (i) the terms of this Assignment will be governed by and construed in accordance with the substantive laws (and not the choice of law rules) of the State of New York without regard to conflict of laws principles (other than Section 5-1401 of the General Obligations Law of the State of New York) and (ii) all actions and proceedings relating to or arising from, directly or indirectly, this Assignment may be brought in any state or federal court of competent jurisdiction in the state, county and city of New York, and each party hereto hereby submits to personal jurisdiction of such courts for such actions or proceedings. Nothing in this Assignment shall be construed to require the Assignor to take any action in conflict with applicable law, the Credit Agreement, the US Security Agreement, the CAN Security Agreement any Loan Document or any related transaction document or which would expose the Assignor to liability, financial or otherwise. Each party hereto hereby waives the right to trial by jury.

This Assignment shall be binding upon the Assignor and the Assignee and each of their respective successors and assigns (including any novating parties).

This Assignment may be executed by each of the parties hereto in separate counterparts, all of which together shall constitute a single instrument. Signatures transmitted by facsimile or other electronic means shall be deemed original signatures for all purposes hereunder.

[Signature pages follow]

DELAWARE TRUST COMPANY,
as Administrative Agent and Collateral Agent

By: 
Name: Adam Berman
Title: Vice President

PIGMENTS HOLDINGS, INC.,

By: _____

Name: Marisa Beenev

Title: President and Secretary

EXHIBIT B

FORM OF CERTIFICATE AND INSTRUCTION

**CERTIFICATE AND INSTRUCTION
OF
PIGMENTS HOLDINGS, INC.**

[●], 2022

Reference is hereby made to that certain: (i) Credit Agreement, dated as of April 6, 2018 (as amended, amended and restated, supplemented, or otherwise modified from time to time, the “Credit Agreement”), by and among H.I.G. Colors, Inc., a Delaware corporation and certain affiliates as guarantors, DCL Corporation, a corporation existing under the laws of Ontario, Canada (f/k/a Dominion Colour Corporation), DCL Holdings (USA), Inc. (f/k/a Lansco Holdings Inc.), as borrowers (collectively, the “Company”), the lenders from time to time party thereto (each a “Lender”, and collectively, the “Lenders”), Delaware Trust Company, as administrative agent and collateral agent (in such capacities, the “Agent”) and the other parties party thereto from time to time, and (ii) Credit Bid Direction Letter (the “Direction Letter”), dated December 21, 2022, among Pigments Holding, Inc. (the “Purchaser”), the Lenders party thereto and the Agent. Capitalized terms used and not otherwise defined herein shall have the meanings assigned thereto in the Credit Agreement.

This Certificate and Instruction is delivered pursuant to the Direction Letter in connection with the Company’s sale of, and the Purchaser’s purchase of, all or substantially all of the assets of the Company under that certain Asset Purchase Agreement, dated as of December 21, 2022 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “APA”), between the Purchaser and the Company.

The Purchaser hereby certifies to the Agent that the transactions contemplated by the Direction Letter and the APA have been consummated and that “Closing” (as defined under the APA) has occurred.

In accordance with the Direction Letter, the Agent is hereby instructed to (i) decrement \$[] of aggregate principal amount of Loans in the Register, which decremented amount shall be allocated pro rata among all Lenders and (ii) execute and deliver any releases reasonably requested by the Purchaser, the Company or the Lenders in order to release the Purchased Assets (as defined under the APA).

[REMAINDER OF THE PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the undersigned have executed this Certificate and Instruction as the authorized representatives of the Purchaser as of the date first written above.

PIGMENTS HOLDINGS, INC.

By: _____
Name:
Title:

EXHIBIT C
SALE PROCEDURES

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE AND ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

In re:)	
)	Chapter 11
)	
DCL HOLDINGS (USA), INC., <i>et al.</i> , ¹)	Case No. 22-11319 (JKS)
)	
Debtors.)	(Jointly Administered)
)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL
CORPORATION

**BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL ASSETS OF DCL HOLDINGS (USA), INC.
AND CERTAIN DEBTOR AFFILIATES**

On [____], 2023, the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) entered the *Order (I) Authorizing the Debtors to Enter into and Perform Under the Stalking Horse Asset Purchase Agreement, (II) Approving Bidding Procedures for the Sale of the Debtors’ Assets, (III) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (IV) Scheduling Bid Deadlines and an Auction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Assumption and Assignment Procedures, and (VII) Granting Related Relief* [Docket No. ____] (the “U.S. Bidding Procedures Order”),² by which the U.S. Court approved the following procedures. These Bidding Procedures, among other things, set forth the process by which the U.S. Debtors are authorized, in consultation with the Consultation Parties, to conduct an auction (the “Auction”), if any, for the sale of all or substantially all of the Debtors’ assets by which the U.S. Court approved the procedures set forth herein (the “U.S. Bidding Procedures”)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: DCL Holdings (USA), Inc. (5472); DCL Corporation (BP), LLC (5462); H.I.G. Colors Holdings, Inc. (6233); H.I.G. Colors, Inc. (4305); DCL Corporation (USA) LLC (5534); and Dominion Colour Corporation (USA) (7076). The location of DCL Holdings (USA), Inc.’s corporate headquarters and the Debtors’ service address is: 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6.

² All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the applicable Bidding Procedures Order.

with respect to the U.S. Debtors³ and their business and assets (collectively, the “U.S. Assets”), in the cases commenced by the U.S. Debtors under the provisions of chapter 11 of title 11 of the United States Code before the U.S. Court (the “Chapter 11 Cases”).

On [●], 2023, the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court” and together with the U.S. Court, the “Bankruptcy Courts”) granted an Order (the “Canadian Bidding Procedures Order” and together with the U.S. Bidding Procedures Order, the “Bidding Procedures Orders”)⁴, by which the Canadian Court approved these Bidding Procedures with respect to DCL Corporation (the “Canadian Debtor” and together with the U.S. Debtors, the “Debtors” or “the DCL Group”) and its business and assets (collectively, the “Canadian Assets” and together with the U.S. Assets, the “Assets”), in the proceedings commenced by the Canadian Debtor pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) before the Canadian Court (the “CCAA Proceedings” and together with the Chapter 11 Cases, the “Bankruptcy Cases”).

Notwithstanding the coordination of these Bidding Procedures, all matters related to these Bidding Procedures as they relate to the U.S. Debtors and the U.S. Assets shall remain under the sole and exclusive jurisdiction of the U.S. Court and all matters related to these Bidding Procedures as they relate to the Canadian Debtor and the Canadian Assets shall remain under the sole and exclusive jurisdiction of the Canadian Court.

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties, to sell all or substantially all of the Assets or their business through a going concern sale (or partial sales) of all, substantially all, or certain of the Assets of the DCL Group (the “Sale”).

“Consultation Parties” in these Bidding Procedures shall be (i) Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Canadian Debtor (the “CCAA Monitor”), (ii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the debtor-in-possession credit agreement dated December 22, 2022 with the Debtors in the Bankruptcy Cases (the “DIP Agent”), (iii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the Debtors’ prepetition credit agreement dated April 25, 2018, as amended (the “ABL Agent”), (iv) the Pre-Petition Term Loan Agent (together with the DIP Agent and the ABL Agent, the “Agents”), and (v) the statutory creditors committee appointed on December 30, 2022 in the Chapter 11 Cases (the “Creditors Committee”). For avoidance of doubt, the foregoing shall include the CCAA Monitor, Agents and Creditor Committee’s respective advisors. Notwithstanding the foregoing or any other provision of these Bidding Procedures, the Agents shall only be consulted to the extent that the Agents confirm that neither they nor any of the lenders under their respective credit facilities (nor any of their affiliates) intend to participate

³ The “U.S. Debtors” are H.I.G. Colours Holdings Inc., H.I.G. Color, Inc. DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, and Dominion Color Corporation (USA).

⁴ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the U.S. Bidding Procedures Order or Canadian Bidding Procedures Order, as applicable.

in these Bidding Procedures as a bidder. If an Agent or lender under a credit facility (or one of its affiliates) participates as a bidder but later withdraws from the process (or has its bid terminated, if applicable), it can become a Consultation Party by confirming in writing to the Debtors and the Monitor that it has withdrawn from the process as a bidder and will not re-enter the process as a bidder.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

Copies of the U.S. Bidding Procedures Order or other documents related thereto are available upon request to Kroll Restructuring Administration LLC by calling (888) 510-7189 (US/Canada toll free) or +1 (646) 440-4160 (International), emailing DCLInfo@ra.kroll.com, or visiting the Debtors' restructuring website at <https://cases.ra.kroll.com/DCL>.

Copies of the Canadian Bidding Procedures Order or other documents related thereto are available on the website of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Canadian Debtor in the CCAA Proceedings, at <https://www.alvarezandmarsal.com/DCLCanada>.

Stalking Horse Bid

Pigments Holdings, Inc. (including its assignees or designees, the “Stalking Horse Bidder”) submitted a bid (the “Stalking Horse Bid”) pursuant to a stalking horse asset purchase agreement (as amended, amended and restated, supplemented, or otherwise modified, the “Stalking Horse APA”) for certain of the Assets to set a floor for the Sale. Having announced and received approval of the designation of the Stalking Horse Bid from the Bankruptcy Courts, the Debtors will now conduct a round of open bidding intended to obtain the highest or otherwise best bid(s) for the Assets or business of Debtors, which may culminate in an auction (the “Auction”) for such Assets or business if competing bids are received.

Key Dates

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Assets or business or any portions thereof. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until March 10, 2023 at 5:00 p.m. (prevailing Eastern time) (the “Bid Deadline”).

The key dates for the Sale process are as follows:⁵

March 10, 2023 at 5:00 p.m. (prevailing Eastern time)	Bid Deadline - Due Date for Bids and Deposits
March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder (each as defined herein).
March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth (i) the highest or otherwise best fully binding offer for the Assets and/or (ii) the highest or otherwise best fully binding offer(s) for all or any portion of the Assets.
March 13, 2023 at 10:00 a.m. (prevailing Eastern time)	Auction (if necessary), which will be held at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	U.S. Sale Hearing (as defined herein), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, Wilmington, Delaware 19801.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	Canadian Sale Hearing (as defined herein), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

Unless otherwise approved by the Bankruptcy Courts, no modification, extension, waiver or addition to these Bidding Procedures shall be inconsistent with the Stalking Horse APA, these Bidding Procedures Orders or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

All References to “business day” in these Bidding Procedures means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the applicable laws of, or are in fact closed in, the state of Delaware or the province of Ontario.

⁵ These dates are subject to extension or adjournment as provided for herein.

A. Submissions to the Debtors.

These Bidding Procedures set forth the terms by which prospective bidders, if any, may participate in the process set forth in these Bidding Procedures and qualify for and participate in an Auction, if any, thereby competing to make the highest or otherwise best offer for the Assets or any portion thereof. The Debtors will offer for sale the Assets, as well as consider other investment or other transactions, through an Auction. The Debtors, in consultation with the Consultation Parties, may consider non-overlapping bids from multiple bidders (including multiple non-overlapping bids submitted by the same bidder) for the Assets. The Stalking Horse APA and Stalking Horse Bid referenced herein provide for the Stalking Horse Bidder's acquisition of substantially all of the Assets, subject to the terms and conditions thereof.

B. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity (other than the Stalking Horse Bidder) interested in consummating a Sale (a "Potential Bidder") must deliver or have previously delivered to the Debtors:

- (1) an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"), to the extent not already executed;
- (2) in a form acceptable to the Debtors and their advisors, in consultation with the Consultation Parties: (x) evidence of the financial capability to consummate the Sale, and (y) if required, a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale; and
- (3) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate such person's or entity's fitness to participate in the process set forth in these Bidding Procedures.

C. Due Diligence.

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors. **No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors.** The Debtors will provide to each Potential Bidder that satisfies the foregoing, commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors' electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline, the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or the Sale to any person except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide such information to Potential Bidders who, at such time and in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right to, in consultation with the Consultation Parties, withhold or redact any diligence materials that the Debtors determine in the Debtors' reasonable business judgment are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Debtors determine is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder or who has not executed a Confidentiality Agreement with the Debtors.

All due diligence requests must be directed to TM Capital Corp., 641 Lexington Ave., 32nd Floor, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).

(a) Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale or any transaction relating to the Debtors between and amongst Potential Bidders shall exclusively be through the Debtors and the Debtors' advisors. Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors expressly consent in advance and in writing to such communication.

(b) Due Diligence of Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding the ability of the Potential Bidder to consummate the Sale. Failure by a Potential Bidder to comply with such reasonable 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 Potential Bidder or that a bid made by such Potential Bidder is not a Bid.

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable Confidentiality Agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids

during the bidding process or otherwise in connection with Bankruptcy Cases, in each case in accordance with the terms of any applicable Confidentiality Agreement.

Notwithstanding the foregoing and the provisions contained in any applicable Confidentiality Agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of the applicable Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable Confidentiality Agreement with respect to a particular bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

D. Qualified Bidders.

- (a) A "Qualified Bidder" is a Potential Bidder (i) who demonstrates the financial capability to consummate the Sale (as determined by the Debtors in consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within one (1) business days after the Bid Deadline, the Debtors' advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times.
- (b) If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Qualified Bidder's Deposit (as defined herein) and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.
- (c) For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder after the Bid Deadline that its bid is not a Qualifying Bid (a "Non-Qualifying Bid") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.
- (d) Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may also be improved at the Auction, if any, as set forth herein. Any improved Qualified

Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

E. Bid Requirements.

A proposal, solicitation, or offer (each, a “Bid”) by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements (the “Bid Requirements”) as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a “Qualified Bid”). The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times.

- (a) **Assets.** Each Bid must clearly state which Assets that the Qualified Bidder is agreeing to purchase and assume.
- (b) **Assumption of Obligations.** Each Bid must clearly state which liabilities and obligations of the Debtors the Qualified Bidder is agreeing to assume.
- (c) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets, including and identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and assumed liabilities (the “Purchase Price”). Each Bid that exceeds the aggregate amount of the Debtors’ pre-petition secured debt shall, if requested by the Monitor, include an allocation of the Purchase Price between the U.S. Assets and the Canadian Assets. Except as may be provided in the Stalking Horse Bid, Potential Bidders shall not include in their Bid a proposed use of any cash component of the Purchase Price that would be received by the Debtors if such Potential Bidder were the Successful Bidder (as defined herein).
- (d) **Minimum Overbid.** At a minimum, each Bid must have a Purchase Price that in the Debtors’ reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal to or greater than the aggregate unadjusted Purchase Price payable to the Debtors under the Stalking Horse Bid,⁶ **plus \$2,250,000 (“Minimum Overbid”)**; *provided*, however, the Debtors may deem this criterion satisfied if non-overlapping Bids that can effectively be combined to form one operative bid that would otherwise satisfy the Bid Requirements, in the aggregate, meet the Minimum Overbid (such bids, “Aggregate Bids”) (the amount of the Minimum Overbid shall be confirmed by the Debtors with Potential Bidders prior to the Bid Deadline).
- (e) **Markup of the Stalking Horse APA.** Each Bid must be accompanied by an executed asset purchase or transaction agreement (“APA”), as well in the case of an asset purchase agreement, a redline of such agreement marked to reflect the

⁶ Which amount is comprised as provided in Section 3.1 of the Stalking Horse APA.

amendments and modifications made to the form of the Stalking Horse APA provided by the Debtors to Potential Bidders. Each such agreement must provide a representation that the Qualified Bidder will: (i) with respect to the U.S. Assets, (A) make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), if applicable, and (B) submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; and (ii) with respect to the Canadian Assets, make all necessary filings under the (A) *Competition Act*, R.S.C., 1985, c. C-34, as amended (the “Competition Act”), and (B) *Investment Canada Act*, R.S. C., 1985, c. 28 (1st Supp.) (the “ICA”), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid or Bids in the case of an Aggregated Bid.

- (f) **Deposit.** Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “Deposit”).
- (g) **Qualified Bid Documents.** Each Bid must include a duly executed, non-contingent APA, a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the APA clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the “Qualified Bid Documents”).
- (h) **Demonstrated Financial Capacity.** A Qualified Bidder must have, in the Debtors’ business judgment, after consultation with the Consultation Parties, the necessary financial capacity to consummate the proposed transactions required by its Bid. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the transactions set forth in its Bid with cash on hand, each Bid must include written evidence of unconditional committed financing from a reputable financing institution, to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee

approvals, and shall have covenants and conditions reasonably acceptable to the Debtors, in consultation with the Consultation Parties.

- (i) **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the Debtors in their business judgment, after consultation with the Consultation Parties.
- (j) **Identity.** Each Bid must fully disclose the identity of each entity that is bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Qualified Bidder if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors be associated with any Bid (including any Overbid (as defined herein) at the Auction). Each Bid must also include contact information for the specific persons and counsel whom TM Capital Corp., King & Spalding LLP and Blake, Cassels & Graydon LLP should contact regarding such Bid. All information disclosed pursuant to this paragraph shall be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than one (1) business day following the Bid Deadline.
- (k) **Adequate Assurance of Future Performance.** Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale; (ii) provide for the payment of all cure costs related to such executory contracts and unexpired leases by the Qualified Bidder; and (iii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.
- (l) **Time Frame for Closing.** A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors, after consultation with the Consultation Parties, which time frame shall include a closing by no later than March 17, 2023.

- (m) **Binding and Irrevocable.** A Qualified Bidder's Bid for the Assets shall be irrevocable unless and until the Debtors accept a higher Bid for the Assets other than such Qualified Bidder's Bid and such Qualified Bidder is not selected as the Backup Bidder (as defined herein) for the Assets.
- (n) **Expenses; Disclaimer of Fees.** Each Bid (other than a Stalking Horse Bid, solely to the extent set forth in the Stalking Horse APA) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder, solely to the extent set forth in the Stalking Horse APA) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction, if any, 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.
- (o) **Authorization.** Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (p) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors, their business and the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents, the Debtors and/or the Assets in making its Bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the Debtors' business, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Qualified Bidder's APA.
- (q) **Adherence to Bidding Procedures.** By submitting its Bid, each Qualified Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction, if any.
- (r) **Government Approvals.** Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other

conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals.

- (s) **Government Approvals Timeframe.** Each Bid must set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.
- (t) **Consent to Jurisdiction.** The Qualified Bidder must submit to the jurisdiction of the Bankruptcy Courts and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, if any, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the transactions contemplated thereby, as applicable.
- (u) **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **5:00 p.m. (prevailing Eastern Time)** on March 10, 2023 by:
 - (i) **Debtors.** DCL Holdings (USA), Inc. and DCL Corporation, 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6, Attn: Scott Davido (Scott.Davido@ankura.com).
 - (ii) **Debtors' U.S. Counsel.** King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: Jeffrey R. Dutson (jdutson@kslaw.com).
 - (iii) **Debtors' U.S. Co-Counsel.** Richards, Layton & Finger, PA , 920 N King Street, Wilmington, Delaware 19801, Attn: Amanda R. Steele (steele@rlf.com).
 - (iv) **Debtors' Canadian Counsel.** Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 4000, Commerce Court West, Toronto, Ontario, M5L 1A9, Attn: Linc Rogers (linc.rogers@blakes.com); Milly Chow (milly.chow@blakes.com).
 - (v) **Debtors' Financial Advisors.** Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, New York 10017, Attn: Scott Davido (Scott.Davido@ankura.com); Jonathan Morrison (Jonathan.Morrison@ankura.com).
 - (vi) **Debtors' Investment Banker.** TM Capital Corp., 641 Lexington Avenue, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).
 - (vii) **CCAA Monitor.** Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, Royal Bank South Tower, Toronto Ontario M5J 2J1, Attn. Josh

Nevsky (jnevsky@alvarezandmarsal.com); Steve Ferguson (sferguson@alvarezandmarsal.com).

- (v) The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than four hours after the Debtors' receipt of such bid.

F. Right to Credit Bid.

The Stalking Horse Bidder shall be considered a Qualified Bidder with respect to its right to acquire all or any of the Assets by credit bid.

G. Auction.

The Debtors, in the exercise of their business judgment and in a manner consistent with their fiduciary duties, shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid for the Assets (the "Baseline Bid"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder at least one (1) Business Day prior to the Auction. The Debtors shall also provide copies of all Qualified Bids and the Qualified Bid Documents supporting such bids to any Qualified Bidder at least one (1) Business Day prior to the Auction. When determining the highest or otherwise best Qualified Bid, and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties and in the exercise of their business judgment and in a manner consistent with their fiduciary duties, consider the following factors in addition to any other factors that the Debtors deem appropriate after consultation with the Consulting Parties: (a) the number, type, and nature of any changes to the Stalking Horse APA, if any, requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents; and (e) the tax consequences of such Qualified Bid; (collectively, the "Bid Assessment Criteria"). For purposes of determining the highest or otherwise best Qualified Bid, one dollar of the credit bid amount of the Stalking Horse Bid shall be equal in all respects to one dollar of cash that may be bid by another Qualified Bidder and the Baseline Bid may be an Aggregated Bid comprised of more than one non-overlapping bids.

If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, then the Debtors shall cancel the Auction, and shall designate the Stalking Horse Bid as the Successful Bid, and pursue entry of the order approving a Sale of the Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

The Auction, if any, shall take place at 10:00 a.m. (**prevailing Eastern Time**) on **March 13, 2023** at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY,

or such later date and time as selected by the Debtors after consultation with the Consultation Parties. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties.

In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Bankruptcy Courts, serve on the Notice Parties and the service list in the CCAA Proceedings and cause to be published on the website maintained by Kroll, the U.S. Debtors' claims and noticing agent in the Chapter 11 Cases, located at <https://cases.ra.kroll.com/DCL> (the "Kroll Website") and on the CCAA Monitor's website located at <https://www.alvarezandmarsal.com/DCLCanada> (the "CCAA Monitor's Website"), a notice containing the following information (as applicable): (a) a statement that the Auction for the Assets has been canceled; (b) the identity of the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the Kroll Website or the CCAA Monitor's Website; and (d) the date, time, and location of the Sale Hearing.

The Auction, if any, shall be conducted in a timely fashion according to the following procedures:

(a) The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s). The Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including determining whether to adjourn the Auction to facilitate separate discussions between Qualified Bidders, the Debtors, and the Consultation Parties, as applicable. The Debtors shall maintain a written transcript of the Auction and all Bids made and announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only Qualified Bidders and their legal and financial advisors, including the Stalking Horse Bidder, the members and advisors of the Creditors Committee and the CCAA Monitor and its advisors, shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction, if any. Any creditor of the Debtors that has provided written notice of its intent to observe the Auction to the Debtors (email is sufficient) at least one (1) business day prior to the start of the Auction shall be able to attend and observe the Auction.

(b) Terms of Overbids.

“Overbid” means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

- (i) **Minimum Overbid Increment.** The initial Overbid(s) for the Assets shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount that is not less than \$250,000, and successive Overbids higher than the previous bid, as Debtors shall, in consultation with the Consultation Parties, announce at the Auction (the “Minimum Overbid Increment”).

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid may include: (a) cash; and (b) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of the such secured creditors’ allowed secured claim including, for the avoidance of doubt, a Bid by the Stalking Horse Bidder up to the full amount of the Pre-Petition Term Loan Obligations (as defined in the Stalking Horse APA); *provided, however*, that nothing herein shall impact any parties’ rights with respect to challenges to the liens or claims of a Secured Creditor.

- (ii) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (iii) **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 after consultation with the Consultation Parties, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified in the initial applicable Overbid round, an Overbid as being higher or otherwise better than the Initial Minimum Overbid, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall 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 based on, among other things, the Bid Assessment Criteria.

(c) Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

- (i) The Auction, if any, shall continue until there is one Bid or Aggregated Bid for the Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid for the Assets. Each such Bid shall be declared the “Successful Bid” and such Qualified Bidder(s), the “Successful Bidder,” at which point the Auction will be closed. The Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Courts of the Successful Bid.
- (ii) The Successful Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors after consultation with the Consultation Parties.
- (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.
- (iv) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

- (v) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one (1) business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (as defined herein), to be filed with the Bankruptcy Courts.

(e) No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating at the Auction, if any, will be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Bid is a good-faith, *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

(f) Backup Bidder.

- (i) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Assets, the Qualified Bidder (or Qualified Bidders holding an Aggregate Bid) with the next-highest or otherwise second-best Bid (or Aggregate Bid) at the Auction for such Assets, as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the “Backup Bid”), shall be required to serve as a backup bidder(s) (the “Backup Bidder”) for such Assets, and each Qualified Bidder(s) shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
- (ii) The identity of the Backup Bidder and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Bid(s) (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder’s Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.
- (iii) If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed the Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to

seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Courts.

(g) Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the Sale, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the Sale Hearings (as defined herein) in open court without further notice; (c) modifying these Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids; *provided, however*, that any modification, extension, waiver, or addition to these Bidding Procedures shall not be inconsistent with the Bidding Procedures Orders, or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

H. Approval of Sale.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the “**U.S. Sale Hearing**”) is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) **on March 16, 2023** before the Honorable [●], at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, 3rd Floor, Wilmington, Delaware 19801.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the “**Canadian Sale Hearing**”) and together with the U.S. Sale Hearing, the “**Sale Hearings**”) is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) **on March 16, 2023** before the Honorable [●], at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

The Sale Hearings may be a joint hearing in accordance with the applicable cross-border protocols and may be continued to a later date by the Debtors, after consultation with the Consultation Parties and the consent of the Successful Bidder, by sending notice prior to, or making an announcement at, the Sale Hearings. No further notice of any such continuance will be required to be provided to any party (including the Successful Bidder).

At the Sale Hearings, the Debtors, in consultation with the Consultation Parties, shall present the Successful Bid(s) to the Bankruptcy Courts for approval.

I. Return of Deposits

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Courts or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearings. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a transaction because of a breach or failure to perform on the part of the Successful Bidder (or Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors and shall be divided as between the U.S. Debtors and the Canadian Debtor based on the Purchase Price allocation as set forth in the Stalking Horse APA.

J. Fiduciary Out.

Subject to the terms of the Stalking Horse APA, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with its fiduciary obligations under applicable law; *provided, however*, that the Debtors shall provide the Consultation Parties and the Stalking Horse Bidder with advance written notice of such action or inaction within two (2) business days prior to taking such action or inaction.

DISCLOSURE SCHEDULES

PURSUANT TO THE

ASSET PURCHASE AGREEMENT

BY AND AMONG

H.I.G. COLORS HOLDINGS, INC. AND ITS SUBSIDIARIES

as Sellers

and

PIGMENTS HOLDINGS, INC

as Purchaser

Dated as of December 21, 2022

and Amended as of February 14, 2023

These disclosure schedules (the “**Schedules**”) have been prepared and delivered in accordance with that certain Asset Purchase Agreement (the “**Agreement**”), dated as of December 21, 2022, by and among Pigments Holdings, Inc. a Delaware corporation (“**Purchaser**”), and H.I.G. Colors Holdings, Inc., a Delaware corporation (“**Holdings**”), and its direct and indirect subsidiaries (together, with Holdings, “**Sellers**”). Capitalized terms used herein but not immediately defined shall have the meaning ascribed to them elsewhere in this Agreement.

These Schedules relates to certain matters concerning the transactions contemplated by the Agreement. These Schedules are qualified in their entirety by reference to specific provisions of the Agreement, and are not intended to constitute, and shall not be construed as constituting, representations or warranties of any party to the Agreement except as and to the extent provided in the Agreement, and shall not be deemed to expand the scope or effect of the relevant party’s representations or warranties in the Agreement.

The numbered headings in these Schedules correspond to the Section numbers in the Agreement. Disclosure of any fact or item in any Schedule referenced by a particular Section in the Agreement shall be deemed to have been disclosed in each other Schedule referenced by a particular Section in the Agreement if the applicability of such disclosure to such other Schedule is reasonably apparent.

Further, mere inclusion of any information in any section or subsection herein shall not be deemed or construed as an admission that such item represents a fact, event, or circumstance that constitutes, or is reasonably expected to have, a Material Adverse Effect on the Company. No disclosure in any Schedule relating to any possible breach or violation of any Contract or any Law or similar legal requirement will be construed as an admission or indication to a third party that any such possible breach or violation exists or has actually occurred. Information set forth in these Schedules may be included solely for informational purposes and may not be required to be disclosed pursuant to the Agreement. The disclosure of any information will not be deemed or interpreted to constitute an acknowledgement that such information is required to be disclosed in connection with the representations and warranties made by the relevant party in the Agreement.

The attachments to these Schedules form an integral part of these Schedules and are incorporated by reference to the specific section of these Schedules to which such attachments relate (as identified herein) for all purposes as if set forth fully herein. In disclosing the information in these Schedules, the Company expressly does not waive any attorney-client privilege associated with such information or any protection afforded by the work product doctrine.

Schedule 1.1**Retention Eligible Employee**A solid black rectangular redaction box.**Designated Location**

Facilities of the Canadian Seller located at 445 Finley Avenue, Ontario, Canada.

Schedule 1.1(b)**Knowledge Parties**

David Charles Herak

Schedule 2.2**Software Not Freely Transferable**

Medius Software used for AP automation.

Schedule 2.4(k)**Excluded Liabilities**

All Liabilities of any Seller arising under the following Contracts:

- (i) Amended and Restated Sponsor Subordinated Promissory Note between and among H.I.G. Colors, Inc., DCL Corporation, DCL Holdings (USA), Inc., dated July 31, 2021,
- (ii) Share Purchase Agreement, between and among KNRV Investments Inc., Dominion Colour Corporation, Colour Acquisition Corporation, dated September 30, 2016, and
- (iii) Subordinated Promissory Note, between and among H.I.G. Colors, Inc. and Landers-Segal Color Co., Incorporated, dated April 6, 2018.

Schedule 5.3(c)**Authority; Noncontravention**

None.

Schedule 5.6**Real Property**

(a) None.

(b) None.

Schedule 5.6(c)**Leased Real Property**

<u>Party</u>	<u>Real Property Address</u>	<u>Owned or Leased</u>	<u>Description of Business Conducted at Location</u>	<u>Name and address of lessor/owners of leased locations</u>
DCL Corporation (f/k/a Dominion Colour Corporation)	1 Concorde Gate, Suite 608, Toronto, Ontario, M3C 3N6	Leased	Corporate Office	Fengate Asset Management, 2275 Upper Middle Road East Suite 700 Oakville, Ontario L6H 0C3
DCL Corporation (USA), LLC (f/k/a LANSO Colors LLC) ¹	20 Altieri Way, Warwick, Rhode Island 02886	Leased	Technical Center	20 Altieri, LLC PO Box 731 Providence, Rhode Island 02901
DCL Corporation (BP), LLC	1506 Bushy Park Road, Goose Creek, South Carolina	Leased	Bushy Park Facility	Cooper River Partners, LLC 1588 Bushy Park Road, Goose Creek 294455 Attn: President
DCL Corporation (f/k/a Dominion Colour Corporation)	2615 Wharton Glen Avenue Mississauga, Ontario L4X 2B1	Leased	Office, Manufacturing & Storage	813182 Ontario Inc. c/o Janet L. Lamb 115 Durham St PO Box 395 Flesherton, ON N0C
DCL Corporation (f/k/a Dominion Colour Corporation)	2597 Wharton Glen Avenue Mississauga, Ontario L4X 2B1	Leased	Manufacturing & Storage	Charane Limited through Strategic Property Management 1097 North Service Road East Suite 200 Oakville, Ontario L6H 1A6
DCL Corporation (NL) B.V. (fka DCC Maastricht B.V.)	Sorteweg 39, 6219 NT, Maastricht, The Netherlands	Leased	Office & Manufacturing	Colors & Effects Netherlands B.V. (formerly BASF Nederland B.V.)

¹ The Second Amendment to the Lease Agreement entered into on July 13, 2022 was inadvertently executed by DCL Corporation.

Schedule 5.6(d)**Owned Real Property**

<u>Party</u>	<u>Real Property Address</u>	<u>Description of Business Conducted at Location</u>
DCL Corporation (f/k/a Dominion Colour Corporation)	445 Finley Avenue, Ajax, Ontario - being the lands described in all of PIN 26464-0052 (LT)	Ajax Facility Location
DCL Corporation (f/k/a Dominion Colour Corporation)	435 Finley Avenue, Ajax, Ontario – being the lands described in all of PIN 26464-0051 (LT)	Ajax Distribution Centre
DCL Corporation (f/k/a Dominion Colour Corporation)	199 New Toronto St., Toronto, Ontario - being the lands described in all of PIN 07600-0171 (LT)	New Toronto Facility Location
DCL Corporation (Europe) Limited (f/k/a Dominion Colour Corporation (Europe) Limited)	Holt Mill Road, Waterfoot, Rossendale, Lancashire, England	Operations

Schedule 5.7**Tangible Personal Property**

None.

Schedule 5.8

Intellectual Property

(c)

(i).

I. Patents:

	Patent Title	Jurisdiction	Patent No./Registration Date	Application No./Filing Date	Owner
1.	Preparation Of Quinacridonequinones And Substituted Derivatives Of Same	US	6,972,333 December 6, 2005	10/757,306 January 14, 2004	DCL Corporation (BP), LLC
2.	Preparation Of Quinacridonequinones And Substituted Derivatives Of Same	MX	PA06008084 January 31, 2007	MXPA/A/2006/008084 July 14, 2006	DCL Corporation (BP), LLC
3.	Process For The Preparation Of Perylene Pigments	HK	1048645 September 28, 2007	1048645 February 4, 2003	DCL Corporation (BP), LLC
4.	Process For The Preparation Of Perylene Pigments	MX	PA01013190 May 21, 2004	MXPA/A/2001/013190 December 18, 2001	DCL Corporation (BP), LLC
5.	Process For Preparing Nanoscale Quinacridone	US	7,211,139 May 1, 2007	11/120,680 May 3, 2005	DCL Corporation (BP), LLC
6.	ナノスケールのキナクリドンの製造法	JP	4801730 October 26, 2011	2008510015 April 12, 2006	DCL Corporation (BP), LLC
7.	Methods For Preparing Perylene/Perinone Pigments	US	7,795,433 September 14, 2010	11/608,574 December 8, 2006	DCL Corporation (BP), LLC
8.	Pigments for Non-Aqueous Inks And Coatings	IN	267317 July 14, 2015	6869/DELNP/2009 October 27, 2009	DCL Corporation (BP), LLC
9.	Pigments for Non-Aqueous Inks And Coatings	CN	n/a	200880019625.5 April 3, 2008	DCL Corporation (BP), LLC
10.	Pigments for Non-Aqueous Inks And Coatings	EP	2148904 June 6, 2012	08744985.6 February 3, 2010	DCL Corporation (BP), LLC
11.	Pigments for Non-Aqueous Inks And Coatings	US	7,901,503 March 8, 2011	12/597,045 October 22, 2009	DCL Corporation (BP), LLC
12.	2,5-Di(Methoxyanilino) Terephthalic Acid Polymorphs And Quinacridones Realized Therefrom	US	8,557,990 October 15, 2013	13/595,994 August 27, 2012	DCL Corporation (BP), LLC
13.	Process For Making Perylene Pigment Compositions	CN	101065452 July 27, 2011	03810291.9 March 7, 2003	DCL Corporation (BP), LLC

14.	Process For Making Perylene Pigment	IN	240415 May 14, 2010	2637/DELNP/2004 September 8, 2004	DCL Corporation (BP), LLC
15.	Process For Making Perylene Pigment Compositions	MX	n/a	PA/a/2004/008694 September 8, 2004	DCL Corporation (BP), LLC
16.	High Transparency Pigments	US	9,487,657 November 8, 2016	12,374,515 January 21, 2009	DCL Corporation (BP), LLC
17.	Pu-Coated Pigments	EP	2057234	07814177.7 August 16, 2007	DCL Corporation (BP), LLC
18.	Process for the Continuous Drowning of Perylene Melt	KR	10079980 May 18, 2007	20010057568 December 14, 2000	DCL Corporation (BP), LLC
19.	Process For The Continuous Drowning Of Perylene Melt	MX	213059 February 26, 2003	PA/A/2000/012104 December 7, 2000	DCL Corporation (BP), LLC
20.	Novel Crystal Forms Of Quinacridones Made From 2,9-Dimethoxyquinacridone And 2,9-Dichloroquinacridone	US	8,197,592 June 12, 2012	12/989,269 May 6, 2011	DCL Corporation (BP), LLC
21.	Novel Crystal Forms Of Quinacridones Made From 2,9-Dimethoxyquinacridone And 2,9-Dichloroquinacridone	US	8,430,954 April 30, 2013	13,473,240 May 16, 2012	DCL Corporation (BP), LLC
22.	Black pigment compositions	US	7,077,898 July 18, 2006	10/886,487 July 7, 2004	Dominion Colour Corporation (Canada)
23.	Rheology improvers and pigment compositions having improved rheology	US	6,827,774 December 7, 2004	10/450,031 June 10, 2003	Dominion Colour Corporation (Canada)
24.	Rheology improvers and pigment compositions having improved rheology	US	6,827,775 December 7, 2004	10/450,034 June 10, 2003	Dominion Colour Corporation (Canada)

II. Trademarks:

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
25.	PERRINDO	United Kingdom	UK00801208243 09-MAY-2014	UK00801208243 12-MAY-2015	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP),</i>

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
					<i>LLC on-going]</i>
26.	QUINDO	United Kingdom	UK00801207663 09-MAY-2014	UK00801207663 05-MAY-2015	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
27.	PERRINDO	Benelux	051142 04-26-1984	400016 02-25-1994	DCL Corporation (BP), LLC
28.	QUINDO	Benelux	051143 04-26-1984	400017 01-01-1985	DCL Corporation (BP), LLC
29.	PERRINDO	Canada	525206 07-12-1984	302386 05-03-1985	DCL Corporation (BP), LLC
30.	QUINDO	Canada	525207 07-12-1984	302599 05-10-1985	DCL Corporation (BP), LLC
31.	PERRINDO	France	707079 06-27-1984	1277276 11-05-1984	DCL Corporation (BP), LLC
32.	QUINDO	France	707087 06-27-1984	1277275 11-15-1984	DCL Corporation (BP), LLC


No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
33.	PERRINDO	Germany	M541532WZ 01-13-1984	1065448 07-04-1984	DCL Corporation (BP), LLC
34.	QUINDO	Germany	M541542WZ 01-13-1984	1065528 07-06-1984	DCL Corporation (BP), LLC
35.	PERRINDO	United States	73350519 02-16-1982	1232426 03-29-1983	DCL Corporation (BP), LLC
36.	QUINDO	United States	73350518 02-16-1982	1235969 05-03-1983	DCL Corporation (BP), LLC
37.	PERRINDO	China	32792209 08-09-2018	32792209 04-21-2019	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
38.	PERRINDO	China	32782256 08-09-2018	32782256 04-21-2019	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
39.	QUINDO	China	32795317 08-09-2018	32795317 05-07-2019	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
40.	QUINDO	China	32798817 08-09-2018	32798817 04-14-2019	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
41.	PERRINDO	International Bureau (WIPO) Designated Contracting Parties: Indonesia Republic of Korea Russian Federation European Union	1208243 05-09-2014	1208243 05-09-2014	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
42.	QUINDO	International Bureau (WIPO) Designated Contracting Parties: European Union Republic of Korea Russian Federation	1207663 05-09-2014	1207663 05-09-2014	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
43.	PERRINDO	Japan	8594484 07-31-1984	1905969 10-28-1986	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP),</i>

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
					<i>LLC on-going</i>
44.	QUINDO	Japan	8594559(84) 07-31-1984	2049622 05-26-1988	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
45.	PERRINDO	Mexico	163458 03-19-1993	437736 07-19-1993	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
46.	QUINDO	Mexico	163457 03-19-1993	437735 07-19-1993	Sun Chemical B.V. <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
47.	PERRINDO	Italy	MI20047956 05-17-1984	1086881 04-21-1997	Sun Chemical Corporation <i>[Recordal of Assignment to DCL Corporation (BP), LLC on-going]</i>
48.	KROLOR	United States	72269026 13-APRIL-1967	0837400 07-MAY-2014	DCL Corporation

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
49.	DCL (Design)	United States	88790717 10-FEB-2020	6565028 23-NOV-2021	DCL Corporation
50.	DCL	United States	88790713 10-FEB-2020	6565027 23-NOV-2021	DCL Corporation
51.	DCC (Design)	United States	85486243 2-DEC-2011	4445890 10-DEC-2013	DCL Corporation
52.	DCC	United States	85486236 2-DEC-2011	4445889 10-DEC-2013	DCL Corporation
53.	ORGANO- ULTRAMARINE	Canada	1852025 10-AUG-2017	TMA1054600 16-SEP-2019	DCL Corporation
54.	OUM	Canada	1852026 10-AUG-2017	TMA1054576 16-SEP-2019	DCL Corporation
55.	DCC & Logo Design	Canada	1543634 15-SEP-2011	TMA840812 21-JAN-2013	DCL Corporation
56.	DCC	Canada	1543632 15-SEP-2011	TMA840808 21-JAN-2013	DCL Corporation

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
57.	DCL Logo Design	Canada	2008513 29-JAN-2020		DCL Corporation
58.	DCL	Canada	2007971 24-JAN-2020		DCL Corporation
59.	WORKING TOGETHER FOR QUALITY	Canada	1543635 15-SEP-2011	TMA840835 21-JAN-2013	DCL Corporation
60.	KROLOR	Canada	321029 26-MAR-1969	TMA167417 16-JAN-1970	DCL Corporation
61.	KROLOR	Australia	283239 12-NOV-1974	283239 12-NOV-1974	DCL Corporation
62.	KROLOR	Benelux	69094 10-JAN-1990	477353 19-OCT-2004	DCL Corporation
63.	ORGANO- ULTRAMARINE	Germany	3020171100373 4-OCT-2017	302017110037 09-NOV-2017	DCL Corporation
64.	ORGANO- ULTRAMARINE	Turkey	2017 87426 04-OCT-2017	2017 87426 23-MAR-2018	DCL Corporation

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
65.		Europe (EUIPO)	018194194 07-FEB-2020	018194194 11-JUN-2020	Dominion Colour Corporation
66.	DCL	Europe (EUIPO)	018194197 07-FEB-2020	018194197 11-JUN-2020	Dominion Colour Corporation
67.	DYECOM	Europe (EUIPO)	000946012 02-OCT-1998	000946012 22-DEC-1999	Dominion Colour Corporation
68.	ELJON	Europe (EUIPO)	000948596 06-OCT-1998	000948596 26-SEP-2000	Dominion Colour Corporation
69.	ORGANO- ULTRAMARINE	Europe (EUIPO)	017100819 11-AUG-2017	017100819 08-JAN-2018	Dominion Colour Corporation
70.	OUM	Europe (EUIPO)	017100827 11-AUG-2017	017100827 08-JAN-2018	Dominion Colour Corporation
71.	DYECOM	International Bureau (WIPO) Designated Contracting Parties: <ul style="list-style-type: none"> • China • Japan • Republic of Korea 	843110 19-OCT-2004	843110 19-OCT-2004	Dominion Colour Corporation

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
		United States (US Reg. No. 3120898)			
72.	DYECOM	United States	79008801	US Reg. No. 3120898 Intl Reg. No 0843110	Dominion Colour Corporation
73.	ELJON	International Bureau (WIPO) Designated Contracting Parties: <ul style="list-style-type: none"> • China • Japan • Republic of Korea • United States (US Reg. No. 3083050) 	845612 19-OCT-2004	845612 19-OCT-2004	Dominion Colour Corporation
74.	ELJON	United States	79009646	US Reg. No. 3083050 Intl Reg. No. 0845612	Dominion Colour Corporation
75.	KROLOR	Italy	302014902307443 07-NOV-1994	0001627997 16-OCT-1996	Dominion Colour Corporation
76.	ORGANO- ULTRAMARINE	Italy	302017000113915 10-OCT-2017	302017000113915 21-AUG-2018	Dominion Colour Corporation

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
77.	KROLOR	Japan	105501/89 19-SEP-1989	2502963 26-FEB-1993	Dominion Colour Corporation
78.	KROLOR IN KATAKANA	Japan	105502/89 19-SEP-1989	2559739 30-JUL-1993	Dominion Colour Corporation
79.	ORGANO-ULTRAMARINE	Spain	M3685285 03-OCT-2017	M3685285 16-MAR-2018	Dominion Colour Corporation
80.	 (cloned UK registration originating from EU registration #18194194, issued by the UK IPO as a result of Brexit.)	United Kingdom	UK00918194194 07-FEB-2020	UK00918194194 11-JUN-2020	Dominion Colour Corporation
81.	DCL	United Kingdom	UK00003504941 12-APR-2011	UK00003504941 14-OCT-2011	Dominion Colour Corporation
82.	DCL	United Kingdom	UK00918194197 07-FEB-2020	UK00918194197 11-JUN-2020	Dominion Colour Corporation

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
	(cloned UK registration originating from EU registration #18194197, issued by the UK IPO as a result of Brexit.)				
83.	DYECOM (cloned UK registration originating from EU registration #946012, issued by the UK IPO as a result of Brexit.)	United Kingdom	UK00900946012 02-OCT-1998	UK00900946012 22-DEC-1999	Dominion Colour Corporation
84.	ELJON (cloned UK registration originating from EU registration #948596, issued by the UK IPO as a result of Brexit.)	United Kingdom	UK00900948596 06-OCT-1998	UK00900948596 26-SEP-2000	Dominion Colour Corporation
85.	KROLOR	United Kingdom	UK00001037934 7-NOV-1974	UK00001037934 7-NOV-1974	Dominion Colour Corporation
86.	ORGANO- ULTRAMARINE	United Kingdom	UK00003260819 03-OCT-2017	UK00003260819 02-FEB-2018	Dominion Colour Corporation

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
87.	ORGANO- ULTRAMARINE (cloned UK registration originating from EU registration #17100819, issued by the UK IPO as a result of Brexit.)	United Kingdom	UK00917100819 11-AUG-2017	UK00917100819 08-JAN-2018	Dominion Colour Corporation
88.	OUM (cloned UK registration originating from EU registration #17100827, issued by the UK IPO as a result of Brexit.)	United Kingdom	UK00917100827 11-AUG-2017	UK00917100827 08-JAN-2018	Dominion Colour Corporation
89.	DCC	Venezuela	2017-012602 31-JUL-2017	P371246 30-JUL-2018	Dominion Colour Corporation
90.	LANOX	US	86401534 22-SEP-2014	5091691 29-NOV-2016	LANSCO COLORS LLC
91.	WE BRING A WORLD OF COLOR TO YOUR DOOR	US	78362542 04-FEB-2004	3023017 06-DEC-2005	LANSCO COLORS LLC

No.	Trademark	Country	App. No./Date	Reg. No./Date	Owner
92.	LANSCO	US	73451339 04-NOV-1983	1311813 01-JAN-1985	LANSCO COLORS LLC
93.	GEMSPERSE	Europe (EUIPO)	004759296 24-NOV-2005	004759296 28-NOV-2006	Dominion Colour Corporation (Europe) Limited
94.	GEMSPERSE	India	2449304 26-DEC-2012	2449304 26-DEC-2012	Dominion Colour Corporation (Europe) Limited
95.	GEMSPERSE	UK	UK00904759296 24-NOV-2005	UK00904759296 28-NOV-2006	Dominion Colour Corporation (Europe) Limited
96.	GEMSPERSE	US	90771619 14-JUNE-2021	6933343 27-DEC-2022	DCL Corporation (Europe) Limited
97.	H-D-SPERSE	UK	UK00002041975 18-OCT-1995	UK00002041975 24-JAN-1997	Gemini Dispersions Limited

Copyrights

None.

(ii).

1. Coexistence Agreement (world-wide), between BLANCHON S.A., (“BLANCHON”) and Sun Chemical Corporation, executed on November 10, 2006, [REDACTED]

[REDACTED]

2. Transitional Trademark License Agreement, dated on or about July 31, 2021, by and between Sun Chemical Corporation, a Delaware Corporation, and DCL Corporation (BP), LLC, a Delaware limited liability company, [REDACTED]

3. Patent License and Settlement Agreement, between BASF SE (“BASF”) and Sun Chemical Corporation, dated January 25, 2017, [REDACTED]

4. Intellectual Property License Agreement, dated as of July 31, 2021, by and among DCL Corporation (BP), LLC, and Sun Chemical Corporation, a Delaware corporation, [REDACTED]

(f)

1. Coexistence Agreement (world-wide), between BLANCHON S.A., (“BLANCHON”) and Sun Chemical Corporation, executed on November 10, 2006, [REDACTED]

2. Patent License and Settlement Agreement, between BASF SE (“BASF”) and Sun Chemical Corporation, dated January 25, 2017, [REDACTED]

(g)

Domain Names

1. pigments.com (Default)
2. armonteith.com
3. dcc.dominioncolour.com

4. dcchoibm.dominioncolour.com
5. dominioncolor.co.uk
6. dominioncolour.co.uk
7. dominioncolour.com
8. dominioncolour.eu
9. dominioncolour.nl
10. dominioncolourehhr.onmicrosoft.com
11. dominioncolourlansco.onmicrosoft.com
12. power8dcc.dominioncolour.nl

Social Media Accounts

1. https://www.instagram.com/dcl_corporation/
2. <https://twitter.com/DCLCorporation>
3. <https://www.youtube.com/channel/UCVhRXwfTIgAJi7ryTm2ej3w/videos>

Schedule 5.9**Litigation**

1. In February 2020, DCL Corporation received a letter from the former Chief Procurement Officer, Minesh Shah, demanding compensation for entitlements under his employment contract as well as legal fees and bad faith damages. The Company believes there is no merit to his claims but provided a counter proposal in March 2020. As of the filing date, the claim is active. Statement of Claim, Statement of Defense, and Statement of Reply have all been filed with the Ontario Superior Court of Justice. A motion to file with the Court has been submitted and associated evidence submitted. The Company has also started the process for mediation in the event it can settle before an actual trial commences. The Company is targeting a settlement of twelve (12) months' base wages.
2. On December 19, 2022, Lanxess Corporation filed a complaint against DCL Corporation (BP), LLC, alleging damages resulting from DCL's termination of a long-standing agreement between the parties. A hearing to consider the plaintiff's motion for expedited proceedings was initially scheduled for December 21, 2022, but was subsequently cancelled.

Schedule 5.10(a)**Material Contracts**

(i) None.

(ii) None.

(iii)

1. Contracts relating to the BV expansion generally, [REDACTED]

(iv)

1. Share Purchase Agreement, dated September 30, 2016, between KNRV Investments Inc., Dominion Colour Corporation and Colour Acquisition Corporation and the related ancillary documents.
2. Membership Interest Purchase and Sale Agreement, dated April 6, 2018, by and among Lansco Holdings, Inc., H.I.G. Colors Holdings, Inc., Landers-Segal Color Co., Incorporated and its shareholders and the related ancillary documents.
3. Asset Purchase Agreement, dated May 6, 2021, by and among Sun Chemical Corporation, DCL Corporation (BP), LLC, DIC Corporation and H.I.G. Colors, Inc., and the related ancillary documents.
4. Bill of Sale between DCL Corporation (BP), LLC and Sun Chemical Corporation, dated July 31, 2021.

(v)

None.

(vi)

1. Consignment Inventory Agreement, between PPG Industries Europe Sarl and DCL Corporation (BP), LLC (as successor in interest to Sun Chemical SA), dated June 28, 2010
2. Consignment Stock Agreement, between Akzo Nobel Automotive & Aerospace Coatings BV and DCL Corporation (BP), LLC (as successor in interest to Sun Chemical SA), dated June 1, 2012
3. Distributor Agreement, dated June 15, 1998, by and between Dominion Colour Corporation and Chemo International Limited, as amended by those certain Amendments dated May 1, 2012, July 1, 2018, and November 18, 2016 (as subsequently assigned to DCL Corporation (USA) LLC)²
4. Agency Agreement, dated June 15, 1998, by and between Dominion Colour Corporation and Chemo International Limited (as subsequently assigned to DCL Corporation (USA) LLC)

² This agreement and the agreements set out in items 4-11 and 14-34 below were assigned by DCL Corporation (formerly Dominion Colour Corporation) to DCL Corporation (USA) LLC pursuant to the Order Book Purchase and Sale Agreement dated effective as of August 1, 2021.

5. Distributor Agreement, dated November 15, 1966, by and between Dominion Colour Corporation and Chizzy Nigeria Limited (as subsequently assigned to DCL Corporation (USA) LLC)
6. Agent Agreement, dated August 20, 1990, by and between Dominion Colour Corporation and Colossal Co. Ltd. (as subsequently assigned to DCL Corporation (USA) LLC)
7. Distributor Agreement, dated February 1, 2014, by and between Dominion Colour Corporation and Comindex S.A. (as subsequently assigned to DCL Corporation (USA) LLC)
8. Distributor Agreement, dated April 1, 2022, by and between DCL Corporation and Comindex S.A. (as subsequently assigned to DCL Corporation (USA) LLC)
9. Agent Agreement, dated September 18, 1990, by and between Dominion Colour Corporation and Cougar Resources Corp. (as subsequently assigned to DCL Corporation (USA) LLC)
10. Distributor Agreement, dated March 24, 1987, by and between Dominion Colour Company and Dar-Tech Inc. (as subsequently assigned to DCL Corporation (USA) LLC)
11. Agreement, dated April 1, 2020, by and between DCL Corporation and Decase Chemicals LTD (as subsequently assigned to DCL Corporation (USA) LLC)
12. Extension of Distributor Agreement, dated September 15, 2016, by and between Dominion Colour Corporation (Europe) Ltd and DKSH Portugal, Unipessoal, LDA
13. Distributor Agreement, dated August 1, 2021, by and between DCL Corporation (USA) LLC and Garzanti Specialties S.p.A.
14. Distributor Agreement, dated October 1, 2016, by and between Dominion Colour Corporation and Haris Al Afaq Ltd. (as subsequently assigned to DCL Corporation (USA) LLC)
15. Distributor Agreement, dated July 8, 1998, by and between Dominion Colour Corporation and Hexa Chemicals (S) PTE. LTD. (as subsequently assigned to DCL Corporation (USA) LLC)
16. Distributor Hybrid Agreement, dated December 11, 2020, by and between DCL Corporation and Atherton & Imrooz (as subsequently assigned to DCL Corporation (USA) LLC)
17. Distributor Agreement, dated August 1, 2016, by and between Dominion Colour Corporation and Intracon Corporation (as subsequently assigned to DCL Corporation (USA) LLC)
18. Agency Agreement, dated January 1, 1997, by and between Dominion Colour Corporation and Kuang Nung Limited (as subsequently assigned to DCL Corporation (USA) LLC)
19. Distributor Agreement, dated January 1, 1977, by and between Dominion Colour Corporation and Kuang Nung Limited (as subsequently assigned to DCL Corporation (USA) LLC)
20. Distributor Agreement, dated January 1, 2015, by and between Dominion Colour Corporation and Marbar Chimie SA (as subsequently assigned to DCL Corporation (USA) LLC)
21. Distributor Hybrid Agreement, dated September 15, 2020, by and between DCL Corporation and Mesa Hermanos Y Cia S A S (as subsequently assigned to DCL Corporation (USA) LLC)

22. Agency Agreement, dated April 15, 1994, by and between Dominion Colour Corporation and N. Krallis S.A. (as subsequently assigned to DCL Corporation (USA) LLC)
23. Distributor Agreement, dated February 13, 1994, by and between Dominion Colour Corporation and PT. Indoreksa Lokamandiri (as subsequently assigned to DCL Corporation (USA) LLC)
24. Distributor Agreement, dated March 29, 2005, by and among Dominion Colour Corporation, Quimica Anders LTDA and Quimica Anders S.A. (as subsequently assigned to DCL Corporation (USA) LLC)
25. Preliminary Terms of Agreement, dated 2007, by and among Dominion Colour Corporation, Gemini Dispersions Limited and Quimica Rana S.A. de S.V. (QR) (as subsequently assigned to DCL Corporation (USA) LLC)
26. Distributor Agreement, dated April 30, 1996, by and between Dominion Colour Corporation and Reho International Inc. (as subsequently assigned to DCL Corporation (USA) LLC)
 - a. Addendum, dated September 9, 2004, by and between Dominion Colour Corporation and Reho International Inc.
27. Agency Agreement, dated April 30, 1996, by and between Dominion Colour Corporation and Reho International Inc. (as subsequently assigned to DCL Corporation (USA) LLC)
28. Distributor Agreement, dated September 11, 2013, by and between Dominion Colour Corporation and Saeyang International Corporation (as subsequently assigned to DCL Corporation (USA) LLC)
29. Distributorship Agreement, dated December 21, 2020, by and between DCL Corporation and The Shepherd Color Company, as renewed by that certain Distributorship Renewal Agreement, dated January 1, 2022, by and between DCL Corporation and The Shepherd Color Company (as subsequently assigned to DCL Corporation (USA) LLC)
30. Agency Agreement, dated July 1, 2012, by and between Dominion Colour Corporation and Siwa Chemicals Co. (as subsequently assigned to DCL Corporation (USA) LLC)
31. Distributor Agreement, dated March 1, 2020, by and between Dominion Colour Corporation and Stockmeier Holding GmbH (as subsequently assigned to DCL Corporation (USA) LLC)
32. Distributor Agreement, dated July 1, 2014, by and between Dominion Colour Corporation and Swisscolor s.r.o., as amended by that certain Amendment dated October 1, 2017 (as subsequently assigned to DCL Corporation (USA) LLC)
33. Distributor Agreement, dated August 1, 2016, by and between Dominion Colour Corporation and Union Chemicals Lanka Plc. (as subsequently assigned to DCL Corporation (USA) LLC)
34. 'Hybrid' Distributor Agreement, dated June 18, 1998, by and between Dominion Colour Corporation and Will & Co. B.V., as amended by those certain Amendments dated January 2004, July 1, 2010, and November 1, 2013 (as subsequently assigned to DCL Corporation (USA) LLC)
35. Agency Agreement, dated March 11, 2022, by and between DCL Corporation (USA) LLC and West & Senior Limited

(vii) None.

(viii)

1. Sales Confirmation between DCC Maastricht BV and Treibacher Industrie AG, dated November 16, 2015.

(ix)

1. Employment Agreement, dated April 5, 2021, by and between DCL Corporation (fka Dominion Colour Corporation) and [REDACTED], as amended.
2. Employment Agreement, dated June 1, 2022, by and between DCL Corporation (fka Dominion Colour Corporation) and [REDACTED].
3. Employment Agreement, dated April 21, 2021, by and between DCL Corporation (BP), LLC and [REDACTED].
4. Employment Agreement, dated July 10, 2021, by and between DCL Corporation and [REDACTED].
5. Employment Agreement, dated April 17, 2021, by and between DCL Corporation (USA), LLC and [REDACTED].
6. Employment Agreement, dated April 6, 2018, by and between Landers-Segal Color Co., Incorporated and [REDACTED].
7. Employment Agreement, dated April 6, 2018, by and between Landers-Segal Color Co., Incorporated and [REDACTED].
8. Employment Agreement, dated January 19, 2019, by and between DCL Corporation (fka Dominion Colour Corporation) and [REDACTED].
9. Employment Agreement, dated April 6, 2018, by and between Landers-Segal Color Co., Incorporated and [REDACTED].
10. Employment Agreement, dated September 29, 2016, by and between DCL Corporation (fka Dominion Colour Corporation) and [REDACTED].
11. 2022 Retention Award Agreements, by and between DCL Corporation and each of:
 - a. [REDACTED] (November 1, 2022)
 - b. [REDACTED]
 - c. [REDACTED] (December 3, 2022)
 - d. [REDACTED] (October 25, 2022)
 - e. [REDACTED] (November 1, 2022)
 - f. [REDACTED] (October 26, 2022)
 - g. [REDACTED]
 - h. [REDACTED] (October 26, 2022)
 - i. [REDACTED] (October 26, 2022)
 - j. [REDACTED] (October 26, 2022)
 - k. [REDACTED]
 - l. [REDACTED] (October 24, 2022)
 - m. [REDACTED]
 - n. [REDACTED] (October 24, 2022)
 - o. [REDACTED] (October 24, 2022)
 - p. [REDACTED]
 - q. [REDACTED]
 - r. [REDACTED] (November 21, 2022)
 - s. [REDACTED] (November 21, 2022)
 - t. [REDACTED] (November 21, 2022)
 - u. [REDACTED] (November 21, 2022)
 - v. [REDACTED] (November 21, 2022)
 - w. [REDACTED] (November 21, 2022)

- x. [REDACTED] (November 21, 2022)
- y. [REDACTED] (November 21, 2022)
- z. [REDACTED] (November 21, 2022)
- aa. [REDACTED] (November 21, 2022)
- bb. [REDACTED]
- cc. [REDACTED] (November 23, 2022)
- dd. [REDACTED] (November 30, 2022)

Schedule 5.11(d)**Employees; Labor Matters**

1. Agreement between DCL Corporation and Teamsters Chemical, Energy and Allied Workers Local Union N. 1979 effective March 19, 2021, to March 18, 2024 covering certain Business Employees located at 435 and 445 Finley Avenue, Ajax, Ontario L1S 3X4 and 199 New Toronto Street, Toronto, Ontario M8V 2E9.
2. Agreement between DCL Corporation (NL) B.V., and FNV in Utrecht effective 1 October 2020 to 31 March 2023 covering certain employees located at the Maastricht, NL location.

Schedule 5.12(a)

Benefit Plans and ERISA Compliance

(i) Canadian Plans

Retirement Plan Type	Registration #	Name
Defined Benefit	0401455	DCL Corporation Hourly Pension Plan
Defined Benefit	0989616	DCL Corporation Salaried Pension Plan
Defined Contribution	1046994	Pension Plan for the Employees of Monteith Inc. (Closed effective April 1, 2022. Pending FSRA asset transfer application to below noted defined contribution plans.)
Defined Contribution	1141860	Pension Plan for the Employees of Dominion Colour Corporation/Voluntary Registered Retirement Savings Plan
Defined Contribution	1166354	Dominion Colour Corporation Hourly Pension Plan/Voluntary Registered Retirement Savings Plan
Defined Contribution	Plan number 52684	Deferred Profit Sharing Plan
Defined Contribution	Plan number 52684	Registered Retirement Savings Plan

Benefit Plan Type	Policy/Plan#	Vendor
Extended Health Care Dental Care Basic Group Life Insurance Optional Life Insurance Short-Term and Long-Term Disability	G0029264	Manufacturers Life Insurance Company (Manulife Financial)
Accidental Death and Dismemberment	GPA 9427770	AIG Insurance Company of Canada
Business Travel Accident	BTA 9427371	AIG Insurance Company of Canada
Emergency Travel Assistance		Manufacturers Life Insurance Company (Manulife Financial)

Additional Employee Benefits

1. Employee Assistance Plan provided by ComPsych
2. Fitness Membership – Employees are reimbursed 50% of fitness membership fees to a maximum of \$200 per year reimbursed at the end of year.
3. Tuition Assistance
4. Service Awards – Employees are recognized for their years of service at each 5-year milestones. At 25-year service milestone recognition includes a luncheon.
5. Salaried Vacation Policy, dated August 2011

(ii) Incentive or Compensation Plans

1. DCL Management Incentive Program
2. DCL Global Sales Incentive Plan (SIP)

(iii) US Plans

Plan Type	Policy/Plan#	Vendor
Medical PPO Medical EPO Dental (High & Low Plans) Vision	0633654	Cigna Health & Life Insurance Company
Long Term Disability	SGE-600567	Cigna Life Insurance Company of New York
Short Term Disability	NYK-700254	New York Life Insurance Company of New York
Accidental Death and Dismemberment	SYK 600519	Cigna Life Insurance Company of New York
Life Insurance	SGN-600908	Cigna Life Insurance Company of New York
Health FSA Dependent Care FSA	Client ID—60650	Health Equity
New York Disability & New York Paid Family Leave Benefits	NYD-601114	Administered by New York Life Cigna Life Insurance Company of New York
Employee Assistance Program	N/A	ComPsych

Additional Employee Benefits

1. The DCL Corporation (USA), LLC Profit Sharing Plan

(iv) Individual Agreements with Business Employees

Schedule 5.10(a)(ix) is incorporated by reference herein.

Schedule 5.14**Insurance**

Coverage	Limits	Deductible / Self Insured Retention	Insurer	Policy Number
General Liability	\$10,000,000 Per Occurrence \$10,000,000 General Aggregate	Each Occurrence Limit \$500,000 Except; Tenants Legal Liability \$1,000 Employee Benefits Liability \$1,000 Legal Liability for Damage to Hired Automobiles \$500 Fire Fighting Expense Liability \$10,000	Lloyds of London	B0507IC2201198
Global Property	Limit of loss: \$40,000,000 Earth Movement: annual aggregate \$40,000,000 Flood: annual aggregate \$40,000,000 except; \$10,000,000 for the Netherlands Windstorm: annual aggregate \$40,000,000	Earth Movement: 5% of values at risk at time of loss, subject to a minimum of \$2,500,000 Windstorm: 5% of values at risk at time of loss, subject to a minimum of \$2,500,000 Flood: 5% of values at risk at time of loss, subject to a minimum of \$2,500,000 All other losses: \$2,500,000	AIG Insurance Company of Canada – Lead Stewart Specialty Risk Underwriting Starr Technical Risks Canada Inc. Lloyds of London	Canada: 086683027 USA: 72112684 UK: ARBIB25560 Netherlands: M26.22.0066
Environmental Impairment Liability	\$10,000,000 each Pollution Condition and in the Aggregate	\$100,000 each Pollution Condition	Lloyds of London	B174010613PC21

Coverage	Limits	Deductible / Self Insured Retention	Insurer	Policy Number
Global Marine	<p>\$1,000,000 USD by any one conveyance or, in any one place or, at any one time or, in any one disaster or accident or; as specified in the following sub-limits, or unless otherwise specified elsewhere herein:</p> <p>\$100,000 USD for non-containerized shipments On Deck;</p> <p>\$1,000,000 USD by any one aircraft (except when used as a connecting conveyance);</p>	\$1,000 USD any one occurrence	AIG Insurance Company of Canada	45778404
Cyber Liability	<p>\$5,000,000 Each Claim</p> <p>\$5,000,000 Policy Aggregate</p>	<p>\$200,000 Each Loss except;</p> <p>Network Extortion: \$500,000</p>	Chubb Insurance Company of Canada	TIVAABW7HZ002
Crime	\$2,000,000	\$15,000 Each Claim	Berkley Insurance Company	BC06035-2001
D&O	\$6,000,000 Policy Aggregate	<p>\$50,000 Each Claim;</p> <p>\$75,000 Each Employment Practices or Third Party Discrimination Claim</p>	Zurich American Insurance Company	MPL 0156209-04

Schedule 5.15

Environmental Matters

1. DCL Corporation's New Toronto site was issued a summons on January 23, 2018 by the City of Toronto for charges associated with alleged violations of section 2A(4) of the City of Toronto Municipal Code Chapter 681 relating to an alleged discharge of 3,3'-dichlorobenzidine on July 26, 2017 and an alleged discharge of oil and grease on November 28, 2017 to the municipal sewer system. A subsequent court summons was issued on November 8, 2018, relating to discharge exceedance to sanitary sewers occurring on June 19, 2018, and this matter was consolidated with prior charges. DCL Corporation pled guilty with a fine to one charge with the remaining 2 charges being withdrawn. No settlement terms or ongoing obligations.
2. The Ministry of the Environment, Conservation and Parks (the "MECP") issued a Certificate of Property Use ("CPU") on October 7, 2015 for DCL Corporation's Ajax facility in Ontario, Canada, in connection with a Record of Site Condition which has been filed to evidence property remediation in accordance with provincial requirements. The CPU for the Ajax property requires, among other things, the ongoing operation, maintenance and monitoring of groundwater collection systems, engineering controls and related reporting.
3. DCL Corporation's New Toronto site is contaminated with a range of metals, VOCs and other contaminants. Some of the contamination has been generated on site, and some contamination has migrated on site from upgradient properties, the latter of which was the subject of a settlement reached on June 27, 2019. The MECP is aware of the contamination and its potential migration across the property to the residences on Toffee Court and has taken no steps with respect to it. At the time of this Agreement, no written notice has been received of any action, prosecution or application having been commenced against DCL Corporation requiring it to remediate the site.
4. In May 2017, the City of Mississauga Fire & Emergency Services ("MFD") issued three Inspection Orders (#135739, #136568 and #136564) (together, the "Inspection Orders") to the Monteith division of DCC ("Monteith") ordering remedial work at Monteith's premises located at 2597 and 2615 Wharton Glen Avenue, Mississauga, Ontario to bring the premises into compliance with the Ontario Fire Code for the storage and handling of flammable and combustible liquids. Monteith engaged an engineering consultant, Arencon Inc. Monteith has also received guidance from the City of Mississauga on modifications required to comply with the Ontario Fire Code. Monteith has engaged an engineering contractor to reply to the outstanding orders as only an engineer can sign and stamp documents certifying compliance with the issued orders. Completion with the compliance orders is expected around the end of calendar 2023 contingent on the timing of permits issued by the local municipality that would allow for necessary construction/installations to comply with all orders issued.
5. Letter dated August 7, 2020 from Sun Chemical Corporation to Lanxess Corporation Re: July/Aug. 2020 Bushy Park Facility Wastewater Performance and Permit Violations Lanxess Impact on Wastewater Treatment Capabilities and DRAFT letter dated October 6, 2020 from Sun Chemical Corporation to Lanxess Corporation concerning exceedances of permitted effluent discharge limits. The DRAFT letter dated October 6, 2020 was not sent to Lanxess Corporation as the parties had a verbal discussion on these matters. In such discussion, while

there was not consensus on the fault of Lanxess, the parties agreed to work collaboratively to respond to the exceedances. The Buyer and Lanxess continue to work towards a new service agreement that accounts for their current processes and associated wastestream and harmful constituents. The parties' discussion included discussion of a pretreatment requirement in a revised Tenant Wastewater Services Agreement.

6. See document titled "Dahlia Balmoral – Regulatory DD Questionnaire Item 1c." [7.3.3.3.4]. Additional studies have been requested by the European Chemicals Agency (ECHA) from the registrants to be submitted by the registrants before May 16, 2022 for 2,9-dimethylanthra[2,1,9-def:6,5,10-d'e'f']diisoquinoline-1,3,8,10(2H,9H)-tetrone. The applicable studies have been completed. Follow up requirements from the ECHA will be confirmed towards the end of calendar 2022.
7. C.I. Pigment Violet 29 (P.V. 29) is the subject of a final risk evaluation issued in January 2021 by the Environmental Protection Agency (the "EPA") pursuant to the Toxic Substances Control Act. DCL Corporation (BP), LLC ("DCL BP") is responding to related information requests from the EPA. Based on the information now available to EPA regarding exposures to PV29 at particle sizes of concern, EPA can conclude that PV29 "no longer presents an] unreasonable risk" at the Bushy Park facility. Accordingly, no additional risk management requirements are needed (or authorized) for the manufacturing condition of use. DCL BP is carefully monitoring the situation. While the hope is that there will be no additional testing requirements, DCL BP cannot be certain. Indications are that a final ruling may not be expected until June 2024.

Permits

Ontario

1. Environment Canada New Substance Notifications issued in the ordinary course of business.
2. Technical Standards and Safety Authority (TSSA) licenses (elevating device, pressure vessel) issued in the ordinary course of business.

Ajax

3. Ontario Ministry of Environment Amended Certificate of Approval (Air) Number 4255-AGLT8G issued December 16, 2016 (Ajax).
4. Ontario Ministry of Environment Compliance Approval (Sewer Works) Number 8593-A96L6G issued May 7, 2016 (Ajax).
5. Ontario Ministry of Environment Certificate of Property Use No. 3643-99WJAH (Ajax)
6. Ontario Ministry of Environment Waste Class Registration for DCL Corporation Ajax premises. (ON0418000)
7. The Regional Municipality of Durham Waste Discharge Permit (Permit No. 0029) issued to Dominion Colour Corporation on January 10, 2005. (Ajax)
8. The Regional Municipality of Durham Sulphate Surcharge Agreement issued to Dominion Colour Corporation dated April 1, 2002 (Ajax)

9. Canadian National Railway Siding Agreement issued to Dominion Colour Corporation (No. SA2364) dated February 11, 2002 (Ajax)

New Toronto

10. Ontario Ministry of Environment Amended Environmental Compliance Approval (Air) Number 1509-9HZLM9 issued February 19, 2015. (New Toronto)
11. City of Toronto Sanitary Discharge Agreement issued to Dominion Colour Corporation dated December 16, 2016 (New Toronto)
12. Ontario Ministry of Environment DCL Corporation Active Waste Class Registration for Toronto premises. (ON0418001)
13. Environment Canada - DCB and DCB salt Letter of Agreement between Environment Canada and Dominion Colour Corporation, dated September 30, 1999.
14. Health Canada - DCL Corporation - Class A Precursor License for Anthranilic Acid No. 9-1254 dated April 1, 2022

Mississauga (Monteith)

15. Ontario Ministry of Environment Amended Environmental Compliance Approval (Air) Number 8429-A35QP5 issued November 12, 2015 (Mississauga).
16. Ontario Ministry of Environment DCL Corporation Active Waste Class Registration for Mississauga premises. (ON0021000)

Maastricht

17. Omgevingsvergunning, Milieuneutraal veranderen DCL Corporation (NL) B.V. te Maastricht Zaaknummer: 2020-207022 Issued by RUD Zuid Limburg on January 11, 2021 (Maastricht)

Waterfoot

18. United Utilities Water PLC - Discharge of Trade Effluent for Gemini Dispersions Limited dated June 24, 2010

Bushy Park

19. Title V air permit (TV-0420-0095)
20. NPDES permit, wastewater (SC0003441)
21. General stormwater for industrial use (SCR00000)

Schedule 5.16**Brokers**

1. TM Capital Corp.

Schedule 5.17**Taxes**

None.

Schedule 7.1**Conduct of Business Pending Closing**

(a) None.

(b) None.

Schedule 9.2(d)**Required Consents**

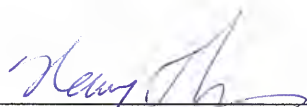
Unless otherwise assigned or transferred by the order the US Bankruptcy Court or CCAA court, without consent:

- 1) Consent to transfer from 260 Eighth Street Holdings ULC for the lands municipally known as 199 New Toronto Street, Toronto, Ontario pursuant to an Application To Annex Restrictive Covenants S.118 registered as Instrument No. AT5238987 on September 17, 2019.
- 2) To the extent required for an assignment of the lease, consent from the landlord for the leased premises at the property municipally known as 1 Concorde Gate, Suite 608, Toronto, Ontario.
- 3) To the extent required for an assignment of the lease, consent from the landlord for the leased premises at the property municipally known as 2615 Wharton Glen Avenue, Mississauga, Ontario.
- 4) To the extent required for an assignment of the lease, consent from the landlord for the leased premises at the property municipally known as 2597 Wharton Glen Avenue, Mississauga, Ontario.
- 5) To the extent required for an assignment of the lease, consent from the landlord for the leased premises at the property municipally known as 20 Altieri Way, Warwick, Rhode Island 02886.
- 6) To the extent required for an assignment of the lease, consent from the landlord for the leased premises at the property municipally known as 1506 Bushy Park Road, Goose Creek, South Carolina.

This is **Exhibit "E"** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Evidenced July 13, 2024

AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

By and Among

H.I.G. COLORS HOLDINGS INC. AND ITS SUBSIDIARIES

as Sellers

and

PIGMENTS HOLDINGS, INC.

as Purchaser

Dated as of ~~December 21, 2022~~ February 13, 2023

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AMENDED AND RESTATED ASSET PURCHASE AGREEMENT

THIS AMENDED AND RESTATED ASSET PURCHASE AGREEMENT (this “**Agreement**”), dated as of ~~December 21, 2022~~February 13, 2023, is made by and among Pigments Holdings, Inc., a Delaware corporation (“**Purchaser**”), and H.I.G. Colors Holdings Inc., a Delaware corporation (“**Holdings**”), and its direct and indirect Subsidiaries (together, with Holdings, but excluding the Acquired Subsidiaries, “**Sellers**”) that are debtors in the US Bankruptcy Cases or the CCAA Proceeding, as applicable. Capitalized terms used herein but not immediately defined shall have the meaning ascribed to them elsewhere in this Agreement.

WHEREAS, on December 20, 2022 (the “**Petition Date**”), Holdings, H.I.G. Colors, Inc., DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA), LLC, and Dominion Colour Corporation (USA) (the “**US Sellers**”) commenced voluntary cases (the “**US Bankruptcy Cases**”) under chapter 11 of title 11, United States Code, 11 U.S.C. § 101–1532 (the “**US Bankruptcy Code**”), in the United States Bankruptcy Court for the District of Delaware (the “**US Bankruptcy Court**”), which cases shall be jointly administered;

WHEREAS, on December 20, 2022 (the “**CCAA Filing Date**”), DCL Corporation, a corporation existing under the laws of Ontario, Canada (the “**Canadian Seller**”) obtained from the Ontario Superior Court of Justice (Commercial List) sitting in Toronto, Ontario (the “**CCAA Court**”) an initial order granting the Canadian Seller relief under the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and such proceedings, the “**CCAA Proceeding**”);

WHEREAS, Sellers continue to operate their businesses and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the US Bankruptcy Code and pursuant to the CCAA and the terms of the CCAA Initial Order and CCAA Amended and Restated Initial Order;

WHEREAS, Purchaser desires to purchase and assume from Sellers, and Sellers desire to sell, transfer, and assign to Purchaser, pursuant to sections 363 and 365 of the US Bankruptcy Code and section 36 of the CCAA, all of the Purchased Assets and Assumed Liabilities on the terms and subject to the conditions set forth in this Agreement (the “**Sale**”);

WHEREAS, Sellers and Purchaser entered into that certain Asset Purchase Agreement (the “Original Asset Purchase Agreement”), dated December 21, 2022;

WHEREAS, Sellers and Purchaser now wish to amend and restate in its entirety the Original Asset Purchase Agreement and provide for this Agreement to supersede in its entirety the Original Asset Purchase Agreement, as heretofore amended;

WHEREAS, this Agreement shall not be binding upon Sellers until approved by the CCAA Court and the US Bankruptcy Court; and

WHEREAS, each of the parties has complied, to the extent required pursuant to applicable Law, with the employee consultation obligations in respect of the transaction under

the Works Council Act (*Wet op de ondernemingsraden*) and the SER Merger Code (*SER-besluit Fusiegedragsregels 2015*).

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

ARTICLE I CERTAIN DEFINITIONS

Section 1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

“**503(b)(9) Claims**” means allowed Claims arising under section 503(b)(9) of the US Bankruptcy Code in the Bankruptcy Cases which remain unpaid as of the Closing Date.

“**Accounts Receivables**” means as of the Closing Date, all accounts receivables, trade receivables, notes receivables, and other miscellaneous receivables, whether current or overdue, of any Seller, excluding any such accounts receivables, trade receivables, notes receivables, and other miscellaneous receivables arising out of the Excluded Assets.

“**Acquired Subsidiaries**” means DCL Corporation (NL) B.V. and DCL Corporation (Europe) Limited.

“**Action**” means any complaint, claim, charge, prosecution, indictment, action, suit, arbitration, audit, hearing, litigation, inquiry, investigation or proceeding (whether civil, criminal, administrative, investigative or informal) commenced, brought or asserted by any Person or group of Persons or Governmental Authority or conducted or heard by or before any Governmental Authority or any arbitration tribunal.

“**Adequate Assurance Account**” shall have the meaning ascribed to it in any order entered by the US Bankruptcy Cases with respect to adequate assurance under Section 366 of the Bankruptcy Code.

“**Additional Cash Consideration**” means an amount equal to (a) the Required Amount *minus* (b) the amount of Excluded Cash; provided that the Additional Cash Consideration shall not be an amount less than zero nor greater than \$2,750,000.

“**Affiliate**” of any Person means any other Person who either directly or indirectly through one or more intermediaries is in control of, is controlled by, or is under common control with, such Person. For purposes of this definition, “**control**” means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of securities, partnership interests or by contract, assignment, credit arrangement, as trustee or executor, or otherwise, and the terms “**controls**,” “**controlling**” and “**controlled by**” shall have correlative meanings. With respect to Purchaser, the term “**Affiliate**” shall also include its managers or members or similar Persons, and any other

entity controlled by the same managers or members or similar Persons as Purchaser (as the case may be), provided that such term shall not include any portfolio companies or managed accounts.

“**Agent**” means Delaware Trust Company, in its capacity as Agent under the Pre-Petition Term Loan.

“**Agreement**” has the meaning set forth in the Preamble.

“**Allocation Schedule**” has the meaning set forth in Section 3.2.

“**Alternative Restructuring Proposal**” means any inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, plan of arrangement, merger, amalgamation, acquisition, consolidation, dissolution, financing proposal, debt investment, equity investment, liquidation, tender offer, recapitalization, plan of reorganization, plan of compromise or arrangement, share exchange, business combination, or similar transaction or series of transactions involving Sellers or the debt, equity, or other interests in Sellers, in each case, that is inconsistent with or represents an alternative to one or more of the Restructuring Transactions or any part thereof.

“**Anti-Corruption Laws**” means the FCPA, COFPOA, the Criminal Code, and any other applicable anti-corruption Laws.

“**Anti-Money Laundering Laws**” has the meaning specified in Section 5.18(d).

“**ARC**” means the advance ruling certificate issued by the Commissioner of Competition pursuant to Section 102 of the Competition Act with respect to the transaction contemplated under this Agreement.

“**Assigned Claims**” has the meaning specified in Section 7.6(d).

“**Assumed Benefit Plans**” means (i) each Benefit Plan (other than a European Benefit Plan) designated by Purchaser as an Assumed Benefit Plan in a writing to Sellers prior to the Closing Date, (ii) the self-insured short-term disability plan of the Canadian Seller, and (iii) each European Benefit Plan.

“**Assumed DB Liabilities**” has the meaning set forth in Section 7.9(b)(iii).

“**Assumed DB Assets**” has the meaning set forth in Section 7.9(b)(iii).

“**Assumed DC Assets**” has the meaning set forth in Section 7.9(b)(iv).

“**Assumed Liabilities**” has the meaning set forth in Section 2.3.

“**Assumed Tax Liabilities**” means any Taxes that are not Income Taxes.

“**Auction**” has the meaning set forth in the Sale Procedures.

“Avoidance Actions” means all claims and causes of action arising under sections 542 through 553 of the US Bankruptcy Code or any analogous state law or section 36.1 of the CCAA, sections 95 to 101 of the BIA or any analogous provincial law.

“Bankruptcy Cases” means the US Bankruptcy Cases and the CCAA Proceeding.

“Bankruptcy Courts” means the US Bankruptcy Court and the CCAA Court.

“Bankruptcy-Related Default” means any default or breach of a Contract that is not entitled to cure under section 365(b)(2) of the US Bankruptcy Code or section 11.3(4) of the CCAA, including a default or breach relating to the filing of the Bankruptcy Cases or the financial condition of Sellers or any default caused by the failure to pay amounts due under a Contract as a result of the filing of the Bankruptcy Cases.

“Benefit Plans” means each “employee benefit plan” within the meaning of Section 3(3) of ERISA (whether or not subject to ERISA), the Canadian Pension Plans, and all other compensation and benefits plans, policies, trust funds, programs, arrangements or payroll practices, and each stock purchase, stock option, restricted stock, profit sharing, retirement savings, pension, supplemental pension, savings, severance, retention, employment, consulting, commission, change-of-control, collective bargaining, bonus, incentive, deferred compensation, loan, fringe benefit, insurance, welfare, post-retirement health or welfare, health, life, tuition refund, service award, company car, scholarship, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, holiday, termination, unemployment, restrictive covenant, and other benefit plan, policy, trust fund, program, arrangement or payroll practice, whether or not subject to ERISA (including any related funding mechanism now in effect or required in the future), whether oral or written, funded or unfunded, insured or self-insured, in each case, that is sponsored, established, maintained, contributed to or required to be contributed to by any of the Sellers, or under which any of the Sellers has any current or potential Liabilities in respect of its current or former employees, including current and former directors, officers and independent contractors, but does not include plans established pursuant to statute to the extent that the administration of such plan is outside of Sellers’ control.

“BIA” means the *Bankruptcy and Insolvency Act*, R.S.C 1985, C. B-3, as amended.

“Bid Deadline” means the date established by the Sale Procedures for the submission of initial bids at the Auction.

“Bid Direction Letter” means the Bid Direction Letter attached hereto as Exhibit B, which may not be amended without Sellers’ consent, acting reasonably.

“Books and Records” means all books, records, files, advertising materials, customer lists, cost and pricing information, business plans, catalogs, customer literature, quality control records and manuals, research and development files, records and credit records of customers (including all data and other information stored on discs, tapes or other media or in the cloud) to the extent used in or to the extent relating to the operation of the Business or the ownership of the Purchased Assets, but excluding Sellers’ (i) Fundamental Documents and share registers,

stock and minute books, and (ii) any documents protected by any applicable privilege, including attorney-client or attorney work product privilege.

“Business” means the business of Sellers and the Acquired Subsidiaries as global manufacturer and reseller of high-performance specialty pigments and dispersions which also provides technical service capability and new product development processes.

“Business Day” means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of Delaware or the province of Ontario.

“Business Employee” means each individual who is a current or former director, officer, employee or individual independent contractor of DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA), LLC, or the Canadian Seller.

“Business Employee List” means the letter provided by Sellers to Purchaser within ten (10) calendar days of the execution and delivery of this Agreement, which letter contains a true and complete list of each individual who is employed by Sellers, together with such individual’s title or position, employing entity, work location, full-time or part-time status, accrued vacation, banked overtime, years of credited service, current rate of hourly wage or salary, annual target cash bonus opportunity, any other compensatory entitlements, each Benefit Plan in which he or she participates or is eligible to participate, along with whether they are on a leave of absence and if so, they type of leave and expected return to work date (if known), and, with respect to any non-union employee, whether, to the Knowledge of Sellers, any allegations of workplace sexual harassment or illegal retaliation or discrimination have been proven (either through a workplace investigation or by a Governmental Authority) against the individual.

“CARES Act” means the Coronavirus Aid, Relief, and Economic Security Act (H.R. 748) and any similar or successor legislation, together with any memoranda or executive orders relating to COVID-19.

“Canadian Employee” means each Business Employee who is employed by the Canadian Seller immediately prior to the Closing.

“Canada Pension Plan” means the Canadian government sponsored pension plan established under an Act to establish a comprehensive program of old age pensions and supplementary benefits in Canada payable to and in respect of contributors (Canada).

“Canadian Pension Plans” means the following registered pension plans, as that term is defined in subsection 248(1) of the Tax Act, each of which is administered by one of the Sellers, or to which any of the Sellers is a participating employer: (i) the Salaried DB Plan; (ii) the Hourly DB Plan; (iii) the Salaried DC Plan; and (iv) the Hourly DC Plan.

“Canadian Purchased Assets” means Purchased Assets belonging to DCL Corporation.

“Canadian Seller” has the meaning set forth in the Recitals.

“CCAA” has the meaning set forth in the Recitals.

“**CCAA Amended and Restated Initial Order**” means an Order of the CCAA Court pursuant to sections 11 and 11.02(2) of the CCAA, amending and restating the CCAA Initial Order and which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“CCAA Cash Pool” means the amount of \$750,000 to be delivered by Sellers to the Monitor from Excluded Cash to be held for the benefit of the estate of the Canadian Seller in the CCAA Proceeding, including any costs for the administration of the CCAA Proceeding.

“**CCAA DIP Order**” means the order approving the DIP Facility by the CCAA Court.

“**CCAA Initial Order**” means an Order of the CCAA Court pursuant to sections 11 and 11.02(1) of the CCAA, granting the Canadian Seller relief under the CCAA and which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“**CCAA Proceeding**” has the meaning given to it in the Recitals.

“**CCAA Sale Hearing**” means the hearing scheduled by the CCAA Court to approve the Sale of the Canadian Purchased Assets.

“**CCAA Sale Motion**” has the meaning set forth in Section 7.7(b)(i).

“**CCAA Sale Order**” means an Order of the CCAA Court approving the Sale, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“**CCAA Sale Procedures Motion**” has the meaning set forth in Section 7.7(a).

“**CCAA Sale Procedures Order**” means an Order of the CCAA Court approving procedures governing the solicitation of bids for Sellers’ assets and business and scheduling an auction and hearing on the Sale, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“**Claim**” has the meaning set forth in section 101(5) of the US Bankruptcy Code or section 2(1) of the CCAA.

“**Closing**” has the meaning set forth in Section 4.1.

“**Closing Date**” means the date on which the Closing occurs.

“**COFPOA**” means the *Corruption of Foreign Public Officials Act*, S.C. 1998, c. 34, as amended.

“**Commissioner of Competition**” means the Commissioner of Competition, appointed pursuant to the Competition Act or any Person duly authorized to exercise the powers and

perform the duties on behalf of the Commissioner of Competition and shall include the Competition Bureau.

“**Company Benefit Plan**” has the meaning set forth in Section 5.12(a).

“**Competition Act**” means the *Competition Act* (Canada) R.S.C. 1985, c. C-34, as amended, and the regulations promulgated thereunder.

“**Competition Act Clearance**” means that either (a) the Commissioner of Competition shall have issued an ARC to Purchaser in respect of the transactions contemplated by this Agreement, or (b) the applicable waiting period under Section 123 of the Competition Act shall have expired or been terminated or a waiver under subsection 113(c) of the Competition Act shall have been issued by the Commissioner of Competition and, in either case, Purchaser shall have received a No Action Letter in respect of the transactions contemplated by this Agreement.

~~“**Competition Authority Clearance**” means, other than with respect to the Competition Act Clearance, that each Governmental Authority (a) has taken a decision that the transactions contemplated by this Agreement do not give rise to a concentration falling within the scope of the relevant competition laws, (b) has issued a written confirmation that the merger control regime applied by such Governmental Authority does not apply to the transactions contemplated by this Agreement, (c) has taken a decision that allows the parties to this Agreement to complete the transactions contemplated by this Agreement, and if that decision is given subject to conditions or obligations, Section 7.5(e) shall apply, or (d) has not taken a decision within the waiting period under the relevant merger control regime, which period may have been validly suspended by the Governmental Authority, with the effect that the transactions contemplated by this Agreement may be completed.~~

“**Competition Tribunal**” means the Competition Tribunal established under the *Competition Tribunal Act* (Canada).

“**Conditions Certificates**” has means (i) a certificate signed by a Responsible Officer of Purchaser and addressed to Sellers and the Monitor (in form and substance satisfactory to Sellers and the Monitor, acting reasonably) certifying that the closing conditions set forth in Section 9.3(a) and Section 9.3(b) have been satisfied or waived and (ii) the certificate to be delivered pursuant to Section 4.2(a)(ii).

“**Confidentiality Agreement**” means any confidentiality provision or agreement between or among one or more of the Sellers and Blackstone Alternative Credit Advisors LP, on behalf of its funds and accounts managed, advised or sub-advised by it and its Affiliates.

“**Consent**” means any consent, approval, franchise, order, License, Permit, waiver, authorization, registration, declaration filing, exemption, notice, application, or certification, including all Regulatory Approvals, made with or granted by any Person.

“**Contract**” means any executory contract or Lease, but excluding the Fundamental Documents of any Seller.

“Copyright Licenses” means any written agreement granting any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary under any Copyright in connection with the Business.

“Copyrights” means all of the following: (i) all copyrights (whether registered or not); all registrations thereof; and all applications in connection therewith, including all registrations, and applications in the United States Copyright Office, the Canadian Intellectual Property Office, or in any similar office or agency of any other Governmental Authority, (ii) all extensions or renewals thereof, and (iii) all moral rights or equivalent rights as recognized under the Laws of any jurisdiction.

“COVID-19” means the coronavirus disease 2019.

“Credit Bid” has the meaning set forth in Section 3.1.

“Creditors’ Committee” means the Official Committee of Unsecured Creditors appointed in the US Bankruptcy Cases.

“Criminal Code” means the Criminal Code, R.S.C., 1986, c. C-46, as amended.

“Critical Vendor Agreements” means the agreements entered into by Sellers in regards to Critical Vendor Claims during the Bankruptcy Cases in accordance with the Critical Vendor Order.

“Critical Vendor Claims” means (i) Vendor Claims and Shippers and Warehousemen Claims (both as defined in the Critical Vendor Order in the US Bankruptcy Case) and (ii) claims for goods and services pursuant to paragraph 9 of initial order of the CCAA Proceeding dated December 20, 2022, as amended and restated on December 29, 2022.

“Critical Vendor Order” means either the final Order entered in the US Bankruptcy Cases or the final Order entered in the CCAA Proceeding authorizing Sellers to pay Critical Vendor Claims.

“Cure Costs” means all cash amounts that, pursuant to section 365 of the US Bankruptcy Code or section 11.3(4) of the CCAA, will be required to be paid as of the Closing Date to cure any monetary defaults on the part of Sellers under the Purchased Contracts, in each case to the extent such Contract was entered into prior to the commencement of the Bankruptcy Cases and as a prerequisite to the assumption of such Purchased Contracts under section 365 of the US Bankruptcy Code or as a prerequisite to the assignment of such Purchased Contracts under section 11.3(1) of the CCAA; *provided, however*, in the case of any Contract, such Contract is executory and, in the case of any Lease, such Lease is unexpired.

“Debt Financing” means any debt financing incurred by Purchaser in connection with the transactions contemplated by this Agreement.

~~“Designated Amount” means an amount to conduct an orderly wind-down of Sellers after the Closing Date not to exceed (a) if the Designated Location is included as Purchased~~

~~Assets, \$1,700,000, (b) if the Owned Real Property with respect to the Designated Location is included as Purchased Assets, but the Business Employees primarily employed at such Designated Location are not continuing with Purchaser, \$3,500,000, or (c) if the Designated Location is an Excluded Asset and all Business Employees primarily employed at such Designated Location are Excluded Employees, \$4,700,000; provided, however, that the amounts in clauses (a), (b) and (c) above are good faith initial determinations of such amounts and subject to adjustment by Sellers, in consultation with the Monitor, and if there is any adjustment to a Designated Amount, Section 10.1(r) shall apply.~~

“Designated Amount” means \$2,000,000, which shall be utilized solely to conduct an orderly wind-down of Sellers after the Closing, of which \$575,000 shall be delivered to the Monitor, on behalf of the Canadian Seller, and \$1,425,000 shall be delivered to the US Sellers. For the avoidance of doubt, if the reasonable and documented costs incurred by either the US Sellers or the Canadian Seller in connection with the orderly wind-down of applicable Sellers after the Closing and the administration, closing, conversion or dismissal of the US Bankruptcy Cases and CCAA Proceeding (and any subsequent proceedings), as applicable, are less than the Designated Amount with respect to such Sellers (i) the US Seller shall return any remaining amounts to Purchaser, and (ii) the Canadian Seller shall transfer any remaining amounts to the CCAA Cash Pool.

“Designated Location” means the facilities of the Canadian Seller referenced on Section 1.1 of the Seller Disclosure Schedule.

“DIP Credit Agreement” means the debtor in possession credit agreement provided in accordance with the terms, and subject to the conditions, set forth thereof and in the DIP Orders, each of which shall be acceptable to Purchaser.

“DIP Facility” means the debtor in possession credit facility provided in accordance with the terms, and subject to the conditions, set forth in the DIP Credit Agreement and the DIP Orders, each of which shall be acceptable to Purchaser.

“DIP Lenders” means all Persons who are lenders under the DIP Credit Agreement, each in its capacity as such.

“DIP Orders” means, together, the US DIP Order and the CCAA DIP Order.

“Dutch Deed of Transfer” means the notarial deed of transfer, in substantially the form attached as Exhibit A, to effect the transfer of the Dutch Shares to Purchaser.

“Dutch Shares” means six hundred thousand (600,000) ordinary shares in the share capital of DCL Corporation (NL) B.V., with a nominal value of 1 euro (EUR 1) numbered 1 up to and including 600,000.

“End Date” has the meaning set forth in Section 10.1(c).

“Environment” means the environment or natural environment as defined in any Environmental Laws and includes air, ambient air, all layers of the atmosphere, all water including surface water, groundwater and underground water, all land, land surface soil,

subsurface strata, all living organisms and the interacting natural systems, and includes indoor spaces.

“Environmental Claim” means any Action, Governmental Order, Lien, fine, written report, penalty, or, as to each, any settlement or judgment arising therefrom, by or from any Person alleging any Environmental Liability arising out of, based on, or resulting from: (i) the presence, Environmental Release of, or exposure to, any Hazardous Materials; or (ii) any actual or alleged non-compliance with any Environmental Law or term or condition of any Environmental Permit; or (iii) any other liability arising under Environmental Law or relating to Hazardous Materials.

“Environmental Laws” means any applicable Law, any Governmental Order, or binding agreement with any Governmental Authority relating to: (i) pollution or the protection, restoration or remediation of, or prevention of harm to, the Environment and natural resources; (ii) the protection of human health and safety as it pertains to exposure to Hazardous Materials; (iii) the manufacture, processing, registration, distribution, formulation, packaging or labeling of Hazardous Materials or products containing Hazardous Materials; (iv) the transport or handling, use, presence, generation, treatment, incineration, landfilling, milling, storage, disposal, Environmental Release of or exposure to any Hazardous Materials; or (v) recordkeeping, notification, disclosure and reporting requirements respecting Hazardous Materials.

“Environmental Liability” means any direct, indirect, pending or threatened indebtedness, liability, claim, loss, damage, fine, penalty, cost, expense, deficiency or responsibility, whether known or unknown, arising under or relating to any Environmental Claim, Environmental Law, Environmental Permit, or Environmental Release, whether based on negligence, strict liability or otherwise (including costs and liabilities for investigation, government response, removal, remediation, restoration, abatement, monitoring, personal injury, medical monitoring, monitoring, penalties, contribution, indemnification, injunctive relief, property damage, natural resource damages, court costs, costs of enforcement proceedings or government responses, and reasonable attorneys’ fees in connection with each of the foregoing), including (i) any actual or alleged violation of any Environmental Law, (ii) any actual or alleged generation, use, handling, transportation, storage, treatment, disposal, release, or threatened release of, or exposure to, any Hazardous Materials at any facility or location, (iii) any liability arising under Environmental Law relating to, arising from or with respect to any formerly owned, leased, or operated properties or any former, closed, divested, or discontinued business operations, (iv) any liabilities arising under Environmental Law assumed or retained by contract, operation of law, or otherwise.

“Environmental Notice” means any written directive, written notice of violation or infraction, or other written notice with respect to any Environmental Claim relating to actual or alleged non-compliance with any Environmental Law or any term or condition of any Environmental Permit.

“Environmental Permit” means any Permit, letter, clearance, Consent, waiver, closure, exemption, decision, or other action required under or issued, granted, given, authorized by, or made pursuant to Environmental Law.

“Environmental Release” means any actual or threatened, direct or indirect, release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, spraying, burying, escaping, leaching, dumping, abandonment, disposing, depositing, migrating, incineration, seepage, placement, introduction, or allowing to escape or migrate within, into, through or from the Environment and/or within, into, through or from any Structure, building, facility, or fixture or into or out of any property, whether intentional or unintentional, known or unknown.

“Equity Securities” means (i) with respect to any corporation, all shares, interests, participations or other equivalents of capital stock of such corporation (however designated), and any warrants, options or other rights to purchase or acquire any such capital stock and any securities convertible into or exchangeable or exercisable for any such capital stock, (ii) with respect to any partnership, all partnership interests, participations or other equivalents of partnership interests of such partnership (however designated), and any warrants, options or other rights to purchase or acquire any such partnership interests and any securities convertible into or exchangeable or exercisable for any such partnership interests and (iii) with respect to any limited liability company, all limited liability company interests or membership interests, participations or other equivalents of limited liability company interests or membership interests of such limited liability company (however designated), and any warrants, options or other rights to purchase or acquire any such membership interests and any securities convertible into or exchangeable or exercisable for any such membership interests.

“ERISA” means the U.S. Employee Retirement Income Security Act of 1974, as amended, and regulations promulgated thereunder.

“ERISA Affiliate” means each entity, trade or business that is, or was at the relevant time, a member of a group described in Section 414(b), (c), (m) or (o) of the IRC or Section 4001(b)(1) of ERISA that includes or included any Seller or any of the Acquired Subsidiaries, or that is, or was at the relevant time, a member of the same “controlled group” as any of the Sellers pursuant to Section 4001(a)(14) of ERISA.

“ETA” means *Excise Tax Act* (Canada) R.S.C. 1985, c. E-15.

“ETA Tax” means taxes imposed under Part IX of the ETA and sales, use or value-added tax legislation enacted by a Canadian province.

“European Benefit Plan” shall mean each Benefit Plan that is maintained or sponsored exclusively by one or more of the Acquired Subsidiaries.

“European Employee” shall mean each individual who is a director, officer, employee or individual independent contractor actively employed by the Acquired Subsidiaries immediately prior to the Closing.

“EX-IM Laws” means all applicable U.S., Canadian and foreign Laws relating to export, reexport, transfer, and import controls, including, without limitation, (a) EAR, ITAR, the customs and import Laws administered by U.S. Customs and Border Protection, (b) the Export and Import Permits Act., the Customs Act, the Defence Production Act, the Department of Public Works and Government Services Act, including all regulations thereunder, the Export

Control List, Area Control List, Brokering Control List, and the Controlled Goods Regulations, and the customs and import Laws administered by the Canada Border Services Agency and Global Affairs Canada.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended, and the regulations promulgated thereunder.

“**Excluded Assets**” has the meaning set forth in Section 2.2.

“**Excluded Avoidance Actions**” means (a) any Avoidance Actions against the Sellers’ Chief Executive Officer arising from payments listed on the US Sellers’ Schedules of Assets and Liabilities and Statements of Financial Affairs filed prior to the date hereof and (b) any Avoidance Actions against the Transferred Employees or Sellers’ vendors or customers.

“**Excluded Benefit Plan**” means each Benefit Plan that is not an Assumed Benefit Plan.

“**Excluded Cash**” means all cash ~~on hand and held by the Sellers at the Closing, including~~ cash drawn by Sellers under the DIP Facility, ~~including cash drawn under the DIP Facility~~ at the Closing, ~~sufficient to (i) satisfy the allowed Professional Fees and Expenses, not including any amounts held by any professional retained by Sellers, or any funds of Sellers held in escrow or reserve with respect to the fees and expenses of any professional retained by Sellers, and (ii) fund the Designated (but excluding amounts held in the Adequate Assurance Account); provided that Excluded Cash shall not exceed the Required~~ Amount.

“**Excluded Employee**” means (i) each Business Employee who is primarily employed at the Designated Location, ~~if the Designated Location is designated as an Excluded Asset in accordance with Section 2.2 or if the Designated Location is designated as a Purchased Asset but Purchaser elects to designate the Business Employees who are primarily employed at the Designated Location as Excluded Employees by written notice to Sellers no later than five (5) Business Days prior to the US Sale Procedures Hearing,~~ (ii) each Retention Eligible Employee identified as an Excluded Employee in writing to Sellers prior to the earlier of (x) ten (10) days immediately prior to the Closing Date, and (y) March 17, 2023, and (iii) each non-union Business Employee against whom there are pending allegations of workplace sexual harassment or illegal retaliation or discrimination that Purchaser reasonably believe have merit after discussions with Sellers’ human resources department, unless otherwise determined by Purchaser in its sole discretion.

“**Excluded Employee Liabilities**” means (a) any and all Liabilities, and any and all other payments, compensation, commissions, benefits, bonuses, vacation and entitlements that Sellers owe or are obligated to provide, whether prior to, on or following the Closing, in each case, with respect to any Business Employee (or any of their respective covered dependents, beneficiaries and estates), in connection with any such individual’s employment with and/or engagement by Sellers, and, with respect to any Business Employees who are not Transferred Employees, the termination of their employment, including, without limitation, any and all entitlements to notice of termination, severance (whether statutory or contractual), damages for wrongful dismissal, or

other Liabilities arising out of the termination of employment or service with Sellers and their respective Subsidiaries and Affiliates (other than any pay in lieu of notice, termination pay, severance pay or similar amount, in each case, that is required to be paid by applicable Law to a Retention Eligible Employee who does not receive an Offer and who is terminated by Sellers on or about the Closing Date), and (b) any and all Liabilities, payments, costs, expenses or disbursements which arise under or relates to any Benefit Plan (other than Liabilities that are Assumed Liabilities pursuant to Section 2.3(j)); *provided, however*, that Excluded Employee Liabilities shall not include any (i) Liabilities for wages and salaries, vacation and other time-off and commissions accrued prior to the Closing, but unpaid in the ordinary course of business in respect of service by a Business Employee after the last day covered by the last regularly scheduled payroll date of Sellers and their respective Affiliates and Subsidiaries to occur on or prior to the Closing Date and any payroll taxes associated therewith, or (ii) Liabilities with respect to Business Employees in Canada that are assumed by Purchaser by operation of labour relations and minimum employment standards Laws.

“**Excluded Liabilities**” has the meaning set forth in Section 2.4.

“**Exit Costs**” means the amount of 503(b)(9) Claims ~~and the amount needed to conduct an orderly wind down of Sellers after the Closing Date~~.

“**FCPA**” has the meaning set forth in Section 5.18(b).

“**Filing Date**” shall mean (i) the Petition Date in respect of the US Sellers and (ii) the CCAA Filing Date in respect of the Canadian ~~Sellers~~Seller.

“**Financial Assurance**” means the letters of credit issued by HSBC Bank Canada in favor of (i) the Ontario Ministry of the Environment and Climate Change in the amount of CAD\$371,058 as required by Certificate of Property Use No. 3643-99WJAH for the Designated Location and (ii) the Town of Ajax in connection with the Canadian Seller’s environmental obligations related the amount of CAD\$11,283 as required by the Amending Site Plan Agreement dated October 23, 2012 and registered on title to the Designated Location; as more particularly set out in Section 1.1 of the Seller Disclosure Schedule instrument no. DR1137039) between the Corporation of the Town of Ajax and the Canadian Seller for the Designated Location.

“**Forecasted Availability**” means projected Excess Availability on or about the Closing Date as set forth in the budget prepared in accordance with the terms of the DIP Credit Agreement.

“**FSRA**” means the Financial Services Regulatory Authority of Ontario.

“**Fundamental Documents**” means the documents of a Person (other than a natural person) by which such Person establishes its legal existence or which govern its internal affairs. For example, the Fundamental Documents of a corporation would be its articles, charter, bylaws and unanimous shareholders’ agreements, if any, and the Fundamental Documents of a limited liability company would be its certificate of formation and limited liability company agreement or operating agreement.

“Fundamental Representations” means (i) with respect to Sellers and the Acquired Subsidiaries, the representations and warranties contained in Section 5.1 (Organization, Standing and Corporate Power), Section 5.3(a) (Authority; Noncontravention), Section 5.4(a) (Capitalization of Acquired Subsidiaries), and Section 5.16 (No Brokers), and (ii) with respect to Purchaser, the representations and warranties contained in Section 6.1 (Corporate Existence and Qualification), Section 6.2 (Corporate Power, Authorization, Enforceable Obligations), and Section 6.5 (No Brokers).

“Funding Arrangements” means a trust agreement or other funding arrangement established in respect of any of the Canadian Pension Plans or in respect of the Purchaser’s Plan, as the context requires.

“GAAP” means generally accepted accounting principles in the United States.

“General Intangibles” means all intangible assets now owned by any Seller, including all right, title and interest that such Seller may now or hereafter have in or under any Contract, all payment intangibles, interest in business associations, Licenses, Permits, uncertificated securities, checking and other bank accounts, rights to receive Tax refunds (to the extent assignable under Law) and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Equity Securities and investment property, and rights of indemnification.

“Governmental Authority” shall mean any (i) nation, state, province, tribal, county, city, municipality, town, village, district, or other jurisdiction of any nature; (ii) federal, state, local, provincial, regional, municipal, foreign, local or other government; (iii) governmental or quasi-governmental authority of any nature (including any government agency, ministry, branch, department, official, or entity and any court or other tribunal); (iv) multi-national organization or body; or (v) body exercising, or entitled to exercise, any administrative, executive, judicial, legislative, police, regulatory, or Taxing Authority or power of any nature.

“Governmental Order” means any order, writ, judgment, injunction, decree, stipulation, determination, or award entered by or with any Governmental Authority, including, but not limited to, any order, writ, judgment, decree, stipulation, determination, award or guideline issued by a Governmental Authority restricting business operations.

“Hazardous Materials” means any (i) constituent, material, substance, chemical, or waste (or combination thereof) that is listed, defined, designated, regulated or classified as hazardous, explosive, corrosive, flammable, infectious, toxic, carcinogenic, mutagenic, radioactive, dangerous, a pollutant, a contaminant, or words of similar meaning or effect under any Environmental Law, (ii) substance that requires removal or remediation under any Environmental Law, (iii) substance that can give rise to liability under any Environmental Law or the presence of which requires investigation, clean up, removal, abatement, remediation or other corrective or remedial action under any Environmental Laws, and (iv) petroleum or petroleum by-products, asbestos or asbestos-containing materials or products, per- and polyfluoroalkyl substances, polychlorinated biphenyls (PCBs) or materials containing same, chlorinated solvents, polyvinyl chloride, radioactive materials, lead-based paints or materials, radon, flammable substances, explosives, toxic mold, and including the contaminants in respect

of site condition standards that have been established under Records of Site Condition – Part XV.1 of the Environmental Protection Act (Ontario Regulation 153/04) and all other similar or analogous legislation of a Governmental Authority.

“**Holdings**” has the meaning set forth in the Preamble.

“**Hourly DB Plan**” means the DCL Corporation Hourly Pension Plan registered under the PBA and the Tax Act with registration number 0401455.

“**Hourly DC Plan**” means the Dominion Colour Corporation Hourly Pension Plan registered under the PBA and the Tax Act with registration number 1166354.

“**Incidental License**” means any (i) permitted use right to confidential information in a non-disclosure agreement entered into in the ordinary course of business; (ii) non-exclusive license to commercially-available software, including all shrink-wrap and click-wrap licenses or other generally commercially available license with annual payments of less than \$100,000, and (iii) non-exclusive license that is not material to the Business and merely incidental to the transaction contemplated in the agreement, the commercial purpose of which is primarily for something other than such license, such as any: (A) agreement for the sale of advertising; (B) sales or marketing or similar agreement that includes a license to use Trademarks or Copyrights for the purposes of promoting the products and services of the Business and (C) vendor agreement that includes permission for the vendor to identify the Business as a customer of the vendor.

“**Income Taxes**” means Taxes imposed on, or measured by, income or profits, including franchise taxes imposed in lieu of income tax.

“**Indebtedness**” shall mean, with respect to any Person, without duplication:

- (a) obligations of such Person for borrowed money, or otherwise evidenced by bonds, debentures, notes or similar instruments;
- (b) all obligations of such Person under conditional sale or other title retention agreements relating to property purchased by such Person, other than any such obligation made in the ordinary course of business;
- (c) all obligations of such Person issued or assumed as the deferred purchase price of property or services (excluding obligations of such Person to creditors for raw materials, Inventory, services and supplies incurred in the ordinary course of such Person’s business);
- (d) all obligations of such Person under leases that have been or should be treated, in accordance with GAAP, as capitalized lease obligations of such Person;
- (e) all obligations of others secured by any Lien on property or assets owned or acquired by such Person, whether or not the obligations secured thereby have been assumed, other than any such obligation made in the ordinary course of business;

(f) all obligations of such Person under interest rate or currency swap transactions (valued at the termination value thereof);

(g) all letters of credit issued for the account of such Person (excluding letters of credit issued for the benefit of suppliers to support accounts payable to suppliers incurred in the ordinary course of business); and

(h) all guarantees and arrangements having the economic effect of a guarantee of such Person of any Indebtedness of any other Person.

“Indemnification Claims” means claims for indemnification of any present or former officer, director, employee, partner or member of any Seller whether arising under a Seller’s Fundamental Documents or any Contract arising prior to the Closing Date.

“Instruments” means all “instruments,” as such term is defined in the UCC, now owned or hereafter acquired by any Seller, wherever located, and, in any event, including all certificated securities, all certificates of deposit, and all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, chattel paper.

“Intellectual Property” means any and all Patents, Copyrights, Trademarks, Trade Secrets, methods, processes, know how, internet domain names, social media accounts, and other intellectual property or industrial or intangible rights, all goodwill associated therewith, and all rights to sue at law or in equity for any infringement or other impairment thereof, including the right to receive all proceeds and damages therefrom.

“Intellectual Property Agreements” means all Copyright Licenses, Patent Licenses, and Trademark Licenses and all other agreements granting any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary with respect to any Intellectual Property used in connection with the Business (expressly excluding, in each instance, Incidental Licenses).

“Inventory” means all “inventory,” as such term is defined in the UCC, now owned or hereafter acquired by any Seller, wherever located, and, without limiting the foregoing, all (i) inventory, (ii) merchandise, (iii) goods and other personal property, (iv) raw materials, work or construction in process, (v) finished goods, returned goods, or materials or supplies of any kind, nature or description and (vi) products, equipment, and appliances, whether owned or on order, including all embedded software.

“Investment Canada Act” means the Investment Canada Act (Canada), R.S.C. 1985, c. 28 (1st Supp), as amended, and the regulations promulgated thereunder.

“IRC” means the U.S. Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“IRS” means the U.S. Internal Revenue Service.

~~“KEIP” means Sellers’ key employee incentive plan which has been approved by the board of directors or the board of managers, as applicable, of Sellers.~~

“**Knowledge of Sellers**” means the actual knowledge after reasonable inquiry of the individuals identified in Section 1.1(b) of the Seller Disclosure Schedule.

“**Laws**” means any federal, state, provincial, local or municipal (or any subdivision of any of them), foreign, international or supranational law (including common law), statute, treaty, ordinance, rule, regulation, by-law, Order, code, or other similar authority enacted, adopted, promulgated, or applied by any Governmental Authority.

“**Leased Real Estate**” has the meaning set forth in Section 5.6(c).

“**Leases**” means each unexpired lease of real or personal property leased, licensed or otherwise granted to Sellers or the Acquired Subsidiaries.

“**Liabilities**” means any and all debts, losses, liabilities, claims, damages, fines, costs, royalties, proceedings, deficiencies or obligations of any nature, whether known or unknown, absolute, accrued, contingent or otherwise and whether due or to become due and any out-of-pocket costs and expenses (including reasonable attorneys’, accountants’ or other fees and expenses).

“**License**” means any licenses, franchises, Consents, approvals and any Permits, including Permits of or registrations with any Governmental Authority; but expressly excluding any license or sublicense of Intellectual Property.

“**License Approvals**” shall have the meaning set forth in Section 7.12.

“**Liens**” means any mortgage, pledge, hypothecation, security interest (whether contractual, statutory or otherwise), charge, trust (including any statutory, deemed or constructive trust), encumbrance, easement, license, encroachment, servitude, Consent, option, lien, put or call right, right of first refusal, voting right, charge, lease, long-lease (*in Dutch: erfpacht*), sublease, right to possession, adverse ownership claim or other restrictions or encumbrances of any nature whatsoever.

“**Material Adverse Effect**” means any fact, condition, change, violation, inaccuracy, circumstance, effect, event, or occurrence that individually or in the aggregate has had, or would be reasonably likely to have, a material adverse change in or material adverse effect on the Purchased Assets or the Business (excluding the Excluded Assets and the Excluded Liabilities), in each case taken as a whole, but excluding (i) any change or effect to the extent that it results from or arises out of (a) the filing and pendency of the Bankruptcy Cases or the financial condition of Sellers; (b) the execution and delivery of this Agreement or the announcement thereof or consummation of the transactions contemplated hereby; (c) changes in (or proposals to change) Law, generally accepted accounting principles, or other accounting regulations or principles; or (d) any action contemplated by this Agreement or taken by Sellers at the request of, or with the consent of, Purchaser; (ii) any change or effect generally applicable to (a) the industries and markets in which Sellers operate or (b) economic or political conditions or the securities or financial markets in any country or region; (iii) any outbreak or escalation of

hostilities or war or any act of terrorism; (iv) any occurrence, threat, or effects of a disease outbreak, epidemic, pandemic, or similar widespread public health concern, which results in recommendations or mandates or Governmental Order from Governmental Authorities to reduce travel, avoid large gatherings, self-quarantine, or extended shutdown of certain businesses, including any recommendations or mandates on levels or types of recreational or business activities that Sellers may hold at their locations due to the ongoing COVID-19 pandemic; (v) any objections in the US Bankruptcy Court or the CCAA Court to (a) this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby, (b) the reorganization of Sellers and any related plan of reorganization or disclosure statement, or (c) the Sale Motions, Sale Procedures Orders or Sale Orders; (vi) the assumption or rejection of any Purchased Contract or Leased Real Estate; and (vii) any failure by the Business to meet any internal or published projections, forecasts or revenue or earnings predictions.

“Material Contract” and **“Material Contracts”** has the meaning set forth in Section 5.10(a).

“Monitor” means Alvarez & Marsal Canada Inc., or such other court-appointed monitor of the Canadian Seller in the CCAA Proceeding.

“Monitor’s Certificate” means the certificate issued by the Monitor, in substantially the form attached to the CCAA Sale Order, certifying that all conditions of Closing in favor of the Canadian Seller have been satisfied by Purchaser or waived by the Canadian Seller.

“Multiemployer Plan” means each Benefit Plan that is a “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA, Section 414(f) of the IRC, or a “multi-employer pension plan” pursuant to subsection 147.1 of the Tax Act, subsection 1(3) of the PBA or as such similar terms are defined in similar pension standards legislation of Canada or a province.

“No Action Letter” means a communication in writing from the Commissioner of Competition advising that he does not, at that time, intend to make an application to the Competition Tribunal under Section 92 of the Competition Act in respect of the transactions contemplated by this Agreement.

“Order” means any judgment, order, administrative order, writ, stipulation, injunction (whether permanent or temporary), award, decree or similar legal restraint of, or binding settlement having the same effect with, any governmental Action.

“Owned Real Property” has the meaning set forth in Section 5.6(d).

“Partially Transferred Canadian Pension Plan” has the meaning set forth in Section 7.9(b)(i).

“Patent Licenses” means all written agreements providing for the grant by or to a Seller of any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary under any Patent, including the right to manufacture, make, have made,

use or sell, offer for sale or otherwise exploit any invention covered in whole or in part by a Patent, in connection with the Business.

“Patents” means all of the following: (a) all letters patent, patents and patent rights, including those relating to utility patents, design patents, industrial designs or any other protectable subject matter, of the United States, Canada or of any other country, and all applications in connection therewith in the United States Patent and Trademark Office, Canadian Intellectual Property Office or in any similar office or agency of the United States, Canada, or any other country; (b) all reissues, continuations, continuations-in-part, divisionals, reexaminations or extensions thereof; and (c) all foreign equivalents to those patents or applications subsequently filed in any jurisdiction.

“PBA” means the Pension Benefits Act (Ontario) and regulations thereunder.

“PBA Reg 310/13” means Ontario Regulation 310/13 made pursuant to the PBA.

“Permits” means all approvals, authorizations, certificates, consents, franchises, variances, licenses, and permits issued by any Governmental Authority (including all applications, renewal applications, or documents filed, or fees paid, in connection therewith).

“Permitted Liens” means: (i) statutory Liens for current and future property Taxes, assessments or other similar governmental charges, including water and sewage charges, not yet due and payable, or being contested in good faith and for which adequate reserves have been taken in accordance with GAAP; (ii) present and future zoning, building codes and other land use Laws regulating the use or occupancy of any Owned Real Property or Leased Real Estate or the activities conducted thereon which are imposed by any Governmental Authority having jurisdiction over such Owned Real Property or Leased Real Estate which are not violated by the current use or occupancy of such Owned Real Property or Leased Real Estate, where such violation would reasonably be expected to have a Material Adverse Effect on the Business; and (iii) easements, covenants, conditions, restrictions and other similar matters affecting title to such Owned Real Property or Leased Real Estate and other title encumbrances which encumber the Owned Real Property or Leased Real Estate (as applicable) as of the date hereof and which do not, individually or in the aggregate, materially impair the use, occupancy, maintenance, repair or development of such Owned Real Property or Leased Real Estate or the operation of the Business where such impairment would have a Material Adverse Effect on the Business; and (iv) Liens securing Indebtedness.

“Person” shall be construed broadly and means any individual, partnership, limited partnership, corporation, limited liability company, association, joint stock company, estate, trust, joint venture, unincorporated organization, other entity, or a Governmental Authority.

“Petition Date” has the meaning given to it in the Recitals.

“Pre-Petition Term Lenders” means the lenders under the Pre-Petition Term Loan.

“Pre-Petition Term Loan” means that certain Credit Agreement, dated as of April 6, 2018 (as previously amended, amended and restated, supplemented, or otherwise modified, and as may be further amended, modified or supplemented from time to time), by and among H.I.G.

Colors, Inc., the Canadian Seller (f/k/a Dominion Colour Corporation), DCL Holdings (USA), Inc. (f/k/a Lansco Holdings Inc.), as borrowers, the guarantors named therein, Delaware Trust Company, as administrative agent, and the lender parties thereto.

“Pre-Petition Term Loan Obligations” means the loans and other “Obligations” (as defined in the Pre-Petition Term Loan) under the Pre-Petition Term Loan.

“Preserve” means any action necessary to preserve, maintain, or otherwise protect any assets being sold or assigned pursuant to this Agreement, including, but not limited to, actions necessary to notice and/or pursue all insurance proceeds of Policy Number MPL 0156209-04, issued by Zurich-American Insurance Company to H.I.G. Colors Holdings, Inc.

“Professional Fees and Expenses” means the ~~allowed~~ reasonable and documented fees and expenses accrued and unpaid by Sellers’ and Purchaser’s professionals as of the Closing Date in accordance with the DIP Budget (as defined in the US DIP Order) less amounts held as retainers by such professionals.

“Purchase Price” has the meaning set forth in Section 3.1.

“Purchased Assets” has the meaning set forth in Section 2.1.

“Purchased Contracts” means all Contracts designated by Purchaser to be assumed and assigned pursuant to Section 2.5.

“Purchaser” has the meaning set forth in the Preamble.

“Purchaser Advisors” means the equity holders, current and prospective leverage providers, current and prospective limited partners and investors, officers, employees, attorneys, financial advisors, Affiliates and other representatives of Purchaser.

“Quebec Pension Plan” means the government sponsored pension plan established under the Act Respecting the Quebec Pension Plan (Quebec).

“Rate of Return” has the meaning set forth in Section 7.9(a)(iv).

“Registered Intellectual Property” has the meaning set forth in Section 5.8(c).

“Regulatory Approvals” means the Competition Act ~~Clearance (if required), the Competition Authority~~ Clearance (if required) and all Consents and other authorizations reasonably required to be obtained from, or any filings required to be made with, any Governmental Authority that are necessary to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

“Rejection Damages Claims” means all claims arising from or related to the rejection of a Contract under section 365 of the US Bankruptcy Code or the disclaimer of a Contract under

section 32 of the CCAA, including any administrative expense claims arising from the rejection or disclaimer of Contracts previously assumed, unless such Contract is a Purchased Contract.

“Replacement Financial Assurance” has the meaning set forth in Section 7.14.

“Representatives” has the meaning specified in Section 7.6(d).

“Required Amount” means an amount equal to (a) the Professional Fees and Expenses, plus (b) the Designated Amount, plus (c) the CCAA Cash Pool.

“Responsible Officer” means, with respect to any Person, the chief restructuring officer, chief executive officer, president, chief operating officer, chief financial officer, controller and chief accounting officer, vice president of finance or treasurer of such Person.

“Restructuring Transaction” means a sale of Sellers’ assets and business pursuant to section 363 of the US Bankruptcy Code and/or section 36 of the CCAA in the Bankruptcy Cases.

“Retention Eligible Employee” means each non-union Business Employee who is (i) an officer of Holdings or any of its Subsidiaries, or (ii) scheduled on Section 1.1 of the Seller Disclosure Schedule, ~~which schedule Purchaser may supplement or amend within ten (10) days following the date of this~~ as supplemented in accordance with the Original Asset Purchase Agreement.

“Salaried DB Plan” means the DCL Corporation Salaried Pension Plan registered under the PBA and the Tax Act with registration number 0989616.

“Salaried DC Plan” means the Pension Plan for the Employees of Dominion Colour Corporation registered under the PBA and the Tax Act with registration number 1141860.

“Sale” has the meaning set forth in the Recitals.

“Sale Motions” means, together, the CCAA Sale Motion and the US Sale Motion.

“Sale Orders” means, together, the CCAA Sale Order and the US Sale Order.

“Sale Procedures” means the bidding procedures governing the Sale, in substantially the form attached as Exhibit C.

“Sale Procedures Orders” means, together, the CCAA Sale Procedures Order and the US Sale Procedures Order.

“Sanctioned Person” means, at any time, (a) any Person listed in any sanctions-related list of designated Persons maintained by any applicable Governmental Authority, including the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of State, or the Government of Canada including Global Affairs Canada, (b) any Person operating, organized or resident in a country, region or territory which is itself the subject or target of any

Sanctions or any Sanctions-related list or (c) any Person owned or Controlled by any such Person described in the foregoing clauses (a) or (b).

“Sanctions” means any applicable trade or economic sanctions administered or enforced by the U.S. Department of the Treasury’s Office of Foreign Assets Control, the U.S. Department of State, the Minister of Foreign Affairs, Global Affairs Canada, the Canada Border Services Agency, the Royal Canadian Mounted Police, the Public Prosecution Service of Canada, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority.

“Securities Act” means the Securities Act of 1933, as amended.

“Select Assumed Liabilities” means the Assumed Liabilities set forth in Section 2.3(c) (solely with respect to Cure Costs, but not obligations to provide adequate assurances), Section 2.3(e), Section 2.3(f), Section 2.3(j) (solely with respect to accrued and unpaid contribution amounts with respect to the Canadian Pension Plans that are assigned to Purchaser as of the Closing Date), and Section 2.3(n) (to the extent accrued but unpaid as of the Closing Date).

“Selected Courts” has the meaning set forth in Section 12.2(a).

“Seller Disclosure Schedule” has the meaning set forth in ARTICLE V.

“Seller Representatives” means Sellers’ directors, officers, employees, advisors, attorneys, accountants, consultants, financial advisors, bankers, or other agents or representatives.

“Sellers” has the meaning set forth in the Preamble.

“Statement of Investment Policies and Procedures” means the statement filed with FSRA pursuant to the PBA by Sellers in respect of a Canadian Pension Plan.

“Structures” means, collectively, buildings, structures, and fixtures on, and other improvements to, the Owned Real Property or Leased Real Estate.

“Subsidiary” or **“Subsidiaries”** means for any Person, any other Person or Persons of which a majority of the outstanding voting Equity Securities are owned, directly or indirectly, by such first Person.

“Tax” or **“Taxes”** means, whether disputed or not, (i) any federal, state, provincial, county, local or foreign taxes, charges, fees, levies or other assessments, including all net income, gross income, sales and use, goods and services (including all ETA Tax and Quebec sales tax), service, use, ad valorem, transfer, gains, profits, excise, franchise, real and personal property, gross receipts, value added, capital stock, capital gains, windfall profits, escheat, unclaimed or abandoned property, production, business and occupation, disability, employment, payroll, license, estimated, stamp, custom duties, severance, unemployment, lease, recording registration, social security (or similar, including Canada Pension Plan contributions, employment insurance premiums and Quebec Pension Plan premiums), Medicare, alternative or add-on minimum, net worth, documentary, intangibles, conveyancing, environmental, premium,

or withholding (including backup withholding) taxes, impost or charges or other compulsory payments imposed by any Governmental Authority, whether disputed or not, and includes any interest and penalties (civil or criminal) on or additions to any such taxes and (ii) liability for items in (i) of any other Person by Contract, operation of Law (including Treasury Regulation §1.1502-6) or otherwise.

“Tax Act” means the Income Tax Act (Canada) and the regulations thereunder.

“Tax Proceeding” has the meaning set forth in Section 8.3.

“Tax Returns” means any return, report, election, declaration, statement, information return, schedule, or other document (including any related or supporting information) filed or required to be filed with any Governmental Authority in connection with the determination, assessment, collection or administration of any Taxes or the administration of any Laws, regulations or administrative requirements relating to any Taxes or any amendment thereof.

“Taxing Authority” means, with respect to any Tax, a Governmental Authority that imposes such Tax, and the agency (if any) charged with the collection of such Tax for such entity, including any Governmental Authority that imposes, or is charged with collecting, social security or similar charges or premiums.

“Trade Secrets” means all confidential and proprietary information used in the Business for commercial advantage and not generally known or reasonably ascertainable by any unauthorized Person, including know-how, trade secrets, manufacturing and production processes and techniques, research and development information, databases and data, including technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information.

“Trademark Licenses” means any written agreement providing for the grant of any right, license, release, covenant not to sue, or non-assertion assurance to or from Seller or any Acquired Subsidiary to use any Trademark in connection with the Business.

“Trademarks” means all of the following: (i) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, slogans, brand names, and other source or identifiers (whether registered or unregistered), and all registrations and applications in connection therewith, including registrations and applications in the United States Patent and Trademark Office, Canadian Intellectual Property Office or in any similar office or agency of the United States, Canada, any state, province or territory thereof, or any other country or any political subdivision thereof; (ii) all reissues, extensions, foreign equivalents or renewals thereof; and (iii) all goodwill of the Business associated with or symbolized by any of the foregoing.

“Transaction Documents” means this Agreement and any other agreements, documents and instruments to be executed and delivered pursuant to this Agreement.

“Transfer Taxes” has the meaning set forth in Section 8.2.

“Transferred Employee” means (i) each non-union Canadian Employee or US Employee who (A) has received an Offer from Purchaser or any of its Affiliates in accordance

with Section 7.8(a) below, (B) accepts such Offer, and (C) commences employment with Purchaser and its Affiliates on or promptly following the Closing Date, (ii) each unionized Canadian Employee, other than a unionized Canadian Employee who is primarily employed at the Designated Location, ~~if the Designated Location is designated as an Excluded Asset in accordance with Section 2.2, or is otherwise designated as an Excluded Employee in accordance with the definition of Excluded Employee,~~ and (iii) each European Employee.

“Transferred Pension Plan Participants” has the meaning set forth in Section 7.9(b)(ii).

“Treasury Regulations” means one or more Treasury regulations promulgated under the IRC by the Treasury Department of the United States.

“Trust” means a trust to be established prior to the Sale solely for the benefit of those vendors, shippers, suppliers, and/or warehouseman identified in the trust agreement governing such trust, which shall be in form and substance reasonably acceptable to Purchaser and the Committee and which form of such agreement shall be filed prior to the objection deadline to the US Sale Motion. Such trust agreement will require, among other things, that (i) any beneficiary of the Trust waive any claims in the US Bankruptcy Cases; (ii) a creditor representative be appointed solely by the Committee prior to the Sale that will control and administer the trust; and (iii) neither the Purchaser nor the DIP Lender will be eligible to receive any proceeds of the Trust. For the avoidance of doubt, the Trust will only benefit those creditors specifically provided for in such trust agreement.

“UCC” means the Uniform Commercial Code.

“UK Shares” means the entire issued share capital of DCL Corporation (Europe) Limited, being 1,467,591 ordinary shares of £1.00 each.

“US Bankruptcy Cases” has the meaning set forth in the Recitals.

“US Bankruptcy Code” has the meaning set forth in the Recitals.

“US Bankruptcy Court” has the meaning set forth in the Recitals.

“US DIP Order” means the interim Order or final Order, as then applicable, authorizing post-petition debtor-in-possession financing or the use of cash collateral to be entered by the US Bankruptcy Court.

“US Employee” means each Business Employee who is actively employed by DCL Corporation (BP), LLC, DCL Holdings (USA), Inc. or DCL Corporation (USA), LLC immediately prior to the Closing.

“US Purchased Assets” means Purchased Assets belonging to the US Sellers.

“US Sale Hearing” means the hearing scheduled by the US Bankruptcy Court to approve the Sale of the US Purchased Assets.

“US Sale Motion” has the meaning set forth in Section 7.7(a).

“US Sale Order” means an Order of the US Bankruptcy Court approving the Sale of the US Purchased Assets, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“US Sale Procedures Hearing” means the hearing scheduled by the US Bankruptcy Court to approve the Sale Procedures.

“US Sale Procedures Order” means an Order of the US Bankruptcy Court approving procedures governing the solicitation of bids for the US Sellers’ assets and business and scheduling an auction and hearing on the Sale of the US Purchased Assets, which shall be in form and substance acceptable to Purchaser in its discretion, acting reasonably.

“US Sellers” has the meaning set forth in the Recitals.

“Utility Services” means water, sewer service, electricity, waste disposal, natural gas, and other similar services from utility providers or their brokers.

Section 1.2 Schedules. References to this Agreement shall include any Exhibits, Schedules and Recitals to this Agreement and references to Sections, Exhibits and Schedules are to Sections of, Exhibits to and Schedules to, this Agreement.

Section 1.3 Information. References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

Section 1.4 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. Whenever the words “include,” “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation.” The words “hereof,” “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, unless the context otherwise requires. The word “or” shall not be deemed to be exclusive. The word “extent” and the phrase “to the extent” when used in this Agreement shall mean the degree to which a subject or other thing extends, and such word or phrase shall not mean simply “if.” All terms defined in this Agreement shall have the defined meaning when used in any certificate or other document made or delivered pursuant thereto unless otherwise defined therein. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such terms. References in this Agreement to specific Laws or to specific provisions of Laws shall include all rules and regulations promulgated thereunder. All Exhibits and schedules annexed to this Agreement or referred to in this Agreement are incorporated in and made a part of this Agreement as if set forth in full in this Agreement. References to any Contract are to that Contract as amended, modified or supplemented from time to time in accordance with the terms of this Agreement and such Contract. Each of the parties to this Agreement has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties to this

Agreement, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

ARTICLE II PURCHASED SALE OF ASSETS; ASSUMPTION OF LIABILITIES

Section 2.1 Purchase and, Sale, and/or Assignment of Assets. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) purchase, acquire and accept from Sellers, and Sellers shall sell, transfer, assign, convey and deliver to Purchaser (or its designated Affiliate or Affiliates), pursuant to and in accordance with the Sale Orders, all of Sellers' right, title and interest in, to and under the Purchased Assets, free and clear of all Liens (other than Permitted Liens), Claims and interests, other than the Assumed Liabilities. "**Purchased Assets**" means all of Sellers' assets (other than the Excluded Assets, even if such asset is listed in this Section 2.1), including:

(a) all cash, cash equivalents, prepayments (including all prepayments made to third party vendors), deferred assets, refunds, credits or overpayments, except for the Excluded Cash;

(b) all Equity Securities in the Acquired Subsidiaries; (including, for the avoidance of doubt, the Dutch Shares and the UK Shares);

(c) all Owned Real Property ~~(other than the Designated Location, but only if it is designated as an Excluded Asset in accordance with Section 2.2);~~

(d) all Accounts Receivables;

(e) all Inventory;

(f) to the extent transferable, all insurance policies of Sellers and any claims thereunder to the extent such policies relate to the operation of the Business or to any Assumed Liabilities, except for coverage and proceeds for any claims relating to or arising prior to the Closing Date, excluding any directors and officers insurance policy;

(g) all Leased Real Estate (and Leases thereof) and all Purchased Contracts; *provided*, that Leased Real Estate shall not be subject to exclusion pursuant to Section 2.2 or Section 2.5;

(h) any security deposits held by counterparties to the Purchased Contracts;

(i) all furniture, fixtures, equipment, marketing materials and other personal property used or usable in the operations of the Business, including, to the extent transferable, all rights to any software used in any computer equipment;

(j) all merchandise and other personal property used or usable in the Business;

(k) all amounts withheld by Sellers and their respective Subsidiaries prior to the Closing from the compensation payable to any Business Employee that is required by the terms of any Benefit Plan or applicable Law that has not, as of the Closing Date, been transferred as required by applicable Law or contributed to such Benefit Plan or the trust maintained in respect of such Benefit Plan;

(l) all assets of, or set aside in respect of, any Assumed Benefit Plans to the extent related to Liabilities assumed pursuant to Section 2.3(j);

(m) to the extent transferable pursuant to applicable law, all Licenses and Permits required for Sellers to conduct the Business as currently conducted or for the ownership, operation, use, maintenance, or repair of any of the Purchased Assets;

(n) all Books and Records (including Tax records and Tax Returns) (provided that Sellers may retain copies of Books and Records);

(o) all (i) Intellectual Property owned by any Seller and used or held for use in connection with the Business; (ii) Intellectual Property Agreements; and (iii) Incidental Licenses;

(p) all General Intangibles associated with the Business;

(q) all guarantees, representations, warranties, and indemnities associated with the operation of the business, including in respect of any Assumed Liabilities;

(r) subject to Section 7.6(d) and Section 2.1(u), all past, present, and future claims; and causes of action whatsoever, including, but not limited to, Avoidance Actions and the proceeds thereof, choses in action, rights of recovery, rights of set off, and rights of recoupment (including any such item relating to the payment of Taxes) other than counterclaims and defenses related to Excluded Assets; for avoidance of doubt, these claims include, but are not limited to, all claims against equity holders, insiders, and sponsors of the Sellers, in addition to claims against the Sellers' current and former officers and directors;

(s) all prepayments, deposits, deferred assets, rights to refunds (including pre- and post-bankruptcy rights to Tax refunds), credits, rights to recover overpayments or other receivables, other than those related to Excluded Assets; **and**

(t) all rights with respect to proofs of claim filed by or on behalf of any Seller in any bankruptcy, insolvency or restructuring case or proceeding other than the Bankruptcy Cases; and

(u) all of Sellers' rights and interests (free and clear of restrictions, conditions, or limitations, if any, in any of the organizational documents governing such

rights and interests) to Preserve and prosecute past, present, and future claims and causes of action set forth in Section 2.1(r).

Solely with respect to the Dutch Shares, the Canadian Seller hereby sells to Purchaser and Purchaser hereby purchases such Dutch Shares free and clear of all Liens (other than Permitted Liens), subject to the terms and subject to the conditions set forth in this Agreement and any orders necessary to consummate the Closing. Subject to the terms and subject to the conditions set forth in this Agreement and any orders necessary to consummate the Closing, the Canadian Seller shall transfer the Dutch Shares on the Closing Date, free and clear of all Liens (other than Permitted Liens) and together with all right attached to the Dutch Shares to Purchaser, and Purchaser shall acquire and accept the Dutch Shares from the Canadian Seller through execution of the Dutch Deed of Transfer.

Section 2.2 Excluded Assets. Notwithstanding anything in this Agreement to the contrary, including anything to the contrary in Section 2.1 hereof, Purchaser shall not purchase or assume and shall not be deemed to have purchased or assumed, any Excluded Assets relating to the Business of Sellers or any Affiliates of Sellers, and Sellers and their Affiliates shall retain all right, title and interest to, in and under the Excluded Assets. “**Excluded Assets**” means Sellers’ properties and assets set forth as follows:

- (a) each Seller’s Fundamental Documents;
- (b) Equity Securities in any Seller;
- (c) any Contracts that are not Purchased Contracts;
- (d) any confidential personnel or other records pertaining to relating to employees of Sellers that are not Transferred Employees;
- (e) all rights to any software used in any computer equipment included in the Purchased Assets, but only to the extent not freely transferable to Purchaser as set forth on Section 2.2 of the Seller Disclosure Schedule, ~~which shall be provided by Seller to Purchaser within 10 days following the date of this~~ as provided in accordance with the Original Asset Purchase Agreement;
- (f) all equipment and other assets and items that are (i) owned by third parties or (ii) leased to any Seller or an Affiliate thereof, or are not freely assignable, saleable, and transferable to Purchaser, in each case, pursuant to a contract or agreement that is not a Purchased Contract;
- (g) all assets of, or set aside in respect of, any of the Excluded Benefit Plans and any Assumed Benefit Plan (except as set forth in Section 2.1(l) above);
- (h) retainers held by any professional retained by Sellers in connection with the Bankruptcy Cases, and any funds of Sellers held in escrow or reserve with respect to the fees and expenses of any professional retained by Sellers in connection with the Bankruptcy Cases;

(i) rights that accrue or will accrue to Sellers under any of the Transaction Documents with respect to the Sale;

(j) any directors and officers (or similar) insurance policies, any insurance policies of Sellers that cover directors and officers, and any rights thereunder;

(k) Excluded Employee Benefit Plans;

(l) Excluded Cash and the Adequate Assurance Account; and

(m) rights to any Tax refunds of Sellers to the extent not assignable by Law;

provided, however, that Purchaser may designate any assets of Sellers as Excluded Assets (other than any Owned Real Property or Leased Real Estate) by written notice to Sellers at least five (5) Business Days prior to the Closing Date, ~~provided further, that Purchaser may designate the Designated Location as an Excluded Asset by written notice to Sellers no later than five (5) Business Days prior to the US Sale Procedures Hearing.~~ For the avoidance of doubt, any such designation of Excluded Assets shall not change the amount of the Credit Bid. ~~If Purchaser designates the Designated Location as an Excluded Asset, the parties agree to negotiate in good faith on commercially reasonable terms, as soon as practicable, appropriate amendments to this Agreement to reflect the designation of the Designated Location as an Excluded Asset and the arrangements that are required or appropriate to be put in place to deal with such exclusion.~~

Section 2.3 Assumed Liabilities. On the terms and subject to the conditions set forth in this Agreement, at the Closing, Purchaser shall (or shall cause its designated Affiliate or Affiliates to) assume and be responsible for, effective as of the Closing, and thereafter pay, honor, perform and discharge as and when due, all of the Assumed Liabilities. “**Assumed Liabilities**” means the Liabilities and obligations of Sellers set forth as follows:

(a) all Liabilities of Sellers relating to or arising under (i) Purchased Contracts, including all Cure Costs, (ii) Permits included within Purchased Assets, and (iii) Intellectual Property rights included within Purchased Assets;

(b) (i) Liabilities owed to vendors who provided goods and/or services to Sellers in the ordinary course of business on or after the Petition Date, ~~and (ii) Liabilities constituting 503(b)(9) Claims~~; *provided, however*, that Purchaser may contest the validity of any such vendor purchase orders in the ordinary course of business; (ii) Liabilities constituting 503(b)(9) Claims which shall be paid by Purchaser (A) on or within seven (7) days upon the Closing Date or (B) if subject to a vendor agreement entered into pursuant to the Critical Vendor Order, pursuant to the terms of such agreement; and (iii) Liabilities of Sellers under the Critical Vendor Agreements;

(c) all Cure Costs and any obligation to provide adequate assurance of future performance;

(d) all Liabilities of Sellers (other than in respect of Taxes, except for Assumed Tax Liabilities) relating to, or arising in respect of, the Purchased Assets accruing,

arising out of or relating to (i) events, occurrences, acts or omissions occurring or existing after the Closing Date or (ii) the operation of the Business or the Purchased Assets after the Closing Date;

(e) the Assumed Tax Liabilities;

(f) any Liabilities for wages and salaries, vacation and other time-off and commissions accrued but unpaid in the ordinary course of business in respect of service by a Business Employee after the last day covered by the last regularly scheduled payroll date of Sellers and their respective Affiliates and Subsidiaries to occur on prior to the Closing Date and any payroll taxes associated therewith;

(g) any pay in lieu of notice, termination pay, severance pay or similar amount, in each case, that is required to be paid by applicable Law to a Retention Eligible Employee who does not receive an Offer and who is terminated by Sellers on or about the Closing Date;

(h) all Liabilities for claims of customers incurred in the ordinary course of business arising after the Filing Date; *provided, however*, that Purchaser may contest any such customer claims in the ordinary course of business;

(i) all Liabilities in respect of Transferred Employees accruing from and after the Closing Date, but only to the extent arising out of or relating to their employment by Purchaser or any of its Affiliates or with respect to Business Employees in Canada that are assumed by the operation of labour relations and minimum employment standards Laws;

(j) (i) all Liabilities under any Assumed Benefit Plan with respect to any Transferred Employee, (ii) all Liabilities under the Assumed Benefit Plan that is a self-insured short-term disability plan of the Canadian Seller, and (iii) all Liabilities under the Canadian Pension Plans that are assumed by Purchaser;

(k) all Liabilities to contribute amounts withheld by Sellers and their respective Subsidiaries prior to the Closing from the compensation payable to any Business Employee that is required by applicable Law or the terms of any Benefit Plan that has not, as of the Closing Date, been transferred as required by applicable Law or contributed to such Benefit Plan or the trust maintained in respect of such Benefit Plan;

(l) all Environmental Liabilities relating to any Owned Real Property or Leased Real Estate ~~(provided that with respect to the Owned Real Property related to the Designated Location, such Owned Real Property has not been designated as a Excluded Asset in accordance with Section 2.2)~~, including Environmental Liabilities relating to, resulting from, caused by or arising out of: (i) the ownership, operation or control of the Purchased Assets, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or after the Closing Date; (ii) the presence, Environmental Release of or exposure to any Hazardous Materials at, on or under or migrating from any real property or otherwise included in the Real Property; (iii) the presence or Environmental Release of any Hazardous Materials in concentrations in excess of Environmental Law to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or

after the Closing Date; (iv) the transportation, storage, treatment, disposal, generation, manufacturing, recycling, reclamation, use or other handling of any Hazardous Materials with respect to the Purchased Assets and to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or after the Closing Date; (v) the presence, existence or human exposure to asbestos at, on, under or within any Purchased Asset in violation of Environmental Law, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing before or after the Closing Date; (vi) any violations of Environmental Law, to the extent accruing, arising out of or relating to events, occurrences, acts or omissions occurring or existing prior to or after the Closing Date; or (vii) the matters set forth on Section 5.15 of the Seller Disclosure Schedule;

(m) all obligations, commitments and Liabilities under any Permits that are assigned to Purchaser hereunder;

(n) all obligations and Liabilities, including on account of rent and Utility Services, accruing under any Leases;

(o) all Pre-Petition Term Loan Obligations, excluding the amount of such Pre-Petition Term Loan Obligations equaling the Credit Bid (as such Credit Bid amount may be increased pursuant to Section 3.1).

~~For the avoidance of doubt, all Environmental Liabilities relating to the Designated Location shall be Excluded Liabilities if the Designated Location is designated as an Excluded Asset in accordance with Section 2.2.~~

Section 2.4 Excluded Liabilities. Notwithstanding anything in this Agreement to the contrary, Purchaser shall not assume, and shall be deemed not to have assumed, any Liabilities relating to the Business of Sellers or any Affiliate of Sellers and Sellers and their Affiliates shall be solely and exclusively liable with respect to all such Liabilities, other than the Assumed Liabilities (collectively, the “**Excluded Liabilities**”), including:

- (a) any Liability of any Seller relating to any Excluded Asset;
- (b) any Liabilities of any Seller relating to or arising under vendor purchase orders arising in the ordinary course of business prior to the Filing Date and not otherwise constituting a 503(b)(9) Claim;
- (c) all Liabilities under Indebtedness for borrowed money of Sellers;
- (d) all Liabilities in relation to Taxes (or the non-payment thereof) of Sellers or their Affiliates for any taxable period other than Assumed Tax Liabilities;
- (e) all Excluded Employee Liabilities;
- (f) all Environmental Liabilities relating to, resulting from, caused by or arising out of the Excluded Assets;

- (g) all Rejection Damages Claims;
- (h) any tort Liabilities of any Seller;
- (i) all Liabilities relating to the CARES Act, including any obligation with respect to deferred payroll Taxes;
- (j) all Indemnification Claims; and
- (k) all Liabilities referenced on Section 2.4(k) of the Seller Disclosure Schedule; ~~provided, that Purchaser may supplement or amend such schedule within ten (10) days following the date of this Agreement to include additional Liabilities only if such additional Liabilities are not otherwise Assumed Liabilities.~~ as supplemented or amended by Purchaser in accordance with the terms of the Original Asset Purchase Agreement.

Section 2.5 Contract Designation Rights.

(a) No later than fourteen (14) days after the Petition Date, Sellers shall deliver to Purchaser a list of Contracts of each Seller with the anticipated amount of the Cure Costs associated with each Contract. Sellers shall cooperate with and provide such additional information to Purchaser in order to identify and provide to Purchaser as promptly as practicable all Material Contracts related to the Business (and the related Cure Costs), as well as Cure Costs of non-Material Contracts subject to assumption or assignment or rejection or disclaimer hereunder. Notwithstanding the foregoing, (i) prior to the Closing Date, Sellers shall supplement such list to add any Material Contracts entered into by Sellers during the pendency of the Bankruptcy Cases and (ii) on and within sixty-five (65) days after the Closing Date, Purchaser retains the right to assume any executory Contract that is not listed on Section 5.10(a) of the Seller Disclosure Schedule as of the Closing Date.

(b) No later than fourteen (14) days after the Petition Date, US Sellers shall file a motion, which shall be in form and substance acceptable to Purchaser, acting reasonably, and which motion may be the US Sale Motion, seeking, authorization and approval for certain assumption and assignment procedures including, among other things, seeking authority to (i) cause notice to be provided to all counterparties to the Contracts of the US Sellers regarding the potential assumption and assignment to Purchaser of all of the Contracts, except for any such Contracts that Purchaser previously has advised Sellers in writing that Purchaser does not wish to assume and (ii) fix the Cure Costs associated with each Contract as of the US Sale Hearing (or as of such later date acceptable to Purchaser). Sellers shall obtain entry of an order approving such motion no later than ~~forty-five (45) days after the Petition Date~~ February 21, 2023.

(c) In the CCAA Sale Motion, Canadian Seller shall seek, among other things, an Order of the CCAA Court for approval of certain assumption and assignment procedures to, among other things, (i) assign to Purchaser all of the Contracts of the Canadian Seller, except for any such Contracts that Purchaser previously has advised Sellers in writing that Purchaser does not wish to assume and (ii) fix the Cure Costs associated with each Contract as of the CCAA Sale Hearing (or as of such later date acceptable to Purchaser). Canadian

~~Sellers~~Seller shall obtain entry of an order approving such Order no later than ~~forty-five (45) days after the CCAA Filing Date~~March 16, 2023.

(d) Any motions filed by Sellers with, and any proposed Orders submitted by Sellers to, the US Bankruptcy Court or the CCAA Court seeking authorization after the date hereof to assign or assume or disclaim or reject any Contracts shall be satisfactory in form and substance to Purchaser. Sellers shall obtain consent from Purchaser prior to amending, modifying, or compromising Cure Costs or other material terms of any Contract.

(e) ~~For~~Except as otherwise provided in Section 2.3(b), for the purpose of determining whether a Contract of Sellers shall be included as a Purchased Contract or an Excluded Asset, from and after the Filing Date all Contracts shall be treated as follows:

(i) no later than the Bid Deadline, Purchaser shall notify Sellers in writing of those Contracts which Purchaser desires to be designated to be assumed by Sellers and assigned to Purchaser on the Closing Date, subject to later redesignation pursuant to Section 2.5(e)(iii) hereof;

(ii) any Contracts entered into during the pendency of the Bankruptcy Cases shall be designated to be assigned to Purchaser, unless Purchaser notifies Sellers in writing that it will not purchase such Contract prior to the Closing Date, in which case such Contract shall not be assigned to Purchaser and shall be included as an Excluded Asset; and

(iii) at any time prior to the Closing Date, Purchaser shall notify Sellers in writing of any Contracts which Purchaser does not desire to be assumed by Sellers and assigned to Purchaser, in which case any such Contracts shall not be assigned to Purchaser and shall be included as Excluded Assets and may be rejected by Sellers; *provided* that, for a period of sixty-five (65) days after the Closing Date, Purchaser may notify Sellers in writing of Contracts (other than Contracts of the Canadian Seller) that it no longer wishes to purchase and assume in the event the consents set forth in Section 2.5(h) hereof are not obtained within a reasonable period of time.

(iv) Purchaser shall provide, with respect to any Contract designated to be assumed and assigned hereunder, such information or documentation related to “adequate assurance of future performance” as shall be reasonably required in connection with the assumption and assignment of such Contract, and upon US Bankruptcy Court or CCAA Court, as applicable, approval for the assumption and assignment thereof to Purchaser, any such Contract so designated shall constitute a Purchased Asset hereunder, subject to later redesignation pursuant to Section 2.5(e)(iii) hereof. Any Contract that is not assumed and assigned as provided above or in Section 2.3(b) shall be an Excluded Asset, and shall not constitute a Purchased Asset hereunder. Except as otherwise provided in Section 2.5(h), to the extent that, prior to Closing, any Purchased Contract is not subject to an order of the US Bankruptcy Court or the CCAA Court with respect to the assumption and assignment of such Purchased Contract, any Liabilities of Sellers related to such Purchased Contract shall be the responsibility of Sellers until such Purchased Contract is either assumed by Sellers and assigned to Purchaser or rejected or disclaimed by Sellers.

(f) From and after the date hereof through the Closing, Sellers shall not reject, repudiate, disclaim or take any action (or fail to take any action that would (or would reasonably be likely to) result in rejection by operation of Law) to reject, repudiate or disclaim any material Contract without the prior written consent of Purchaser.

(g) Nothing in this Agreement shall be construed as an attempt by Sellers to assign any Contract to the extent that such Contract is not assignable under the US Bankruptcy Code, the CCAA or otherwise without the consent of the other party or parties thereto where the consent of such other party has not been given or received, as applicable.

(h) With respect to any Purchased Contract (other than a Lease for Leased Real Estate) for which the consent of a party thereto to the assignment thereof is required notwithstanding the entry or granting of the Sale Orders that shall not have been obtained at Closing and any claim, right or benefit arising thereunder or resulting therefrom, to the extent Purchaser waives the condition set forth in Section 9.2(d) (to the extent applicable), prior to the Closing Date, Sellers and Purchaser shall use reasonable efforts to obtain as expeditiously as possible the written consent of the other party or parties to such Contract necessary for the assignment thereof to Purchaser. Until any such consent, waiver, confirmation, novation or approval is obtained, for a period of sixty-five (65) days from the Closing Date, Sellers and Purchaser shall cooperate to establish an arrangement reasonably satisfactory to Sellers and Purchaser under which Purchaser would obtain the claims, rights and benefits and assume the corresponding Liabilities and obligations thereunder (including by means of any subcontracting, sublicensing or subleasing arrangement). In such event, Sellers will hold in trust for and promptly pay to Purchaser, when received, all moneys received by them under any such Purchased Contract or any claim, right or benefit arising thereunder and Purchaser shall be solely responsible for the costs of any such Purchased Contract. Purchaser acknowledges that no adjustment to the Purchase Price shall be made for any Contracts that are not assigned. Until such written consent is obtained, Purchaser shall have the ability to designate the Contract as an Excluded Asset. Nothing in this paragraph shall be deemed a waiver of Purchaser's right to receive an effective assignment of all of the Purchased Assets at Closing nor shall any Contracts covered by this paragraph be deemed to constitute Excluded Assets solely by virtue of this paragraph.

(i) Within sixty-five (65) days after the Closing Date, US Sellers shall file with the US Bankruptcy Court and Canadian Seller shall file with the CCAA Court a final list of Purchased Contracts.

ARTICLE III PURCHASE PRICE

Section 3.1 Purchase Price. On the terms and subject to the conditions hereof, at the Closing, the aggregate consideration for the Purchased Assets shall consist of: (i) a credit bid, on a dollar-for-dollar basis, including pursuant to section 363(k) of the US Bankruptcy Code, in an aggregate amount of \$45,000,000 of the Pre-Petition Term Loan Obligations (the **"Credit Bid"**); (ii) an amount in cash sufficient for the repayment in full of the Obligations (as defined in the DIP Credit Agreement) and Pre-Petition ABL Obligations (as defined in the DIP Credit Agreement), as provided for in Section 1.4 of the DIP Credit Agreement, including cash

collateralization of any outstanding letters of credit or financial assurances issued under the DIP Facility and Bank Products (as defined in the DIP Credit Agreement) in accordance with the terms thereof; ~~and~~ (iii) the Additional Cash Consideration; and (iv) the assumption of the Assumed Liabilities (the sum of clauses (i)-~~(iii)~~(iv), the “Purchase Price”); *provided*, that Purchaser reserves the right, by written notice to Sellers at least three (3) Business Days prior to the Bid Deadline, to increase the Credit Bid (and therefore increase the Purchase Price) up to the full amount of the Pre-Petition Term Loan Obligations; *provided, further*, that Purchaser reserves the right to increase the Credit Bid further in connection with an Auction.

Section 3.2 Allocation of Purchase Price. Purchaser and Sellers agree that the purchase price, as determined for U.S. federal income Tax purposes, shall be allocated in accordance with Section 1060 of the IRC and the Treasury Regulations promulgated thereunder in accordance with an allocation schedule (the “Allocation Schedule”). Within one hundred and twenty (120) calendar days after the Closing Date, Purchaser shall deliver to Sellers a draft allocation of the purchase price, as determined for U.S. federal income Tax purposes. If, within thirty (30) calendar days of Sellers’ receipt of Purchaser’s proposed allocation, Sellers do not deliver Purchaser written notice (a “Seller Allocation Objection Notice”) of any objections that they have to such allocation, Purchaser’s proposed allocation shall be the Allocation Schedule. If Sellers timely deliver to Purchaser a Seller Allocation Objection Notice, then Purchaser and Sellers shall work together in good faith to resolve the disputed items. If Purchaser and Sellers are unable to resolve all of the disputed items within thirty (30) calendar days of Purchaser’s receipt of the Seller Allocation Objection Notice (or such later date as Purchaser and Sellers may agree), then Purchaser and Sellers shall refer the disputed items for resolution to an accounting firm of national reputation mutually acceptable to Purchaser and Sellers, with no existing relationship with either Purchaser or Sellers and such accounting firm shall determine the Allocation Schedule. Sellers and Purchaser shall (a) use the Allocation Schedule for the purpose of making the requisite filings under Section 1060 of the IRC, and the Treasury Regulations thereunder, (b) report, and cause their respective Affiliates to report, the federal, state, and local income and other Tax consequences of the transactions contemplated herein, and in particular to report the information required by Section 1060(b) of the IRC, and file IRS Form 8594 (Asset Acquisition Statement under Section 1060 of the IRC) in a manner consistent with the Allocation Schedule unless otherwise required by a “determination” within the meaning of IRC Section 1313, and (c) promptly notify the other of the existence of any Tax audit, controversy, or litigation related to the Allocation Schedule. Notwithstanding the allocation of the purchase price agreed among the parties hereto pursuant to this Section 3.2 for the aforementioned Tax purposes, nothing in the foregoing shall be determinative of values ascribed to the Purchased Assets or the allocation of the value of the Purchased Assets for any other purpose. With respect to the Canadian Seller and the Canadian Purchased Assets, the purchase price shall be allocated among the Canadian Purchased Assets in a manner entirely consistent with Schedule Section 3.2. Purchaser and Canadian Seller shall each report an allocation of the purchase price among the Canadian Purchased Assets in a manner consistent with Schedule Section 3.2 and shall file all Tax Returns (including amended returns and claims for refunds) and elections required under the Tax Act or equivalent Canadian provincial Law in a manner consistent with such allocation. Notwithstanding the foregoing, to the extent an allocation of purchase price to specific assets are necessary as of the Closing so as to facilitate payments of Transfer Taxes required to be paid as

of Closing, the parties will work together in good faith to determine those amounts prior to Closing.

Section 3.3 Withholding Rights. Purchaser and any other applicable withholding agent shall be entitled to deduct and withhold with respect to any payments made pursuant to this Agreement such amounts that are required to be deducted and withheld with respect to any such payments under the IRC, Tax Act or any other provision of applicable Law. Before withholding or deducting any amounts hereunder, the applicable withholding agent shall notify Sellers of its intent to withhold at least five (5) days before deducting or withholding any such amounts. To the extent any such amount is to be so deducted and withheld by Purchaser, such amounts shall be timely paid over to, or deposited with, the relevant Governmental Authority in accordance with the provisions of applicable Law. Any such withheld amounts shall be treated for all purposes of this Agreement as having been paid to such Persons in respect of which such deduction and withholding was made.

ARTICLE IV CLOSING

Section 4.1 The Closing. The closing of the Sale (the “**Closing**”) shall take place at the offices of King & Spalding LLP, at 10:00 a.m. local time, on the first (1st) Business Day after the date upon which all conditions set forth in ARTICLE IX hereof have been satisfied or waived (other than those conditions which by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or at such other place, date and time as the parties may agree.

Section 4.2 Deliveries at the Closing.

(a) Sellers shall deliver or shall cause to be delivered to Purchaser the following at the Closing:

(i) bills of sale, assignment agreements and other customary transfer documents necessary to transfer to Purchaser (or its Affiliate) all right, title and interest of Sellers to or in the Purchased Assets, in form and substance reasonably acceptable to Sellers and Purchaser;

(ii) a certificate signed by a Responsible Officer of each Seller and addressed to Purchaser and the Monitor (in form and substance satisfactory to Purchaser and the Monitor, acting reasonably) certifying that the closing conditions set forth in Section 9.2(a) and Section 9.2(b) have been satisfied or waived;

(iii) certificates signed by a Responsible Officer of each Seller to which is attached (A) a certificate reflecting the incumbency and true signatures of the officers of such Seller who execute this Agreement and other Transaction Documents on behalf of such Seller and (B) true and correct copies of the resolutions of the boards of directors of each Seller with respect to the transactions contemplated by this Agreement and the Transaction Documents;

(iv) a certificate from the Secretary of State or other applicable Governmental Authority of the jurisdiction of formation or incorporation, as applicable, dated

within ten (10) days of the Closing Date, with respect to the existence and good standing of Sellers (other than Dominion Colour Corporation (USA));

(v) a valid, complete and accurate IRS Form W-9 in respect of each US Seller, or, in the case of a US Seller that is disregarded as separate from its owner for U.S. federal income Tax purposes, in respect of such Seller's regarded owner;

(vi) the applicable Tax elections required by Section 8.2 duly executed by the Canadian Seller;

(vii) assignment agreements, duly executed by an authorized officer of each applicable Seller, required to assign any Intellectual Property included in the Purchased Assets;

(viii) an assignment and assumption agreement, duly executed by each Seller;

(ix) the Books and Records;

(x) a duly legalized power of attorney on behalf of the Canadian Seller and DCL Corporation (NL) B.V. for purposes of executing the Dutch Deed of Transfer, together with the instruction that the Dutch civil law notary (*notaris*) in the Netherlands or any of its deputies may proceed with the execution of the Dutch Deed of Transfer in substantially the form attached as Exhibit A to this Agreement;

(xi) the shareholders' register of DCL Corporation (NL) B.V. to the Dutch civil law notary (*notaris*) in the Netherlands in which the transfer of the Dutch Shares will be recorded;

(xii) a duly executed transfer into the name of Purchaser in respect of the UK Shares;

(xiii) a voting power of attorney duly executed by the Canadian Seller to allow Purchaser to vote in respect of the UK Shares;

(xiv) the statutory registers (including the register of members) of DCL Corporation (Europe) Limited;

(xv) the web-filing details for DCL Corporation (Europe) Limited and its respective Companies House authentication code;

(xvi) a copy of a resolution of the board of directors of DCL Corporation (Europe) Limited authorizing the transfer of the UK Shares and the registration of the transfer of the UK Shares;

(xvii) certificates evidencing the Acquired Subsidiaries' shares, to the extent that such Acquired Subsidiaries' shares are in certificate form, duly endorsed in blank or with stock powers or similar instruments of transfer duly executed in proper form for transfer,

and, to the extent that such Acquired Subsidiaries' shares are not in certificated form, other evidence of ownership or assignment in form and substance reasonably satisfactory to Purchaser;

(xviii) written resignations, in form and substance reasonably satisfactory to Purchaser, of each of the officers and directors of each Acquired Subsidiary, as requested by Purchaser in writing not less than five (5) Business Days prior to the Closing Date; and

(xix) such other instruments as are reasonably requested by Purchaser and otherwise necessary to consummate the Sale.

(b) Purchaser shall deliver or cause to be delivered to Sellers, or their designees at the Closing:

(i) the Purchase Price;

(ii) an amount equal to ETA Taxes, if any, that are required to be paid at Closing;

(iii) the Replacement Financial Assurance;

(iv) Conditions Certificates;

(v) a certificate signed by a Responsible Officer of Purchaser to which is attached: (A) true and correct copies of the resolutions of the board of directors of Purchaser with respect to the transactions contemplated by this Agreement and the Transaction Documents and (B) a certificate reflecting the incumbency and true signatures of the officers of Purchaser who execute this Agreement and other Transaction Documents on behalf of Purchaser;

(vi) a certificate from the Secretary of State or other applicable Governmental Authority of the jurisdiction of formation or incorporation, as applicable, dated within ten (10) days of the Closing Date, with respect to the existence and good standing of Purchaser;

(vii) the applicable Tax elections required by Section 8.2 duly executed by Purchaser;

(viii) an assignment and assumption agreement, duly executed by Purchaser;

(ix) a duly legalized power of attorney on behalf of Purchaser for purposes of executing the Dutch Deed of Transfer, together with the instruction that the Dutch civil law notary (*notaris*) in the Netherlands or any of its deputies may proceed with the execution of the Dutch Deed of Transfer in substantially the form attached as Exhibit A to this Agreement; and

(x) such other Instruments as are reasonably requested by Sellers and otherwise necessary to consummate the Sale and reasonably acceptable to Purchaser.

ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLERS

Subject to US Bankruptcy Court and CCAA Court approval of this Agreement and except as set forth in the disclosure schedule delivered by Sellers (the “**Seller Disclosure Schedule**”) to Purchaser simultaneously with the execution and delivery hereof, as may be updated in accordance with Section 7.15, Sellers jointly and severally represent and warrant to Purchaser that:

Section 5.1 Organization, Standing and Corporate Power. Each Seller and each Acquired Subsidiary is an entity duly incorporated or organized, validly existing and in good standing under the laws of the jurisdiction in which it is formed or incorporated and has the requisite power and authority to carry on its business as now being conducted. Each Seller and each Acquired Subsidiary is duly qualified or licensed to do business and is in good standing in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary, other than in such jurisdictions where the failure to be so qualified or licensed (individually or in the aggregate) could not reasonably be expected to have a Material Adverse Effect.

Section 5.2 Compliance with Applicable Laws; Permits.

(a) Each Seller and each Acquired Subsidiary has complied for the past three (3) years and is currently in compliance, in each case, in all material respects, with each Law applicable to the conduct of the Business.

(b) Sellers and the Acquired Subsidiaries hold all Permits and Licenses necessary for the conduct of the Business as presently conducted, other than any such Permits or Licenses the absence of which would not reasonably be expected to be, individually or in the aggregate, material to the Purchased Assets or the Business (in each case, taken as a whole) (the “**Business Permits**”). Each of the Business Permits owned, held or possessed by any of the Sellers or the Acquired Subsidiaries is valid, subsisting and in full force and effect. The operation of the Business as currently conducted is not in material violation of, nor is any Seller or Acquired Subsidiary in default or material violation under, any Business Permit and, to the Knowledge of Sellers, no event has occurred which would constitute a default or violation of any material term, condition or provision of any Business Permit, in each case, that would be reasonably be expected to have a Material Adverse Effect. No suspension, cancellation or non-renewal of any Business Permit is pending or, to the Knowledge of Sellers, threatened. Each Seller and Acquired Subsidiary has complied in all material respects, and is in compliance in all material respects, with all terms and conditions of the Business Permits, except as would not reasonably be expected to have a Material Adverse Effect.

Section 5.3 Authority; Noncontravention.

(a) Subject to the US Bankruptcy Court’s entry of the US Sale Procedures Order and the US Sale Order and the CCAA Court’s granting of the CCAA Sale Procedures Order and the CCAA Sale Order, (i) each Seller has the requisite power and authority to enter into this Agreement and to consummate the transactions contemplated by this Agreement and (ii)

the execution and delivery of this Agreement by Sellers and the consummation by Sellers of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of each Seller. This Agreement has been duly executed and delivered by each Seller and, assuming this Agreement constitutes a valid and binding agreement of Purchaser and subject to entry or granting of the Sale Orders, constitutes a valid and binding obligation of each Seller, enforceable against each Seller in accordance with its terms, subject to (x) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors' rights generally and (y) general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity.

(b) Subject to the US Bankruptcy Court's entry of the US Sale Procedures Order and the US Sale Order and the CCAA Court's granting of the CCAA Sale Procedures Order and the CCAA Sale Order, the execution and delivery by each Seller of this Agreement or any other Transaction Documents to which a Seller is a party does not, and the consummation by Sellers of the transactions contemplated by this Agreement or any other Transaction Documents to which a Seller is a party, and compliance by Sellers with the provisions of this Agreement or any other Transaction Documents to which a Seller is a party, shall 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, cancellation, modification or acceleration of any obligation or to a loss of a benefit under, or result in the creation of any Lien upon any of the properties or assets of any Seller under (i) the Fundamental Documents of any Seller or an Acquired Subsidiary or (ii) subject to the governmental filings and other matters referred to in Section 5.6(c), any Laws applicable to any Seller or an Acquired Subsidiary or its respective properties or assets other than, in each case, any such conflicts, violations, defaults, rights, losses or Liens that (individually or in the aggregate) would not reasonably be expected to have a Material Adverse Effect.

(c) No Consent of any Governmental Authority, or any third party pursuant to any Material Contract, is required by or with respect to any Seller in connection with the execution and delivery of this Agreement by such Seller, or the consummation by such Seller of the transactions contemplated by this Agreement, except for (i) the Consents set forth in Section 5.3(c) of the Seller Disclosure Schedule, (ii) the entry or granting of the Sale Orders by the US Bankruptcy Court and the CCAA Court, as applicable, (iii) compliance with any applicable requirements of the Exchange Act, Securities Act or the Competition Act, and (iv) such other Consents as to which the failure to obtain or make (individually or in the aggregate) would not reasonably be expected to be materially adverse to the Business.

Section 5.4 Acquired Subsidiaries.

(a) Capitalization.

(i) The Canadian Seller has full legal and beneficial title (*juridisch en economisch gerechtigde tot*) to the Acquired Subsidiaries' shares. The Dutch Shares constitute the whole of the issued and outstanding share capital of DCL Corporation (NL) B.V., and the UK Shares constitute the whole of the issued and outstanding share capital of DCL Corporation (Europe) Limited.

(ii) Each of the Dutch Shares is fully paid-up and upon execution of the Deed of Transfer will be free and clear of any Liens.

(iii) Each of the UK Shares is fully paid-up and free and clear of any Liens.

(iv) Except for the Transaction Documents, there are no options, warrants, rights, agreements, pledges, calls, puts, rights to subscribe, conversion rights or other arrangements or commitments to which DCL Corporation (NL) B.V. is a party or which is binding upon DCL Corporation (NL) B.V. providing for the issuance, disposition or acquisition of any of its capital or any rights or interests exercisable therefor, and there are no equity appreciation, phantom equity, profit sharing or similar rights with respect to DCL Corporation (NL) B.V. DCL Corporation (NL) B.V. is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or revoke any shares in its capital. There are no outstanding depositary receipts (*certificaten*) in relation to the Dutch Shares.

(v) Other than the obligations resulting from the Transaction Documents and the restrictions set out in the constitutional documents of DCL Corporation (NL) B.V., there are: (i) no obligations with respect to any of the Dutch Shares restricting the transfer of any such shares or the payment of dividends, (ii) no agreements or arrangements binding on the Canadian Seller that require approval or notice for transfer of any of the Dutch Shares or the payment of dividends and (iii) no agreements or arrangements (including proxies) in relation to the voting rights connected to any of the Dutch Shares.

(vi) Except for the Acquired Subsidiaries' shares, there are no outstanding securities or other similar equity ownership interests of any class or type of or in any of the Acquired Subsidiaries. There are no outstanding options, warrants, calls, purchase rights, subscription rights, exchange rights or other rights, convertible exercisable or exchangeable securities, agreements or commitments of any kind pursuant to which any of the Acquired Subsidiaries is or may become obligated to (i) issue, deliver, transfer, sell or otherwise dispose of any of its securities, or any securities convertible into or exercisable or exchangeable for its securities, or (ii) redeem, purchase or otherwise acquire any outstanding securities of any of the Acquired Subsidiaries.

(vii) Holdings owns 100% of the issued and outstanding capital stock of H.I.G. Colors, Inc., a Delaware corporation ("Colors"). Colors owns (i) 100% of the issued and outstanding membership interest of DCL Corporation (BP), LLC, a Delaware limited liability company, and (ii) 100% of the issued and outstanding capital stock of DCL Holdings (USA), Inc., a Delaware corporation ("Holdings USA"). Holdings USA owns 100% of the issued and outstanding membership interests of DCL Corporation (USA), LLC, a Delaware limited liability company.

(b) No Subsidiaries. None of the Acquired Subsidiaries has any Subsidiary, and none of the Acquired Subsidiaries owns or has the right to acquire, directly or indirectly, any outstanding capital stock of, or other equity interests in, any other Person.

Section 5.5 [Reserved].

Section 5.6 Real Properties.

(a) Except as set forth in Section 5.6(a) of the Seller Disclosure Schedule, Sellers and the Acquired Subsidiaries (i) have good and valid title in and to all Owned Real Property, (ii) have good and valid leasehold interest in and to all Leased Real Estate and (iii) have good and valid title to all other Purchased Assets constituting Structures or otherwise have the right to use such other Purchased Assets pursuant to a valid and enforceable lease, license or similar contractual arrangement, in each case free and clear of any Liens, other than Permitted Liens.

(b) Except as set forth in Section 5.6(b) of the Seller Disclosure Schedule, the Owned Real Property and Leased Real Estate constitutes all of the real property assets used by Sellers and the Acquired Subsidiaries for the conduct of the Business in substantially the same manner in all material respects as such Business is being operated as of the date hereof. Except as set forth in Section 5.6(b) of the Seller Disclosure Schedule or as disclosed by registered title to the Owned Real Property (provided same is a Permitted Lien), to the Knowledge of Sellers, there are no facts or conditions affecting any Owned Real Property or Leased Real Estate that could reasonably be expected, individually or in the aggregate, to interfere with the current use, occupancy or operation of such Owned Real Property or Leased Real Estate in any material respect. Except as set forth in Section 5.6(b) of the Seller Disclosure Schedule, only Sellers and the Acquired Subsidiaries conduct the Business and the Business is not conducted through any other divisions or any direct or indirect Subsidiary or Affiliate of any Seller.

(c) Section 5.6(c) of the Seller Disclosure Schedule sets forth a complete and correct list of all of the real property leased, licensed or otherwise granted to Sellers and the Acquired Subsidiaries and each Lease with respect thereto (and all interests leased pursuant to such Leases, the “**Leased Real Estate**”), including the addresses thereof and all written amendments or modifications to the Leases. Sellers have delivered to Purchaser true, correct and complete copies of all Leases, including all written amendments or modifications thereto, and the Leases are unmodified and in full force and effect. No Seller nor Acquired Subsidiary is a sublessor or grantor under any sublease or other instrument granting to another Person any right to the possession, lease, occupancy or enjoyment of the Leased Real Estate, except as set forth on Section 5.3(c) of the Seller Disclosure Schedule. With respect to each Lease, except as set forth in Section 5.6(c) of the Seller Disclosure Schedule and except with respect to any Bankruptcy-Related Default:

(i) except with respect to any Bankruptcy-Related Defaults, the Leases are in full force and effect and are valid, binding and enforceable against the applicable Seller and Acquired Subsidiary, to the Knowledge of Sellers, any counterparty to such Leases in accordance with their respective terms;

(ii) no amount payable under any Lease is past due except as set forth in Section 5.6(c) of the Seller Disclosure Letter;

(iii) each Seller and the Acquired Subsidiary is in compliance in all material respects with all commitments and obligations on its part to be performed or observed

under each Lease and has no Knowledge of Sellers of the failure by any other party to any Lease to comply in all material respects with all of its commitments and obligations thereunder;

(iv) no Seller nor Acquired Subsidiary has received any written notice (A) of a default (which has not been cured), offset or counterclaim under any Lease, or, any other written communication calling upon it to comply with any provision of any Lease or asserting noncompliance, or asserting such Seller or the Acquired Subsidiary has waived or altered its rights thereunder, and no event or condition has happened or presently exists which constitutes a default or, after notice or lapse of time or both, would constitute a default under any Lease on the part of any Seller or the Acquired Subsidiary or, to the Knowledge of Sellers, any other party, or (B) of any Action against any party under any Lease which if adversely determined would result in such Lease being terminated; and

(v) no Seller nor the Acquired Subsidiary has assigned, subleased, sublicensed, mortgaged, pledged or otherwise encumbered or transferred its interest, if any, under any Lease, other than Permitted Liens; and

(vi) to the extent that any Lease is within the period prescribed in such Lease for exercise of any renewal, each Seller and each Acquired Subsidiary has timely exercised any option to extend or renew the term thereof.

(d) Section 5.3(d) of the Seller Disclosure Schedule sets forth each parcel of real property owned by each Seller and each Acquired Subsidiary and used in or necessary for the conduct of the Business as currently conducted (together with all Structures and all easements, rights-of-way and other rights and privileges appurtenant thereto, collectively, the “**Owned Real Property**”), including with respect to each property, the address location and use. Each Seller has delivered to Purchaser copies of the deeds and other instruments (as recorded) by which such Seller or Acquired Subsidiary acquired such parcel of Owned Real Property, and copies of any title insurance policies, opinions, abstracts and surveys, in each case in the possession of such Seller or Acquired Subsidiary with respect to such parcel. With respect to each parcel of Owned Real Property:

(i) the applicable Seller or Acquired Subsidiary has good and marketable fee simple title as legal and beneficial owner, free and clear of all Liens, except Permitted Liens;

(ii) such Seller or Acquired Subsidiary has not leased or otherwise granted to any Person the right to use or occupy such Owned Real Property or any portion thereof; and

(iii) there are no unrecorded outstanding options, rights of first offer or rights of first refusal to purchase such Owned Real Property or any portion thereof or interest therein.

(e) Except as disclosed in Section 5.6(c) and Section 5.6(d) of the Seller Disclosure Schedule, (i) to the Knowledge of Sellers, there are no pending or threatened expropriation or condemnation proceedings by or before any Governmental Authority with respect to any Owned Real Property or Leased Real Estate and (ii) no Seller nor Acquired

Subsidiary has received any written notice from any Governmental Authority of any zoning, ordinance, building, fire, health or safety code or other legal violation in respect of any Owned Real Property or Lease that could reasonably be expected to have a Material Adverse Effect.

(f) Except as disclosed in Section 5.6(c) and Section 5.6(d) of the Seller Disclosure Schedule, to the Knowledge of the Sellers, no improvements constituting a part of the Owned Real Property or Leased Real Estate encroach on any real property not owned, leased or licensed by Sellers to the extent that removal of such encroachment could reasonably be expected to materially impair the manner and extent of the current use, occupancy and operation of such improvements.

(g) Except as disclosed in Section 5.6(c) and Section 5.6(d) of the Seller Disclosure Schedule and except with respect to any Bankruptcy-Related Default, Sellers and the Acquired Subsidiaries are in possession of the Owned Real Property and Leased Real Estate, respectively, and enjoy peaceful and undisturbed possession of such real property in all material respects

(h) This Agreement shall be effective to create an interest in the Owned Real Property only if the subdivision control provisions of the *Planning Act* (Ontario) are complied with on or before the Closing. To the Knowledge of the Sellers, completion of the transactions contemplated by this Agreement do not require any Consent under the *Planning Act* (Ontario).

Section 5.7 Tangible Personal Property. Except as set forth in Section 5.7 of the Seller Disclosure Schedule and other than the Excluded Assets, Sellers have good and valid title to, or have good and valid leasehold interests in, all material items of tangible personal property that is included in the Purchased Assets, free and clear of all Liens other than Permitted Liens.

Section 5.8 Intellectual Property; Information Security.

(a) The operation of the Business as currently conducted by Sellers or the Acquired Subsidiaries in connection therewith, does not conflict with, infringe, misappropriate, or otherwise violate, and in the last three (3) years has not conflicted with, infringed, misappropriated or otherwise violated, the Intellectual Property rights of any third party. No Action has been asserted or is pending or, to the Knowledge of Sellers, threatened against any Seller or Acquired Subsidiary with respect to the foregoing.

(b) Sellers and the Acquired Subsidiaries exclusively own all right, title and interest in and to all Intellectual Property owned or purported to be owned by them (the “**Owned Intellectual Property**”) that is material to the Business free and clear of all Liens other than Permitted Liens and, to the Knowledge of Sellers, Sellers and the Acquired Subsidiaries have the valid and enforceable right to use all other Intellectual Property material to the Business subject only to the terms of the Intellectual Property Agreements, if applicable. Neither this Agreement, nor the consummation of the transactions contemplated herein, will result in the grant, by Sellers or any Acquired Subsidiary to any Person, of any ownership interest, license, or claim, right or protection from any Action with respect to any Intellectual Property. Except as set forth in an Intellectual Property Agreement listed on Section 5.8(c)(ii) of the Seller Disclosure Schedule, no material restrictions exist in connection with the disclosure, use, license or transfer of the Owned

Intellectual Property, and after giving effect to this Agreement and the transactions contemplated herein, Purchaser and the Acquired Subsidiaries will acquire or retain, as applicable, upon the Closing Date all rights in Intellectual Property used in connection with the Business as previously held by Sellers and the Acquired Subsidiaries immediately prior to the Closing, without the requirement of any additional fees, payments or remuneration.

(c) Section 5.8(c) of the Seller Disclosure Schedule identifies (i) all registrations and applications for (A) the Intellectual Property included in the Purchased Assets and (B) Owned Intellectual Property of each Acquired Subsidiary (collectively, the “**Registered Intellectual Property**”), and (ii) the Intellectual Property Agreements to which any Seller or Acquired Subsidiary is a party.

(d) The Registered Intellectual Property is subsisting and has not been adjudicated to be invalid or unenforceable in whole or part, and to the Knowledge of Sellers, is valid and enforceable.

(e) To the Knowledge of Sellers, no Person is engaging in any activity that infringes, misappropriates, or otherwise violates the Intellectual Property that is material to the Business or any Seller’s or Acquired Subsidiary’s rights therein, and no Seller or Acquired Subsidiary has sent any written notice to any Person or asserted in writing or threatened in writing to assert any Action alleging same in the last three (3) years.

(f) No Owned Intellectual Property is subject to any settlement agreement, consent agreement, decree, order, injunction, judgment or ruling materially restricting the use of any Registered Intellectual Property or that would materially impair the validity or enforceability of such Owned Intellectual Property.

(g) The internet domain names set forth on Section 5.8(c) of the Seller Disclosure Schedule are registered to and controlled by one or more Sellers or Acquired Subsidiaries.

(h) Sellers and the Acquired Subsidiaries have taken commercially reasonable actions to, and have implemented and maintained commercially reasonable policies and processes to, protect and maintain (i) the confidentiality of any material Trade Secrets included in the Purchased Assets, and (ii) the performance, security and integrity of the systems, networks, software, hardware, websites, and other information technology assets and infrastructure used in connection with the Business, and, to the Knowledge of Sellers, in the past three (3) years there have been no material failures, malfunctions, breaches, unauthorized access to, or use or disclosure of the same.

Section 5.9 Litigation. Except for such matters listed in Section 5.9 of the Seller Disclosure Schedule and except for such environmental, health or safety matters addressed in Section 5.15, as of the date hereof there is no Action pending or, to the Knowledge of Sellers, threatened against Sellers or the Acquired Subsidiaries that (individually or in the aggregate) would reasonably be expected to have a Material Adverse Effect, nor is there any Governmental Order outstanding against any Seller or Acquired Subsidiary that (individually or in the aggregate) would reasonably be expected to have a Material Adverse Effect.

Section 5.10 Material Contracts; Debt Instruments.

(a) Section 5.10(a) of the Seller Disclosure Schedule identifies all the following types of Contracts (each a “**Material Contract**”, and collectively with the Leases identified in Section 5.6(c) of the Seller Disclosure Schedule and the Intellectual Property Agreements identified in Section 5.8(c) of the Seller Disclosure Schedule, the “**Material Contracts**”) in effect as of the date hereof that are related to the Purchased Assets or the Business generally and to which any Seller or Acquired Subsidiary is a party:

(i) joint venture, partnership, limited liability company or other similar Contracts other than the Fundamental Documents of any Seller or Acquired Subsidiary;

(ii) material Leases for personal property;

(iii) any Contract relating to any outstanding commitment for capital expenditures in excess of \$100,000 individually or \$300,000 in the aggregate;

(iv) Contracts (or series of related Contracts) relating to the acquisition or disposition of any Person or business (whether by merger, sale of stock, sale of assets or otherwise) within the past five (5) years;

(v) Contracts that (A) limit the freedom of any Seller or Acquired Subsidiary or the Business to compete in any line of business or with any Person or in any geographic area or (B) contains exclusivity obligations or restrictions binding on any Sellers or Acquired Subsidiaries or the Business;

(vi) any sales, distribution, agency or marketing Contract (or series of related Contracts) involving in excess of \$50,000 in any annual period;

(vii) any Contract (or series of related Contracts) relating to the purchase by any Sellers or Acquired Subsidiaries of any products or services under which the undelivered balance of such products or services is in excess of \$150,000, other than Contracts with individual Business Employees;

(viii) Contracts (including any “take-or-pay” or keepwell agreement) under which (A) any Person has directly or indirectly guaranteed any liabilities or obligations of any Sellers or Acquired Subsidiaries or (B) any Sellers or Acquired Subsidiaries have directly or indirectly guaranteed liabilities or obligations of any other Person; or

(ix) Contracts with any Business Employee earning base salary over \$200,000 per annum or providing for change of control, retention or severance Liabilities in excess of such Liabilities arising from applicable Laws.

(b) Except with respect to any Bankruptcy-Related Default or payment default and except as to matters which would not reasonably be expected to have a Material Adverse Effect, each Material Contract included in the Purchased Assets is a legal, valid, binding and enforceable agreement of the applicable Sellers or Acquired Subsidiaries and is in full force and effect, and no Seller, Acquired Subsidiary nor, to the Knowledge of Sellers, any other party

thereto is in default or breach under the terms of, or has provided any written notice to terminate or modify, any such Material Contract. To the Knowledge of Sellers, no Seller or Acquired Subsidiary is a party to a Material Contract that is an oral Contract.

(c) Complete and correct copies of (i) each Material Contract (including all waivers thereunder), (ii) all Contracts for Indebtedness, (iii) Contracts relating to any interest rate, currency or commodity derivatives or hedging transaction; and (iv) all current form Contracts related to the Business have been made available to Purchaser.

Section 5.11 Employees; Labor Matters.

(a) All of the information included on the Business Employee List, when provided, will be true and accurate as of a date that is on or within ten (10) Business Days prior to the date of provision. Sellers shall update and deliver to Purchaser an updated Business Employee List (i) at least five (5) Business Days prior to an Auction and (ii) on or before two (2) Business Days following the entry of the Sale Orders to reflect any terminations and new hires and reallocations permitted or consented to by Purchaser pursuant to Section 7.1(b)(xiii) below.

(b) Sellers are and have been for the past three (3) years in compliance in all material respects with all applicable Laws relating to Business Employees and employment or engagement of labor, including all applicable Laws relating to wages, hours, overtime, employment standards, immigration, collective bargaining, employment discrimination, civil or human rights, accessibility, safety and health, workers' compensation, pay equity, classification of employees and independent contractors, and the collection and payment of payroll deductions, withholding and/or social security Taxes. Each of Seller and Acquired Subsidiary has met in all material respects all requirements required by Law or regulation relating to the employment of foreign citizens, including all requirements of Form I-9 Employment Verification, and no Seller nor Acquired Subsidiary currently employs, or has ever employed, any Person who was not permitted to work in the jurisdiction in which such Person was employed. Sellers and the Acquired Subsidiaries have complied in all material respects with all Laws that could require overtime to be paid to any Business Employee.

(c) None of Sellers, Acquired Subsidiaries, or any of their respective Subsidiaries and Affiliates is delinquent in payment to any Business Employee for any material wages, fees, salaries, commissions, bonuses, or other direct compensation for service performed by them or amounts required to be reimbursed to such Business Employee or in any material payments owed upon any termination of such Business Employee's employment or engagement.

(d) Except as set forth on Section 5.11(d) of the Seller Disclosure Schedule, none of the Sellers nor Acquired Subsidiaries are a party to or otherwise bound by any collective bargaining agreement, voluntary recognition agreement, or other agreement with a labor union, works council or similar employee or labor organization applicable to any Business Employee, none of the Sellers or Acquired Subsidiaries are engaged in any labor negotiation with any labor union, works council or similar employee or labor organization applicable to any Business Employee, and, to the Knowledge of Sellers, there are no activities or proceedings of any labor union, works council or similar employee or labor organization to further organize any such Business Employees. Additionally, (i) there is no unfair labor practice charge or complaint

pending before any applicable Governmental Authority relating to Sellers, Acquired Subsidiaries, or any Business Employee; (ii) there is no labor strike, material slowdown, material dispute, or material work stoppage or lockout pending or, to the Knowledge of Sellers, threatened against or affecting any of the Sellers or Acquired Subsidiaries, and none of the Sellers nor Acquired Subsidiaries has in the past three (3) years experienced any strike, material slowdown or material work stoppage, lockout or other collective labor action by or with respect to any Business Employee; (iii) there is no representation claim or petition pending before any applicable Governmental Authority; and (iv) there are no charges with respect to or relating to any of the Sellers or Acquired Subsidiaries pending before any applicable Governmental Authority responsible for the prevention of unlawful employment practices.

(e) To the Knowledge of Sellers, no current Business Employee is bound by any contract (including licenses, covenants or commitments of any nature) or subject to any judgment, decree or order of any Governmental Authority that would materially interfere with the use of such Business Employee's best efforts to promote the interests of Sellers or that would materially conflict with Sellers' business as currently conducted.

(f) No current Business Employee who is not treated as an employee for income Tax purposes by Sellers or Acquired Subsidiaries is an employee under applicable Laws or for any purpose, including, without limitation, for Tax withholding purposes or Benefit Plan purposes, and none of the Sellers nor Acquired Subsidiaries has any Liability by reason of any such individual, in any capacity, being improperly excluded from participating in any Benefit Plan. Each employee of Sellers and the Acquired Subsidiaries has been properly classified by Sellers as "exempt" or "non-exempt" under applicable Law.

Section 5.12 Benefits Plans and ERISA Compliance.

(a) Section 5.12(a) of the Seller Disclosure Schedule sets forth a true and complete list of each material Benefit Plan (a "**Company Benefit Plan**"); *provided*, that such schedule shall not be required to include any employment Contract with a Business Employee earning a base salary of less than \$200,000 per annum that does not provide for change of control, retention or severance Liabilities in excess of such Liabilities arising from applicable Laws (it being understood and agreed that such Contracts shall nonetheless be considered Company Benefit Plans for all purposes hereunder). With respect to each Company Benefit Plan, Sellers have provided to Purchaser or its counsel a true and complete copy, to the extent applicable, of: (i) each writing constituting a part of such Company Benefit Plan and all amendments thereto, and a written description of any material unwritten Company Benefit Plan; (ii) the most recent annual report and accompanying schedules; (iii) the current summary plan description, employee booklet or other communication to employees or former employees relating to the Company Benefit Plan and any summaries of material modifications; (iv) the most recent annual financial statements and actuarial reports; (v) the most recent determination or opinion letter received by any of the Sellers from the IRS or the Canada Revenue Agency regarding the tax-qualified status of such Company Benefit Plan; (vi) the most recent written results of all required compliance testing; and (vii) copies of any material non-ordinary course correspondence with the IRS, U.S. Department of Labor, FSRA or other Governmental Authority. There has been no amendment to, announcement by any of the Sellers or the Acquired Subsidiaries relating to any Company Benefit Plan which would increase materially the

expense of maintaining such plan above the level of the expense incurred therefor for the most recent fiscal year.

(b) Each Company Benefit Plan (and each related trust, insurance contract or fund) has been established, administered and funded in accordance with its express terms in all material respects, and in compliance in all material respects with all applicable Laws, including ERISA, the IRC, the PBA and the Tax Act. There are no pending or, to the Knowledge of Sellers, threatened actions, claims or lawsuits against or relating to the Company Benefit Plans (other than routine benefits claims). To the Knowledge of Sellers, neither Sellers nor any “party in interest” or “disqualified person” with respect to a Company Benefit Plan has engaged in a non-exempt “prohibited transaction” within the meaning of Section 4975 of the IRC or Section 406 of ERISA. To the Knowledge of Sellers, no fiduciary (within the meaning of Section 3(21) of ERISA) has breached any fiduciary duty with respect to a Company Benefit Plan or otherwise has any Liability in connection with acts taken (or the failure to act) with respect to the administration or investment of the assets of any Company Benefit Plan.

(c) To the Knowledge of Sellers, no Company Benefit Plan is presently under audit or examination (nor has written notice been received of a potential audit or examination) by any Governmental Authority. Other than as a result of the Bankruptcy Cases, all material payments required to be made by any of the Sellers or the Acquired Subsidiaries under, or with respect to, any Company Benefit Plan (including employer and employee contributions, distributions, reimbursements, premium payments or intercompany charges) with respect to all prior periods have been timely made or accrued for in Sellers’ and the Acquired Subsidiaries’ Books and Records. There is not now, nor, do any circumstances exist that could give rise to, any requirement for the posting of security with respect to a Benefit Plan or the imposition of any Lien on the assets of any of the Sellers or Acquired Subsidiaries under ERISA, the IRC, the PBA or the Tax Act.

(d) With respect to each Company Benefit Plan that is intended to qualify under Section 401(a) of the IRC, such Company Benefit Plan, and its related trust, has at all times since its adoption been so qualified and has received a current determination letter (or is the subject of a current opinion letter in the case of any prototype plan) from the IRS on which Sellers can rely that it is so qualified and that its trust is exempt from Tax under Section 501(a) of the IRC, and nothing has occurred with respect to the operation of any such plan which could reasonably be expected to cause the loss of such qualification or exemption or the imposition of any material Liability, penalty or Tax under ERISA or the IRC. No stock or other securities issued by any of the Sellers or Acquired Subsidiaries forms or has formed any part of the assets of any Benefit Plan that is intended to qualify under Section 401(a) of the IRC or of the assets held in any of the Funding Arrangements for the Canadian Pension Plans.

(e) No Company Benefit Plan is, and none of the Sellers, Acquired Subsidiaries nor any ERISA Affiliate have ever sponsored, established, maintained, contributed to or been required to contribute to, or in any way has any Liability (whether on account of an ERISA Affiliate or otherwise), directly or indirectly, with respect to any plan that is, (i) subject to Title IV or Section 302 of ERISA or Section 412, 430 or 4971 of the IRC or a “defined benefit” plan within the meaning of Section 414(j) of the IRC or Section 3(35) of ERISA (whether or not subject thereto), (ii) a Multiemployer Plan, (iii) a plan that has two or more

contributing sponsors at least two of whom are not under common control, within the meaning of Section 4063 of ERISA, (iv) a “multiple employer welfare arrangement” (as defined in Section 3(40) of ERISA), or (v) a plan maintained in connection with any trust described in Section 501(c)(9) of the IRC. None of the Sellers, Acquired Subsidiaries nor any ERISA Affiliate has withdrawn at any time within the preceding six years from any Multiemployer Plan, or incurred any withdrawal Liability which remains unsatisfied, and no events have occurred and no circumstances exist that could reasonably be expected to result in any such Liability to any of the Sellers or Acquired Subsidiaries.

(f) No event has occurred and no condition exists that would reasonably be expected to subject Sellers or the Acquired Subsidiaries to any (i) Tax, penalty, fine, (ii) Liens (other than Liens that arise by operation of Law in Canada in respect of required employer contributions to the Canadian Pension Plans that are accrued but not yet due), or (iii) other liability imposed by ERISA, the IRC, the PBA, the Tax Act or other applicable Laws, in the case of (i), (ii) or (iii), in respect of any employee benefit plan maintained, sponsored, contributed to, or required to be contributed to by any ERISA Affiliate (other than Sellers or Acquired Subsidiaries).

(g) None of the Company Benefit Plans provide, and none of the Sellers nor Acquired Subsidiaries has any current or potential obligation to provide, medical, health, life or other welfare benefits after the termination of a Business Employee’s employment or engagement, as applicable, except as may be required by Section 4980B of the IRC and Section 601 of ERISA or any other applicable Law. Except as disclosed on Section 5.12(g) of the Seller Disclosure Schedule, no Company Benefit Plan that provides group health benefits is a self-insured arrangement by any of the Sellers or funded through a trust. None of the Sellers nor Acquired Subsidiaries has incurred, or is reasonably expected to incur or to be subject to, any material Tax or other penalty with respect to the reporting requirements under Sections 6055 and 6056 of the IRC, as applicable, or under Section 4980B, 4980D or 4980H of the IRC. Except for the Canadian Pension Plans, none of the Company Benefit Plans provides any retirement, pension or supplemental pension benefits to any Canadian employees or former Canadian employees of Sellers.

(h) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with another event) (i) result in any payment becoming due, or increase the amount of any compensation or benefits due, to any Business Employee or with respect to any Company Benefit Plan; (ii) increase any benefits otherwise payable under any Company Benefit Plan; (iii) result in the acceleration of the time of payment or vesting of any such compensation or benefits, or the forgiveness of indebtedness of any Business Employee; or (iv) result in an obligation to fund or otherwise set aside assets to secure to any extent any of the obligations under any Company Benefit Plan. No Person is entitled to receive any additional payment (including any Tax gross-up or other payment) from any of the Sellers or the Acquired Subsidiaries as a result of the imposition of the excise Taxes required by Section 4999 of the IRC or any Taxes required by Section 409A of the IRC.

(i) Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby will (either alone or in combination with

another event) result in any payment or benefit (whether in cash or property or the vesting of property) to any “disqualified individual” (as such term is defined in U.S. Treasury Regulation Section 1.280G-1) that could, individually or in combination with any other such payment, constitute an “excess parachute payment” (as defined in Section 280G(b)(1) of the IRC).

(j) Each Benefit Plan that is a “nonqualified deferred compensation plan” (as defined in Section 409A(d)(1) of the IRC) is in documentary compliance with, and has been administered in compliance with, Section 409A of the IRC and applicable guidance thereunder in all material respects and no amount under such Benefit Plan is or has been subject to the interest and additional Tax set forth under Section 409A(a)(1)(B) of the IRC.

(k) All data necessary to administer each Company Benefit Plan is in the possession of Sellers or their agents and is in a form which is sufficient for the proper administration of the Company Benefit Plan in accordance with its terms and all Laws and such data is complete and correct, in each case, except as would not reasonably be expected to be materially adverse to the Business.

(l) With respect to the Canadian Pension Plans:

(i) Other than the Canadian Pension Plans, no other Company Benefit Plan is a “registered pension plan” as defined in subsection 248(1) of the Tax Act;

(ii) Except for the Salaried DB Plan and the Hourly DB Plan, none of the Canadian Pension Plans contains a “defined benefit” provision as defined in subsection 147.1(1) of the Tax Act;

(iii) All employer contributions required to be made to the Canadian Pension Plans to the date hereof have been made or properly accrued in accordance with the terms of such plans and Laws. All employee contributions to the Canadian Pension Plans required to the date hereof have been properly withheld by Sellers and have been fully paid into the Funding Arrangement for each respective Canadian Pension Plan;

(iv) To the Knowledge of Sellers, nothing has occurred which would result in the revocation of the registration of any of the Canadian Pension Plans under the Tax Act and the PBA or any applicable provincial pension legislation. All amounts paid by Sellers under the provisions of the Canadian Pension Plans will be deductible for income tax purposes; and

(m) Neither the Salaried DB Plan nor the Hourly DB Plan had a going concern unfunded liability, a solvency deficiency or a wind-up deficiency, as at December 31, 2021, calculated on a basis using the methods and assumptions contained in the actuarial valuation reports filed in respect of such plans with the FSRA pursuant to the PBA as at December 31, 2021.

(n) All Benefit Plans subject to the Laws of any jurisdiction outside of the United States or Canada or that covers any Business Employee residing or working outside of the United States or Canada (each, a “**Foreign Benefit Plan**”) (i) if they are intended to qualify for special tax treatment, meet requirements for such treatment in all material respects and, to the

Knowledge of Sellers, there are no existing circumstances or events that have occurred that could reasonably be expected to affect adversely the special tax treatment with respect to such Foreign Benefit Plan, (ii) if they are intended to be funded and/or book-reserved, are fully funded and/or book reserved, as appropriate, based upon reasonable actuarial assumptions, and (iii) if intended or required to be qualified, approved or registered with a Governmental Authority, is and has been so qualified, approved or registered and nothing has occurred that could reasonably be expected to result in the loss of such qualification, approval or registration, as applicable.

Section 5.13 [Reserved].

Section 5.14 Insurance. Section 5.12 of the Seller Disclosure Schedule sets forth all material insurance policies maintained by Sellers and the Acquired Subsidiaries with respect to the Purchased Assets. All such policies are in full force and effect and Sellers and Acquired Subsidiaries have complied with the terms thereof in all material respects.

Section 5.15 Environmental Matters.

(a) Except as set forth in Section 5.15 of the Seller Disclosure Schedule (as ~~such schedule may be updated up to seven (7) days following the date of this~~ pursuant to the terms of the Original Asset Purchase Agreement):

(i) Each Seller, Acquired Subsidiary, and the Purchased Assets are, and have for the past three (3) years have been, in compliance with all applicable Environmental Laws in all material respects (which compliance includes obtaining, maintaining and complying with all Environmental Permits in connection with the operation of the Business and the ownership or use of the Purchased Assets);

(ii) There are no Environmental Claims pending or, to the Knowledge of Sellers, threatened against Seller or the Acquired Subsidiaries in connection with the conduct or operation of the Business, or the ownership or use of the Purchased Assets, and Sellers and Acquired Subsidiaries are not subject to any pending Actions or orders or threatened Actions or orders for Environmental Liabilities, and, to the Knowledge of Sellers, there are no past or present actions, activities, circumstances, conditions, events or incidents that could form the basis of any Environmental Claim in connection with the conduct or operation of the Business or the ownership or use of the Purchased Assets or otherwise result in any Environmental Liabilities;

(iii) To the Knowledge of Sellers, there are currently no investigations of the conduct or operation of the Business or the ownership or use of the Purchased Assets, the Owned Real Property, the Leased Real Estate, or any other real property, pending or threatened that would reasonably be expected to result in material Environmental Liabilities;

(iv) There has been no Environmental Release of Hazardous Materials by any Seller, any Affiliates of any Seller, or to the Knowledge of Sellers by any other Person in connection with the Business or Purchased Assets, in contravention of Environmental Law that could, after the Closing Date, materially prevent, impede, or increase the costs associated with the ownership, lease, operation, performance, or use of the Purchased Assets, the Business, or

any of the Owned Real Property or Leased Real Estate or any other assets of Sellers or the Acquired Subsidiaries as currently conducted;

(v) There has been no generation, treatment, storage, disposal, or transport of Hazardous Materials in contravention of Environmental Laws by the Business, and to the Knowledge of Sellers, no Hazardous Materials have been disposed of on any of the Purchased Assets, the Owned Real Property or Leased Real Estate, in violation of applicable Environmental Laws;

(vi) Sellers and the Acquired Subsidiaries have not received an Environmental Notice that any of the Purchased Assets, the Business, Owned Real Property, Leased Real Estate or any other real property currently or formerly owned, leased or operated by any Seller or Acquired Subsidiary in connection with its business operations (including soils, groundwater, surface water, and Structures located thereon) has been contaminated with any Hazardous Materials which could reasonably be expected to result in an Environmental Claim against, or a violation of Environmental Law or the terms of any Environmental Permit by, Sellers, the Acquired Subsidiaries, or any of the Purchased Assets;

(vii) No Seller nor Acquired Subsidiary has assumed any liability or agreed to indemnify any Person for any material liability or obligation arising under or relating to Environmental Laws; and

(viii) To the Knowledge of Sellers, neither the conduct nor operation of the Business or the ownership or use of the Purchased Assets has given rise to exposure of employees or any other Person to, or an Environmental Release in excess of any applicable limits or standards under Environmental Laws that that would reasonably be expected to result in any material Environmental Liabilities.

(b) Each Seller and Acquired Subsidiary has made available to Purchaser copies of all material environmental reports, compliance audits, health and safety audits and inspections, site assessments, notices of violation, written complaints or written claims in connection with the conduct or operation of the Business or the ownership or use of the Purchased Assets and any real property currently or formerly owned, leased, or operated by such Person in connection with the conduct or operation of the Business or the ownership or use of the Purchased Assets, in each case which are in the possession or under the reasonable control of Sellers and related to compliance with or liability under Environmental Laws, Environmental Permits, and Hazardous Materials.

(c) No Seller nor Acquired Subsidiary is required by any Environmental Law, as a result of the transactions contemplated hereby, (i) to perform a site assessment for Hazardous Materials, (ii) to remove or remediate Hazardous Materials, or (iii) to give notice to or receive approval from any Governmental Authority pursuant to Environmental Laws.

Section 5.16 No Brokers. Except as set forth in Section 5.14 of the Seller Disclosure Schedule, no Person has acted, directly or indirectly, as a broker or financial advisor for Sellers in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

Section 5.17 Taxes.

(a) Except as set forth in Section 5.17 of the Seller Disclosure Schedule, (i) all material Tax Returns required to be filed by or on behalf of any Seller or Acquired Subsidiary have been duly and timely filed, and all such Tax Returns are true, correct and complete in all material respects, (ii) other than with respect to US federal Income Taxes for 2021 and 2022 taxable years, all material Taxes due and payable by any Seller or Acquired Subsidiary, whether or not shown on any such Tax Return, have been timely paid, and (iii) there are no Liens for Taxes with respect to the Purchased Assets, other than Permitted Liens.

(b) No Seller nor Acquired Subsidiary is the subject of any Action with respect to Taxes or its Tax Returns nor has any such Action been threatened in writing (or, to the Knowledge of Sellers, otherwise).

(c) Each Seller and Acquired Subsidiary has timely withheld and paid, or caused to be paid, all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any Person or Governmental Authority and all IRS Forms W-2 and Forms 1099 (or any other applicable form) with respect thereto have been properly and timely distributed.

(d) No Seller nor Acquired Subsidiary has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency which waiver or extension remains outstanding. There are no pending or threatened audits, investigations, disputes, notices of deficiency, claims or other proceedings for or relating to any liability for Taxes.

(e) No Seller nor Acquired Subsidiary is a party to any “closing agreement” as described in Section 7121 of the IRC (or any similar provision of state, local or foreign Law) or any other agreement with any Governmental Authority with respect to Taxes. No private letter ruling, technical advice memoranda or similar rulings have been requested or issued by any Governmental Authority with respect to any Seller or Acquired Subsidiary.

(f) No Seller nor Acquired Subsidiary is a party to any Tax allocation, indemnification or sharing agreement. No Seller nor Acquired Subsidiary (i) has been a member of an affiliated group filing a consolidated federal income Tax Return, or (ii) has liability for the Taxes of any Person under Treasury Regulations Section 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by Contract, or otherwise.

(g) No claim has been made in writing by any Governmental Authority in a jurisdiction where a Seller or Acquired Subsidiary does not file Tax Returns that such Seller or Acquired Subsidiary is or may be subject to taxation by that jurisdiction.

(h) The U.S. federal income tax classification and place of Tax residence of each Seller and Acquired Subsidiary is listed in Section 5.15 of the Disclosure Schedule.

(i) The Canadian Seller is not a non-resident of Canada within the meaning of the Tax Act.

(j) The Canadian Seller is a registrant for purposes of Part IX of the ETA and its registration number is 122221641 RT0001.

(k) Each Seller and Acquired Subsidiary is duly registered for the purposes of value added tax in the jurisdictions it is required to register, if any, and has complied in all material respects with all requirements concerning value added Taxes in such jurisdictions.

(l) No Seller nor Acquired Subsidiary has been a party to or otherwise involved in any transaction, scheme or arrangement or series of transactions, schemes of arrangements that is or forms part of a scheme for the avoidance of Tax or of which the main purpose or objective (or one of the main purposes or objectives) is to obtain a Tax advantage or which can reasonably be considered as such, or meets any hallmark set out in Annex IV of the Council Directive of 25 May 2018 (2018/822/EU) amending Directive 2011/16/EU (DAC6).

(m) The Canadian Seller has duly and timely collected all material amounts on account of all transfer taxes, including HST/GST and provincial or territorial property or sales taxes, required by applicable Law to be collected by it and has duly and timely remitted to the appropriate Governmental Authority any such material amounts required by applicable Law to be remitted by it where the failure to do so would be capable of forming or resulting in a Lien on or other claim against or seizure of all or any part of the Purchased Assets of the Canadian Seller.

Section 5.18 Sanctions, Anti-Money Laundering Laws and Anti-Corruption Laws.

(a) No Seller, Acquired Subsidiary, director, manager, officer, nor, to the Knowledge of Sellers, any employee, agent or third party acting on behalf of Sellers or the Acquired Subsidiaries, is a Sanctioned Person. Sellers and Acquired Subsidiaries (i) maintain and comply with an economic sanctions compliance program reasonably designed to ensure compliance with applicable Sanctions and (ii) do not, directly or, to the Knowledge of Sellers, indirectly, conduct business in any manner that would result in a violation of applicable Sanctions.

(b) No Seller, Acquired Subsidiary, director, manager, officer, nor, to the Knowledge of Sellers, any employee or agent of Sellers, has materially violated, been found in violation of or been charged or convicted under, or is under investigation by any Governmental Authority for possible violation of, any applicable Anti-Corruption Laws, EX-IM Laws or Sanctions.

(c) No Seller, Acquired Subsidiary, director, manager, officer, nor, to the Knowledge of Sellers, any employee or agent of Sellers or the Acquired Subsidiaries, has taken any action, directly or indirectly, in violation by such persons of the U.S. Foreign Corrupt Practices Act of 1977, as amended, and the rules and regulations thereunder (the “FCPA”), COFPOA and the rules and regulations thereunder, including making use of the mails or any means or instrumentality of interstate commerce corruptly in furtherance of an offer, payment, promise to pay or authorization of the payment of any money, loan, reward, advantage, benefit of any kind or other property, gift, promise to give, or authorization of the giving of anything of value to any “foreign official” (as such term is defined in the FCPA and COFPOA) or any foreign political party or official thereof or any candidate for foreign political office, in

contravention of the FCPA or COFPOA. Each Seller and Acquired Subsidiary has conducted its business during the past three (3) years in material compliance with the FCPA and COFPOA and has instituted and maintains written policies and procedures designed to ensure continued compliance therewith.

(d) Each Seller and Acquired Subsidiary has established procedures and controls which it reasonably believes are adequate (and otherwise comply with applicable Law) to ensure that such Seller, Acquired Subsidiary and each of its direct or indirect subsidiaries is and will continue to be in compliance with all applicable money laundering statutes and the rules and regulations thereunder and any related or similar rules, regulations or guidelines, issued, administered or enforced by any Governmental Authority (collectively, the “**Anti-Money Laundering Laws**”); and (i) the operations of Sellers and the Acquired Subsidiaries are and have been conducted at all times during the past three (3) years in compliance with Anti-Money Laundering Laws, and (ii) as of the date hereof, no Action by or before any court or Governmental Authority involving Sellers with respect to the Anti-Money Laundering Laws is pending or threatened in writing.

(e) No Seller or Acquired Subsidiary is in violation of applicable EX-IM Laws. During the past three (3) years, each Seller and Acquired Subsidiary has conducted its business in compliance with the EX-IM Laws and has instituted and maintains policies and procedures to ensure continued compliance therewith.

Section 5.19 Investment Canada Act. Neither the Canadian Seller nor any entity it controls carries on a “cultural business” within the meaning of the Investment Canada Act.

Section 5.20 No Other Representations and Warranties. Sellers acknowledge that the representations and warranties contained in ARTICLE VI are the only representations or warranties given by Purchaser and that all other express or implied representations and warranties are disclaimed. PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT, NOTWITHSTANDING THE REPRESENTATIONS AND WARRANTIES EXPRESSLY PROVIDED IN THIS ARTICLE V, THE CONSENT OF A PARTY TO THE CLOSING SHALL CONSTITUTE A WAIVER BY SUCH PARTY OF ANY CONDITIONS TO CLOSING NOT SATISFIED AS OF THE CLOSING DATE, EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT (WHICH REPRESENTATIONS AND WARRANTIES SHALL NOT SURVIVE CLOSING), SELLERS MAKE NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO THE PURCHASED ASSETS, INCLUDING INCOME TO BE DERIVED OR EXPENSES TO BE INCURRED IN CONNECTION WITH THE PURCHASED ASSETS, THE PHYSICAL CONDITION OF ANY PERSONAL OR REAL PROPERTY COMPRISING A PART OF THE PURCHASED ASSETS OR WHICH IS THE SUBJECT OF ANY LEASE OR CONTRACT TO BE ASSIGNED TO PURCHASER AT THE CLOSING, THE ENVIRONMENTAL CONDITION OR THE PHYSICAL CONDITION OF ANY REAL PROPERTY OR IMPROVEMENTS, THE ZONING OF ANY SUCH REAL PROPERTY OR IMPROVEMENTS, THE VALUE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE TRANSFERABILITY OF THE PURCHASED ASSETS, THE TERMS, AMOUNT, VALIDITY OR ENFORCEABILITY OF ANY ASSUMED LIABILITIES, THE TITLE OF THE PURCHASED ASSETS (OR ANY PORTION THEREOF), THE

MERCHANTABILITY OR FITNESS OF THE PERSONAL PROPERTY OR ANY OTHER PORTION OF THE PURCHASED ASSETS FOR ANY PARTICULAR PURPOSE, OR ANY OTHER MATTER OR THING RELATING TO THE PURCHASED ASSETS, THE BUSINESS OR THE ASSUMED LIABILITIES OR ANY PORTION THEREOF. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLERS HEREBY DISCLAIM ANY WARRANTY, EXPRESS OR IMPLIED, OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. PURCHASER FURTHER ACKNOWLEDGES THAT PURCHASER HAS CONDUCTED AN INDEPENDENT INSPECTION AND INVESTIGATION OF THE PHYSICAL CONDITION OF THE PURCHASED ASSETS AND ALL SUCH OTHER MATTERS RELATING TO OR AFFECTING THE PURCHASED ASSETS AS PURCHASER DEEMED NECESSARY OR APPROPRIATE AND THAT IN PROCEEDING WITH ITS ACQUISITION OF THE PURCHASED ASSETS AND ASSUMPTION OF THE ASSUMED LIABILITIES, EXCEPT FOR ANY REPRESENTATIONS AND WARRANTIES EXPRESSLY SET FORTH IN ARTICLE V, PURCHASER IS DOING SO BASED SOLELY UPON SUCH INDEPENDENT INSPECTIONS AND INVESTIGATIONS. ACCORDINGLY, UPON THE CLOSING DATE, PURCHASER WILL ACCEPT THE PURCHASED ASSETS AND ASSUMED LIABILITIES AT THE CLOSING “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.”

ARTICLE VI REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as of the date hereof that:

Section 6.1 Corporate Existence and Qualification. Purchaser (a) is a Delaware corporation duly formed, validly existing and in good standing under the laws of its jurisdiction of formation and has all requisite power and authority to carry on its business as it is now being conducted and (b) is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not reasonably be expected to prevent, hinder or impair the ability of Purchaser to perform its obligations under this Agreement.

Section 6.2 Corporate Power, Authorization, Enforceable Obligations. The execution, delivery and performance by Purchaser of the Transaction Documents to which it is a party: (a) are within Purchaser’s organizational power; (b) have been duly authorized by all necessary organizational action; (c) do not contravene any provision of its Fundamental Documents; and (d) do not violate any Laws. This Agreement has been, and each of the other Transaction Documents to the extent Purchaser is a party thereto shall be, duly executed and delivered by Purchaser, and this Agreement constitutes, and each other Transaction Document when executed by Purchaser shall constitute, a legal, valid and binding obligation of Purchaser enforceable against it in accordance with its terms, subject to (i) applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar Laws relating to or affecting creditors’ rights generally and (ii) general principles of equity, regardless of whether enforcement is sought in a proceeding at law or in equity.

Section 6.3 Consents and Approvals. Except for any such requirements, the failure of which to be obtained or made would not reasonably be expected to prevent, impede or materially delay or otherwise affect in any material respect the Sale, and assuming the truth and correctness of the representations and warranties of Sellers set forth in Section 5.6(d) hereof, no Consent of any Governmental Authority or any third party is required to be made or obtained by Purchaser in connection with the execution, delivery, and performance by Purchaser of this Agreement or any of the other Transaction Documents to which Purchaser is a party, except for the Competition Act Clearance (if required) ~~and the Competition Authority Clearance (if required)~~.

Section 6.4 Financial Ability.

(a) Purchaser has, and on the Closing Date will have, access to sufficient cash on hand to allow Purchaser to perform all of its obligations under this Agreement, including (i) payment or satisfaction of Cure Costs and other Assumed Liabilities required to be paid on the Closing Date and (ii) all fees and expenses to be paid by Purchaser related to the transactions contemplated by this Agreement. Purchaser is capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the US Bankruptcy Code and section 11.3(3)(b) of the CCAA with respect to adequate assurance of future performance under the Purchased Contracts.

(b) Purchaser has the legal right on behalf of the Pre-Petition Term Lenders to make a credit bid pursuant to section 363 of the US Bankruptcy Code in order to pay the Credit Bid portion of the Purchase Price, pursuant to the Bid Direction Letter or other evidence satisfactory to Sellers that Purchaser is authorized to make the Credit Bid on behalf of the Pre-Petition Term Lenders.

Section 6.5 No Brokers. No Person has acted, directly or indirectly, as a broker for Purchaser in connection with the transactions contemplated by this Agreement and no Person is entitled to any fee or commission or like payment in respect thereof.

Section 6.6 Sales Tax. If applicable, Purchaser, or its Affiliate designee, is, or will be prior to the Closing, registered under the ETA and the corresponding provisions of any applicable provincial sales or value-added tax laws, as applicable, with respect to ETA Tax or any applicable similar provincial or retail sales tax, in each case, for Canadian Tax purposes. Purchaser, or its Affiliate designee, has provided, or will provide at the Closing, the Canadian Seller with its registration numbers for such taxes.

Section 6.7 Investment Canada Act. Purchaser is a “free trade investor” that is not a “state-owned enterprise” within the meaning of the Investment Canada Act.

Section 6.8 No Other Representations and Warranties. Purchaser acknowledges that the representations and warranties contained in ARTICLE V are the only representations or warranties given by Sellers and that all other express or implied representations and warranties are disclaimed. Purchaser is an informed and sophisticated purchaser, and has engaged expert advisors, experienced in the evaluation and purchase of properties and assets such as the Purchased Assets and assumption of liabilities such as the Assumed Liabilities as contemplated hereunder. Purchaser has undertaken such investigation and has been provided with and has

evaluated such documents and information as it has deemed necessary to enable it to make an informed and intelligent decision with respect to the execution, delivery and performance of this Agreement. Purchaser acknowledges that Sellers have given Purchaser reasonable and open access to the key employees, documents and facilities of the Business. Purchaser acknowledges and agrees that the Purchased Assets are being sold on an “as is, where is” basis and Purchaser agrees to accept the Purchased Assets and the Assumed Liabilities in the condition they are in on the Closing Date based on its own inspection, examination and determination with respect to all matters and without reliance upon any express or implied representations or warranties of any nature made by or on behalf of or imputed to Seller, except as expressly set forth in this Agreement. Without limiting the generality of the foregoing, Purchaser acknowledges that Sellers make no representation or warranty with respect to (a) any projections, estimates or budgets delivered to or made available to Purchaser of future revenues, future results of operations (or any component thereof), future cash flows or future financial condition (or any component thereof) of the Business or the future prospects or operations of the Business or (b) any other information or documents made available to Purchaser or its counsel, accountants or advisors with respect to the Business, except as expressly set forth in this Agreement. Purchaser acknowledges and agrees with the provisions of Section 5.16 herein.

ARTICLE VII COVENANTS

Section 7.1 Conduct of Business Pending Closing.

(a) Except (i) as otherwise expressly contemplated by this Agreement, the other Transaction Documents or Section 7.1(a) of the Seller Disclosure Schedule, (ii) as required by any Governmental Order relating to COVID-19, or (iii) with the prior written consent of Purchaser or approval of the US Bankruptcy Court or the CCAA Court, as applicable, during the period from and after the date hereof until the earlier of termination of this Agreement or the Closing Date, Sellers shall, and shall cause the Acquired Subsidiaries to, conduct the Business in all material respects in the ordinary course of business, including meeting all obligations post-Filing Date relating to the Business as they become due. Except (A) as otherwise expressly contemplated by this Agreement, the other Transaction Documents or Section 7.1(a) of the Seller Disclosure Schedule, (B) as required by any Governmental Order relating to COVID-19, (C) as may be required in connection with or as a result of the Bankruptcy Cases or any Governmental Order, or (D) with the prior written consent of Purchaser, during the period from and after the date hereof until the earlier of termination of this Agreement and the Closing Date, Sellers shall, and shall cause the Acquired Subsidiaries to, use commercially reasonable efforts to (i) preserve and maintain their relationships with their customers, suppliers, unions, partners, lessors, licensors, licensees, contractors, distributors, agents, officers, employees and other Persons with which they have significant business relationships material to the Business except in relation to the Contracts of the Business that are determined not to become Purchased Contracts in accordance with this Agreement; *provided* that nothing herein shall prevent Sellers or the Acquired Subsidiaries from commencing or defending any Action against or by any such Person in connection with the claims of such Person in the Bankruptcy Cases; (ii) preserve and maintain the Purchased Assets, ordinary wear and tear excepted; (iii) preserve the ongoing operations of the Business; (iv) maintain the Books and Records in all material respects in the ordinary course of business; (v) comply in all material respects with all applicable Laws (including Environmental Laws); (vi) not enter into any business, arrangement or otherwise take any action that would reasonably be expected to have a Material Adverse Effect on the ability of Sellers, the Acquired Subsidiaries or Purchaser to obtain any approvals of any Governmental Authority for this Agreement and the transactions contemplated hereby; and (vii) not dispose of any Owned Real Property or Leased Real Estate and, except in the ordinary course of business or as previously disclosed to or known by Purchaser, not modify, amend or terminate any of the Leases, and (viii) to the extent permitted after the filing of the Bankruptcy Cases, the DIP Orders, or by Order of the US Bankruptcy Court or the CCAA Court, as applicable, pay all applicable Taxes as such Taxes become due and payable. Purchaser acknowledges that the Designated Location has been placed into an idle state and employees primarily employed at the Designated Location have been placed on temporary layoff, and in the case of salaried employees primarily employed at the Designated Location, temporarily redeployed by the Canadian Seller.

(b) Without limiting the generality of the foregoing, except as otherwise expressly contemplated by this Agreement, the other Transaction Documents, Section 7.1(b) of the Seller Disclosure Schedule or with the prior written consent of Purchaser or approval of the US Bankruptcy Court or the CCAA Court, as applicable, during the period from and after the

date hereof until the earlier of termination of this Agreement and the Closing Date, each Seller shall not, and shall cause the Acquired Subsidiaries not to, do any of the following:

(i) with respect to the Equity Securities of Holdings, declare, set aside or pay any dividends (payable in cash, stock, property or otherwise) on, make any other distributions in respect of such Equity Securities, or redeem any of such Equity Securities;

(ii) issue, deliver, sell, pledge or otherwise encumber or subject to any Lien the Equity Securities of any Seller or Acquired Subsidiary;

(iii) amend their Fundamental Documents;

(iv) form any Subsidiary;

(v) acquire or agree to acquire by merging or consolidating with, or by purchasing a substantial equity interest in or a substantial portion of the assets of, or by any other manner, any business, corporation, partnership, joint venture, association or other business organization or division thereof, of another Person;

(vi) sell, assign, license, transfer, convey, lease, encumber, allow to lapse or expire or otherwise dispose of any Purchased Assets, other than in the ordinary course of business;

(vii) other than with respect to the DIP Facility, incur any Indebtedness for borrowed money or make any payments in respect of any Indebtedness for borrowed money;

(viii) cancel or compromise any material debt or claim or waive or release any material right, in each case, that is a Purchased Asset or Assumed Liability;

(ix) pay, loan or advance any amount to, or sell, transfer or lease any properties or assets (real, personal or mixed, tangible or intangible) to, purchase any properties or assets from, or enter into any (A) Material Contract, (B) Contracts for material Indebtedness, or (C) Contract relating to any interest rate, currency or commodity derivatives or hedging transaction with any of Sellers' executive officers or directors (or immediate family members thereof), other than payment of compensation and benefits in the ordinary course of business, including reimbursement of otherwise reimbursable legal fees and expenses of Sellers' directors;

(x) other than in accordance with Section 2.5 hereof, assume, reject or amend, restate, supplement, modify, waive or terminate any (A) Material Contract, (B) Contract for Indebtedness, (C) Contract relating to any interest rate, currency or commodity derivatives or hedging transaction, (D) material Permit or (E) Intellectual Property right or enter into any settlement of any claim that (1) is outside the ordinary course of business, (2) delays the Closing, (3) relates to a Material Contract, or (4) subjects any Seller to any material non-compete or other similar material restriction on the conduct of its Business that would be binding following the Closing;

(xi) fail to maintain and keep in full force and effect all existing insurance policies, other than (A) expiration of insurance policies that expire by their terms (in

which event Sellers shall use reasonable efforts to renew or replace such insurance policies with insurance policies offering commensurate levels of coverage) or (B) immaterial changes to such insurance policies made in the ordinary course of business;

(xii) adopt or change any method of accounting (except as required by changes in GAAP), make, change or revoke any Tax election, change any annual Tax accounting period, file any amended Tax Return, enter into any closing agreement, settle or compromise any Tax claim or assessment, surrender any right to claim a Tax refund, consent to the extension or waiver of the limitations period applicable to any Tax claim or assessment, except as required by Law;

(xiii) other than as required by a Benefit Plan set forth on Section 5.9(a) of the Seller Disclosure Schedule, applicable Law or as explicitly contemplated hereunder or with respect to Excluded Employees, (A) increase the compensation or benefits of any Business Employee, other than increases in the ordinary course of business to Business Employees who are not Retention Eligible Employees, (B) accelerate the vesting or payment of any compensation or benefits of any Business Employee, (C) enter into, amend or terminate any Benefit Plan (or any plan, program, agreement or arrangement that would be a Benefit Plan if in effect on the date hereof) or grant, amend or terminate any awards thereunder, (D) fund any payments or benefits that are payable or to be provided under any Benefit Plan, (E) terminate without “cause” (as determined consistent with past practice) any Retention Eligible Employee, (F) hire or engage any new Business Employee, other than in replacement of a departed Business Employee (other than a Retention Eligible Employee) in the ordinary course of business, (G) make or forgive any loan to any Business Employee (other than advancement of expenses in the ordinary course of business consistent with past practices), (H) enter into, amend or terminate any collective bargaining agreement or other agreement with a labor union, works council or similar employee or labor organization (or enter into negotiations to do any of the foregoing), (I) recognize or certify any labor union, works council, bargaining representative, or any other similar organization as the bargaining representative for any Business Employee, (J) implement or announce any employee layoffs, furloughs, reductions in force, reductions in compensation, hour or benefits, work schedule changes or similar actions that could implicate the U.S. Worker Adjustment and Retraining Notification Act or any similar state, local or foreign law, or (K) waive or release any noncompetition, nonsolicitation, nondisclosure, noninterference, nondisparagement, or other restrictive covenant obligation of any Business Employee; **provided, that nothing in this clause (xiii) shall be interpreted to restrict Seller’s right to implement the KEIP, as approved by Sellers’ respective board of directors and board of managers, as applicable, prior to the date hereof, in accordance with the terms thereof; or** or

(xiv) agree or commit to take any of the foregoing actions.

Section 7.2 Access to Information. Until the Closing Date, Sellers shall, and shall cause the Acquired Subsidiaries to, (a) afford to the Purchaser Advisors access during normal business hours and upon advance notice to the Purchased Assets and Sellers’ and Acquired Subsidiaries’ properties, respectively, (including access to existing environmental reports and for purposes of conducting environmental assessments), Books and Records and Contracts; (b) make available or cause to make available to the Purchaser Advisors copies of all such Contracts, Books and Records and other existing documents and data as the Purchaser Advisors may

request, including any financial data filed with the US Bankruptcy Court or the CCAA Court or otherwise provided to any lender under any Indebtedness of Sellers; and (c) make available or cause to make available to the Purchaser Advisors during normal business hours and upon advance notice the appropriate management personnel of Sellers and Acquired Subsidiaries (and shall use reasonable efforts to cause their attorneys, accountants and other professionals to be made available) for discussion of the Business, the Purchased Assets, the Assumed Liabilities and personnel as Purchaser may request, in each case so long as such access does not unreasonably interfere with the operations of Sellers or the Acquired Subsidiaries; *provided, however*, that nothing in this Section 7.2 or otherwise shall require Sellers to furnish to the Purchaser Advisors any confidential materials prepared by Sellers' financial advisors or legal advisors or any materials subject to any attorney-client or other privilege or to the extent disclosure thereof would result in a violation of Law or breach of an agreement or other obligation; *provided, further, however*, that Sellers shall, and shall cause the Acquired Subsidiaries to, use reasonable efforts in cooperating with any requests for, and use reasonable efforts to obtain any, waivers that would enable any otherwise required disclosure to the other party to occur without so jeopardizing any such privilege or contravening such applicable Law, agreement, or other obligation.

Section 7.3 Consents. Sellers shall, and shall cause the Acquired Subsidiaries to, use commercially reasonable efforts to cooperate with Purchaser's efforts to solicit and obtain all Consents or Orders required for the consummation of the transactions contemplated by this Agreement and the other Transaction Documents, including with respect to any Contracts designated to be Purchased Contracts in accordance with Section 2.5 hereof; *provided, however*, that Sellers and the Acquired Subsidiaries shall not be obligated to bear any out-of-pocket expenses in connection with such efforts.

Section 7.4 Competition Act Clearance. Unless agreed by the parties that the Competition Act Clearance is not required:

(a) Without limiting the generality of Section 7.3, as soon as reasonably practicable, ~~but no later than ten (10) Business Days from the date of this Agreement:~~ (i) Purchaser shall, with the assistance of and, in consultation with, Sellers, promptly file a submission with the Commissioner of Competition requesting an ARC under section 102 of the Competition Act in respect of the transactions contemplated by this Agreement and, in lieu thereof, request a No Action Letter in furtherance of obtaining the Competition Act Clearance; and (ii) unless otherwise agreed to by the parties, each of Purchaser and Sellers shall file a pre-merger notification form with the Commissioner of Competition pursuant to section 114(1) of the Competition Act.

(b) Purchaser shall pay 100% of all filing fees incurred in connection with the Competition Act Clearance.

(c) In connection with obtaining the Competition Act Clearance, each party shall and shall ensure each of its respective Affiliates:

(i) use its commercially reasonable efforts to obtain Competition Act Clearance as promptly as possible;

(ii) cooperate and provide information and assistance that is reasonably requested by the other party to obtain the Competition Act Clearance and in respect of any notification, application, filing or response to information requests or submission related to the Competition Act Clearance, and to consult with the other party on the preparation of all applicable notifications, information documentation and submissions supplied to or filed with any Governmental Authority, and provide reasonable opportunity to the other party to comment on such applications, notifications, information, documentation and submissions to be supplied to or filed with any Governmental Authority;

(iii) respond promptly to any requests for information from any Governmental Authority (including in respect of any supplementary information requests);

(iv) keep the other party reasonably informed as to the status of and proceedings relating to obtaining the Competition Act Clearance, including providing the other party with a copy or summary of all communications with or received from a Governmental Authority; and

(v) not independently participate in any meeting or discussion with any Governmental Authority in respect of the Competition Act Clearance without giving the other party reasonable prior notice of the meeting or the discussion and, to the extent permitted by the Governmental Authority, the opportunity to attend and participate.

(d) Notwithstanding any requirement in this Section 7.4 or any other provisions in this Agreement, to the extent that any information provided by any party is deemed to be competitively sensitive by such party, such information shall be provided only to external counsel for the other party on an external counsel only basis, provided that a redacted version of such information is also provided to such other party.

Section 7.5 [Reserved]

~~Section 7.5 Competition Authority Clearance. Unless agreed by the parties that the Competition Authority Clearance is not required:~~

~~(a) Without limiting the generality of Section 7.3, as soon as reasonably practicable, but no later than ten (10) Business Days from the date of this Agreement: (i) Purchaser shall, with the assistance of and, in consultation with, Sellers, promptly file a submission with the relevant competition Governmental Authorities.~~

~~(b) Purchaser shall pay 100% of all filing fees incurred in connection with Competition Authority Clearance.~~

~~(c) In connection with obtaining the Competition Authority Clearance, each party shall and shall ensure each of its respective Affiliates:~~

~~(i) use its commercially reasonable efforts to obtain Competition Authority Clearance as promptly as possible;~~

~~(ii) cooperate and provide information and assistance that is reasonably requested by the other party to obtain the Competition Authority Clearance and in respect of any notification, application, filing or response to information requests or submission related to the Competition Authority Clearance, and to consult with the other party on the preparation of all applicable notifications, information documentation and submissions supplied to or filed with any Governmental Authority, and provide reasonable opportunity to the other party to comment on such applications, notifications, information, documentation and submissions to be supplied to or filed with any Governmental Authority;~~

~~(iii) respond promptly to any requests for information from any Governmental Authority (including in respect of any supplementary information requests);~~

~~(iv) keep the other party reasonably informed as to the status of and proceedings relating to obtaining the Competition Authority Clearance, including providing the other party with a copy or summary of all communications with or received from a Governmental Authority; and~~

~~(v) not independently participate in any meeting or discussion with any Governmental Authority in respect of the Competition Authority Clearance without giving the other party reasonable prior notice of the meeting or the discussion and, to the extent permitted by the Governmental Authority, the opportunity to attend and participate.~~

~~(d) Notwithstanding any requirement in this Section 7.5 or any other provisions in this Agreement, to the extent that any information provided by any party is deemed to be competitively sensitive by such party, such information shall be provided only to external counsel for the other party on an external counsel only basis, provided that a redacted version of such information is also provided to such other party.~~

~~(e) In the event that the decision of the relevant Governmental Authority is given subject to conditions or obligations, Purchaser accepting such condition or obligation, provided that nothing in this Agreement shall require Purchaser to agree to or take any action or comply with any condition which would, individually or in the aggregate, reasonably be expected to have a material adverse effect on the business, financial condition, assets or results of Purchaser and its Affiliates after Closing.~~

Section 7.6 Further Assurances.

(a) At any time and from time to time after the date hereof, Sellers and Purchaser agree to use their respective reasonable efforts to cooperate with each other and (i) at the reasonable request of the other party, execute and deliver any Instruments or documents and (ii) take, or cause to be taken, all such further action as the other party may reasonably request in order to evidence or effectuate the consummation of the transactions contemplated hereby and to otherwise carry out the intent of the parties hereunder as promptly as practicable; *provided*,

however, that notwithstanding anything to the contrary in this Agreement, (i) Sellers shall be entitled to take any actions as are required in connection with the discharge of the fiduciary duties of Sellers' board of directors, board of managers, or such similar governing body, including to terminate this Agreement, and (ii) Sellers' obligations pursuant to this Section 7.6 shall only continue until the later of one hundred twenty (120) days following the Closing and when the applicable Bankruptcy Case is terminated in respect of such Seller.

(b) Following the Closing, for the purposes of Sellers (i) preparing or reviewing Tax Returns, (ii) monitoring or enforcing rights or obligations under this Agreement, (iii) defending third-party lawsuits or complying with the requirements of any Governmental Authority, or (iv) any other reasonable business purpose, including assistance with the administration, wind-down, conversion, and closing of the Bankruptcy Cases (or any subsequent proceedings), the review of claims in connection with any claims process, the dissolution of Sellers, and related tax and other administrative matters, (x) upon reasonable notice, Purchaser shall permit Sellers, their counsel, and their other professionals reasonable access to all premises, properties, personnel, Books and Records, and Contracts or Leases, which access shall include (1) the right to copy such documents and records as they may reasonably request at Sellers' cost, and (2) Purchaser's copying and delivering such documents or records as reasonably requested, (y) Purchaser shall provide reasonable access to Purchaser's personnel during regular business hours to assist Sellers in their post-Closing activities (including preparation of Tax Returns and requirements in the Bankruptcy Cases), provided that such access does not unreasonably interfere with Purchaser's operations and (z) Purchaser shall provide reasonable access to Purchaser's employees and systems during regular business hours; ~~at no expense to Sellers~~, to assist Sellers in the administration or wind-down of the Sellers and managing payments and benefits to non-Transferred Employees, in each case of (y) or (z), at no expense to Sellers.

(c) If, following the Closing, Sellers (or their Affiliates or Seller Representatives) receive any money, check, note, draft, instrument, payment or other property as proceeds of the Purchased Assets or any part thereof, each such Person shall receive all such items ~~in trust~~ for, and as the sole and exclusive property of, Purchaser and, upon receipt thereof, shall notify Purchaser in writing of such receipt and shall remit the same (or cause the same to be remitted) to Purchaser in the manner specified by Purchaser.

(d) ~~Following~~ Within two (2) Business Days following the Closing, Purchaser (on behalf of itself and its Affiliates) ~~will~~ shall (i) pay to the Trust \$500,000 in cash, (ii) assign to the Trust all claims and causes of action included in the US Purchased Assets against equity holders, insiders, sponsors and current and former officers and directors ("Representatives") of the US Sellers (the "Assigned Claims"); provided, however, the Assigned Claims shall exclude any claims against or in respect of the CCAA Cash Pool and the Excluded Avoidance Actions, and (iii) assign to the Trust all of the US Sellers' rights and interests (free and clear of restrictions, conditions, or limitations, if any, in any of the organizational documents governing such rights and interests) to Preserve and prosecute past, present, and future Assigned Claims. Purchaser agrees to not pursue or cause to be pursued, and ~~hereby releases, as of the Closing shall release (A) any Avoidance Actions against any of the Sellers' current or former employees, directors or officers, equityholders, vendors or customers (excluding any Avoidance Actions that constitute~~

Assigned Claims) other than ~~as~~ a defense (to the extent permitted under applicable Law) against any claim or cause of action raised by any such party. ~~Such employees, directors or officers, equityholders, vendors and customers shall be express third party beneficiaries of this Section 7.6(d), and (B) any claims and causes of action against Sellers' Representatives that are not Assigned Claims. For the avoidance of doubt, nothing herein shall preclude or otherwise impair the Trust from Preserving and/or pursuing any Assigned Claim against any or all Representatives of the US Sellers, in such capacity, if such Representative also was, is, or becomes a Representative of the Canadian Seller.~~

(e) Prior to the Closing, Sellers shall use commercially reasonable efforts to, and to cause their respective directors, officer and employees to, at Purchaser's reasonable request in writing (including via e-mail), provide cooperation to Purchaser in connection with the Debt Financing. Purchaser shall promptly, upon request by Sellers, reimburse Sellers for any reasonable and documented out-of-pocket expenses (including reasonable and documented attorney's fees) incurred by Sellers in connection with the cooperation of Sellers contemplated by this Section 7.6(e). Purchaser shall indemnify and hold harmless, Sellers, and their respective directors, managers, officers, employees and representatives, from and against any and all liabilities or losses suffered or incurred by them in connection with the arrangement of the Debt Financing and any information utilized in connection therewith, except in the event such liabilities or losses arose out of or result from the gross negligence or willful misconduct by or of Sellers or any of their respective directors, managers, officers, employees and representatives. Purchaser acknowledges and agrees that, notwithstanding Sellers' obligations under this Section 7.6(e), Sellers' obligations under this Section 7.6(e) shall be deemed satisfied unless Sellers have materially and intentionally breached its obligations under Section 7.6(e) and such breach is a proximate cause of the Debt Financing not being consummated. Purchaser acknowledges and agrees that the obtaining of Debt Financing is not a condition to its obligations under this Agreement.

(f) ~~Following the date hereof, Sellers shall, in consultation with the Monitor, use commercially reasonable efforts to finalize and confirm the good faith initial determinations of the Designated Amounts set forth herein.~~ At the Closing, the Designated Amount allocated to the Canadian Seller and the CCAA Cash Pool shall be delivered by the Canadian Seller to the Monitor.

Section 7.7 Bankruptcy Covenants.

(a) Sale Procedures. Not later than the date that is two (2) Business Days following the Petition Date, US Sellers shall file a motion seeking entry of the US Sale Procedures Order with the US Bankruptcy Court (the "**US Sale Procedures Motion**"), which shall be in a form and substance acceptable to Purchaser, acting reasonably. US Sellers shall use reasonable efforts to obtain entry by the US Bankruptcy Court of the US Sale Procedures Order (with such changes thereto as Purchaser shall approve or request in its discretion, acting reasonably) within forty-five (45) days after the Petition Date. Not later than the date that is one (1) Business Day following the CCAA Filing Date, Canadian Seller shall file a motion seeking the granting of the CCAA Sale Procedures Order with the CCAA Court (the "**CCAA Sale Procedures Motion**"), which shall be in a form and substance acceptable to Purchaser in its discretion, acting reasonably. Canadian Seller shall use reasonable efforts to obtain from the

CCAA Court the CCAA Sale Procedures Order (with such changes thereto as Purchaser shall approve or request in its discretion, acting reasonably) within forty-five (45) days after the CCAA Filing Date. Subject to entry of and in accordance with any provisions of the Sale Procedures Orders, Sellers shall hold an Auction on the Sale no later than March 14, 2023, obtain entry of the Sale Orders no later than March 16, 2023 and consummate the Sale transaction no later than March 17, 2023. Sellers shall comply with all of the terms and conditions contained in the Sale Procedures, including the occurrence of the events by the dates and times listed therein which terms and conditions are expressly incorporated by reference herein as if set forth in full. From the time of execution and delivery by each Seller and Purchaser of this Agreement until its termination, Sellers and Seller Representatives shall not be subject to any restrictions with respect to the solicitation or encouragement of any entity concerning an Alternative Restructuring Proposal in accordance with the Sale Procedures.

(b) Court Approval.

(i) US Sellers shall serve a copy to each applicable Taxing Authority of the US Sale Motion, proposed US Sale Order and proposed US Sale Procedures Order, or notice of such motions and Order in addition to instructions on how to obtain copies of such motion and proposed Order, in each jurisdiction where the US Purchased Assets are subject to Tax at least twenty-one (21) days prior to the US Sale Hearing. Canadian Seller shall serve a copy to each applicable Taxing Authority and such other Persons required by Purchaser of the motion seeking the granting of the CCAA Sale Order (the “**CCAA Sale Motion**”) and the proposed CCAA Sale Order, or notice of such motion and Order in addition to instructions on how to obtain a copy of such motion and proposed Order at least fourteen (14) days prior to the CCAA Sale Hearing.

(ii) Sellers shall use reasonable efforts to obtain entry or granting by the US Bankruptcy Court and the CCAA Court, as applicable, of the US Sale Order and the CCAA Sale Order, respectively, no later than March 16, 2023.

(iii) If the Sale Procedures Orders or Sale Orders or any other Orders of the US Bankruptcy Court or the CCAA Court relating to this Agreement shall be appealed by any party (or a petition for certiorari or motion or application for leave to appeal, reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to any such Order), Sellers shall diligently defend against such appeal, petition, motion or application and shall use their reasonable efforts to obtain an expedited resolution of any such appeal, petition, motion or application; *provided* that Sellers consult with Purchaser at Purchaser’s request regarding the status of any such proceedings or Actions.

(iv) Sellers shall diligently consult with Purchaser and its representatives to obtain Purchaser’s consent concerning the forms of the Sale Procedures Orders and the Sale Orders, use reasonable efforts to consult with the Committee, Purchaser, and ~~its~~their representatives upon the Committee’s or Purchaser’s request concerning any other Orders of the US Bankruptcy Court or the CCAA Court and the Bankruptcy Cases, and provide Purchaser and the Committee with copies of requested motions, applications, pleadings, notices, proposed Orders and other documents relating to such proceedings as soon as reasonably practicable prior to any submission thereof to the US Bankruptcy Court or the CCAA Court, as

applicable. Sellers further covenant and agree that, after the Closing, the terms of any reorganization plan or plan of compromise or arrangement submitted to the US Bankruptcy Court or the CCAA Court for confirmation or sanction shall not conflict with, supersede, abrogate, nullify or restrict the terms of this Agreement, or in any way prevent or interfere with the consummation or performance of the transactions contemplated by this Agreement, including any transaction contemplated by or approved pursuant to the Sale Procedures Orders or the Sale Orders.

~~(e) **KEIP. Purchaser and its Affiliates will not object, and will not support any objection, to the KEIP, as approved by Sellers' respective board of directors and board of managers, as applicable, prior to the date hereof.**~~

Section 7.8 Employee Matters.

(a) Not less than five (5) days prior to the Closing Date, Purchaser shall, or shall cause its Affiliates to, make an offer of employment (an “**Offer**”) to each US Employee and each non-union Canadian Employee, such Offer to be conditional and effective on the Closing and containing such terms and conditions as determined by Purchaser in its sole discretion, subject to (i) the obligations set forth in Section 7.8(b), and (ii) with respect to any Canadian Employees covered by a collective bargaining agreement set forth on Section 5.11(d) of the Seller Disclosure Schedule, the terms of such collective bargaining agreement; *provided*, that, notwithstanding anything herein to the contrary, in no event shall Purchaser be required to extend an Offer to any Excluded Employee. Notwithstanding the foregoing, in respect of any non-union Canadian Employee who is on an approved short-term or long-term disability leave of absence on Closing and is not receiving benefits pursuant to an Assumed Benefit Plan, the effective date of employment may not be the Closing Date, but rather the terms of the Offer shall specify that the offer is conditional upon the Employee being capable of returning to work and the date on which such Employee returns to work shall be the date of employment and the date that the employee becomes a Transferred Employee.

(b) As soon as practicable after the Purchaser becomes the Successful Bidder under the Sales Procedures, and no later than five (5) calendar days thereafter, the Canadian Seller shall provide written notice to all Excluded Employees primarily employed at the Designated Location that the Designated Location will be permanently closed and that their employment will terminate, or in the case of unionized Canadian Employees which are primarily employed at the Designated Location, that they will be permanently/indefinitely laid off, in each case effective immediately prior to Closing. For the period beginning on the Closing Date and ending on the earlier of (x) December 31, 2023 and (y) the date on which the employment of such Transferred Employee terminates for any reason, Purchaser shall, or shall cause its Affiliates to, provide each non-unionized Transferred Employee with (i) a base salary or hourly wage rate, as applicable, that is no less than the base salary or hourly wage rate, as applicable, provided to such Transferred Employee immediately prior to the Closing Date, (ii) commission and incentive compensation opportunities that are no less favorable in the aggregate than the commission and annual cash incentive compensation opportunities (exclusive of any equity-based compensation opportunities and any change of control and retention-related opportunities) provided to such Transferred Employee immediately prior to the Closing Date, and (iii) qualified welfare and retirement benefits that are comparable

in the aggregate to those qualified welfare and retirement benefits (exclusive of any defined benefit pension, retiree medical and deferred compensation benefits) provided to such Transferred Employee by Sellers immediately prior to the Closing Date. With respect to Transferred Employees covered by a collective bargaining agreement set forth on Section 5.11(d) of the Seller Disclosure Schedule, Purchaser shall, or shall cause its Affiliates to, comply with the terms and conditions of the applicable collective bargaining agreement.

(c) Purchaser shall, or shall cause its Affiliates to, use commercially reasonable efforts to cause service rendered by Transferred Employees prior to the Closing Date to be taken into account for all purposes (including eligibility to participate, vesting and benefit accruals) under all compensation and Benefit Plans, programs and policies that are established and maintained by Purchaser or any of its Affiliates for the benefit of such Transferred Employees (“**Buyer Benefit Plans**”) after the Closing Date, except for purposes of vesting under any new equity-based compensation plan, program, agreement or arrangement, for purposes of benefit accruals under any defined benefit pension plan, deferred compensation or retiree health or welfare plan or arrangement, to the extent that such service is not recognized under any such plan, program or policy for other employees of Purchaser or its Affiliates, to the extent that such service was not recognized by Sellers under a comparable Benefit Plan in which such Transferred Employee participated immediately prior to the Closing or to the extent such credit would result in a duplication of benefits.

(d) Purchaser shall, or shall cause its Affiliates to, use commercially reasonable efforts to: (i) cause Transferred Employees to not be subject to any pre-existing condition or limitation under any Buyer Benefit Plans providing group health benefits for any condition for which such employee would have been entitled to coverage under the corresponding Benefit Plan in which such employee participated immediately prior to the Closing Date; and (ii) cause such Transferred Employees to be given full credit for eligible co-payments made, and deductibles satisfied, prior to the Closing Date under the corresponding Company Benefit Plan in which such Transferred Employee participated immediately prior to the Closing for purposes of satisfying the applicable deductible, coinsurance and maximum out-of-pocket provisions under the Buyer Benefit Plan in which such Transferred Employee participates in the year in which the Closing occurs; provided, that Purchaser’s obligations pursuant to clause (ii) above is conditioned upon Sellers providing Purchaser with all information as is reasonably necessary for Purchaser to provide such credit in a format reasonably acceptable to Purchaser or its insurer, as applicable, promptly (and in all events within five (5) Business Days) following receipt of a request for such information by Purchaser.

(e) Sellers shall cause the waiver of any covenant prohibiting a Business Employee from engaging in certain activities or taking certain actions during, or for a period of time following a termination of, his or her employment with Sellers, including any non-compete, non-solicit, non-interference, non-disparagement or confidentiality covenants, in each case, to the extent necessary for each Business Employee to be permitted to commence employment with Purchaser or any of its Affiliates and for such Business Employee to provide such services as may be requested from time to time by Purchaser or any of its Affiliates (whether as an employee or otherwise).

(f) During the period commencing on the date hereof and ending at the Closing, Sellers shall provide Purchaser and its Affiliates with reasonable access to the Business Employees during normal business hours, and will deliver such notices and other communications, in each case, as is reasonably requested from time to time by Purchaser or any of its Affiliates.

(g) Nothing herein is intended to, and shall not be construed to, create any third party beneficiary rights of any kind or nature, including, without limitation, the right of any Business Employee or other individual to seek to enforce any right to compensation, benefits, or any other right or privilege of employment with Sellers or Purchaser or any of their respect Affiliates. For the avoidance of doubt, no Business Employee or other Person shall be a third-party beneficiary in respect of this Section 7.8. Nothing in this Section 7.8 shall be construed or interpreted to be an amendment to any Benefit Plan or Buyer Benefit Plan.

(h) Except for Assumed Benefit Plans, Purchaser shall not assume any of the Benefit Plans or any liability for accrued benefits or any other liability under or in respect of any of the Benefit Plans. The Transferred Employees shall, as of the Closing Date cease to accrue further benefits under the Excluded Benefit Plans.

Section 7.9 Assignment and Assumption of Canadian Pension Plans.

(a) Transfer of Assumed Canadian Pension Plans.

(i) As soon as practicable after the Closing Date, but effective as of the Closing Date, Sellers shall assign to Purchaser and Purchaser shall assume the Canadian Pension Plans which are included in the Assumed Benefit Plans, including all rights, obligations, trust fund assets and other assets held pursuant to the Funding Arrangements therefor, and liabilities thereunder (each such Canadian Pension Plan that is included as an Assumed Benefit Plan is herein called an “**Assumed Canadian Pension Plan**”). In order to effect such assignment and assumption of the Assumed Canadian Pension Plans, Sellers and Purchaser agree to take such steps, prepare and execute such documents (including any required actuarial valuation report), notify the members and former members of such Assumed Canadian Pension Plans and any Unions representing them and seek such approvals of the applicable Governmental Authorities as may be necessary or desirable, as soon as practicable. Notwithstanding the foregoing, Purchaser’s administrative responsibility for the Assumed Canadian Pension Plans shall become effective only upon the assignment to Purchaser by Sellers of the rights and obligations of Sellers under the Assumed Canadian Pension Plans’ Funding Arrangements, including, without limitation, all of Sellers’ rights in respect of the assets held in the Funding Arrangements, in accordance with Section 7.9(a)(iii).

(ii) Subject to the approval of the applicable Governmental Authorities and Section 7.8(a)(i), Sellers shall assign to Purchaser and Purchaser shall accept all of the rights and obligations of Sellers under the Funding Arrangements established for the Assumed Canadian Pension Plans, including all of Sellers’ rights in respect of the assets held in such Funding Arrangements.

(iii) Subject to Section 7.9(a)(i), Sellers agree to administer the Assumed Canadian Pension Plans until the date on which the rights and obligations of Sellers under the Funding Arrangements, including all of Sellers' rights in respect of the assets held in the Funding Arrangements, are assigned to Purchaser (the "**Pension Plan Assignment Date**") in the same manner as it is being administered at the Closing Date but for the account of, and at the expense of, either the Funding Arrangements for the Assumed Canadian Pension Plans or, where such charge to the Funding Arrangement is not permitted by applicable Law, Purchaser. For greater certainty, Sellers shall not be obligated to pay any amounts to or in respect of the Assumed Canadian Pension Plans and the Funding Arrangements therefor after the Closing Date except for the account of and at the expense of Purchaser. Until the Pension Plan Assignment Date and subject to any other agreements which Sellers and Purchaser may make following the Closing, Sellers agree to receive and deposit contributions, if any, by Purchaser and the participants in the Assumed Canadian Pension Plans to the Funding Arrangements therefor.

(iv) From the Closing Date to the Pension Plan Assignment Date, Sellers shall ensure that all funds held in the Funding Arrangements of the Assumed Canadian Pension Plans are invested in accordance with the Statement of Investment Policies and Procedures ("**SIP&P**") adopted by Sellers in respect to each Assumed Canadian Pension Plan and filed with FSRA pursuant to the PBA. Sellers agree to provide written notice to Purchaser of any changes Sellers make to such SIP&P that come into effect between the Closing Date and the Pension Plan Assignment Date. Sellers shall provide Purchaser written notice of the investment rate of return on the assets held in the Funding Arrangements of the Assumed Canadian Pension Plans (the "**Rate of Return**"). Such written notice shall be provided to Purchaser on a quarterly basis, not later than 30 days following the end of each calendar quarter. Provided Sellers and the trustee or other funding agent for the Assumed Canadian Pension Plans comply with such SIP&P and Laws, neither Sellers nor the trustee or other funding agent of the Assumed Canadian Pension Plans shall be liable for the investment performance of the assets held in the Funding Arrangements for the Assumed Canadian Pension Plans or responsible for any loss in the value of the assets to be transferred to Purchaser as the result of such investment performance.

(v) The expenses attributable to the assignment of the liability and responsibility of Sellers under the Assumed Canadian Pension Plans and the Funding Arrangements therefor to Purchaser shall be paid to the extent permissible from the assets of the Assumed Canadian Pension Plans. Purchaser shall be responsible for all expenses incurred by it with respect to the assumption of the liability, rights and responsibility under the Assumed Canadian Pension Plans and the Funding Arrangements therefor.

(vi) As soon as practicable after the Closing Date, Sellers shall provide to Purchaser such information and records, and access to such personnel, as may reasonably be required to administer the Assumed Canadian Pension Plans, to the extent that such information and records are not then in the possession of Purchaser or any of its authorized representatives.

(b) Partial Transfer of Canadian Pension Plans.

(i) Notwithstanding that one or more of the Canadian Pension Plans has not been designated by Purchaser in a writing to Sellers as an Assumed Benefit Plan,

Purchaser may, in a writing to Sellers prior to the date of the CCAA Sale Hearing, designate that it intends to assume that portion of Sellers' liability and responsibility under a particular Canadian Pension Plan that is an Excluded Benefit Plan in respect of the Transferred Employees who are participants in that plan. The provisions of this Section 7.9(b) shall apply to the transfer of the assets and liabilities from such Canadian Pension Plan so designated. Each such Canadian Pension Plan that is so designated by Purchaser pursuant to this Section 7.9(b)(i) is herein called a "**Partially Transferred Canadian Pension Plan**".

(ii) As soon as practicable after the Closing Date, but effective as of the Closing Date, Sellers shall assign to Purchaser and Purchaser shall assume all of Sellers' liability and responsibility under and pursuant to each Partially Transferred Canadian Pension Plan in respect of those Transferred Employees who are participants therein (the "**Transferred Pension Plan Participants**"). In order to effect such assignment and assumption, Sellers agree to take such steps, prepare and execute such documents, notify the members and former members of each such Partially Transferred Canadian Pension Plan including the Transferred Pension Plan Participants and any Unions representing them and seek such approvals of the applicable Governmental Authorities as may be necessary or desirable, as soon as practicable, including without limitation in compliance with PBA Reg 310/13 and the applicable guidance issued in connection with such Regulation by FSRA. As soon as practicable after the Closing Date, but effective as of the Closing Date, Purchaser shall establish and register with the applicable governmental agencies, or shall otherwise cause to be provided, a pension plan for the Transferred Pension Plan Participants (the "**Purchaser's Plan**") which shall contain benefit provisions which are equivalent in all material respects to those provided under the Partially Transferred Canadian Pension Plan which are applicable to the Transferred Pension Plan Participants. Purchaser shall also establish or otherwise provide a Funding Arrangement for Purchaser's Plan. Purchaser's Plan shall provide that for the purposes of eligibility for membership, vesting and continued benefit accrual, service by Transferred Pension Plan Participants recognized under the Partially Transferred Canadian Pension Plan shall be deemed to be continuous unbroken service with Purchaser. Purchaser further agrees to provide Sellers with such documentation and information as may be reasonably required to satisfy Sellers that Purchaser's Plan and the Funding Arrangement therefor have been properly established or otherwise provided, as applicable, in accordance with this Section 7.9(b).

(iii) If either the Hourly DB Plan or the Salaried DB Plan is one of the Partially Transferred Canadian Pension Plans, the provisions of this Section 7.9(b)(iii) shall apply. Immediately following the Closing Date, Sellers shall cause the actuary for the Hourly DB Plan or the Salaried DB Plan, as the case may be, to calculate the actuarial present value of the accrued benefits of Transferred Pension Plan Participants who are participants in such plan at the Closing Date (the "**Assumed DB Liabilities**"), determined on a solvency basis, recognizing service credited under such plan to the Closing Date. Such calculation shall be made in compliance with the requirements of the PBA including, without limitation, PBA Reg 310/13, and, to the extent permissible, using the same actuarial methods and assumptions used in the last actuarial valuation prepared as at December 31, 2021 and filed with FSRA in respect of the Hourly DB Plan or Salaried DB Plan and applying the provisions of such plan as at the Closing Date. Similarly, Sellers shall cause the actuary for the Hourly DB Plan or the Salaried DB Plan, as the case may be, to calculate the amount of assets to be transferred from the Hourly DB Plan or the Salaried DB Plan, as the case may be, to Purchaser's Plan in respect of such Assumed DB

Liabilities, pursuant to section 9 of PBA Reg 310/13 (the “**Assumed DB Assets**”). Sellers shall provide Purchaser with a copy of the report of the actuary for the Hourly DB Plan or the Salaried DB Plan on the calculation of the Assumed DB Liabilities and Assumed DB Assets and shall provide access to the actuary for such plan to confirm the calculation of the Assumed DB Liabilities and Assumed DB Assets, including access to all information, documents or records of Sellers pertaining to the Hourly DB Plan or the Salaried DB Plan necessary for such purpose. If the applicable Governmental Authorities require some variation from the foregoing calculation of the Assumed DB Liabilities and the Assumed DB Assets, the calculation will be modified by the actuary for the Hourly DB Plan or the Salaried DB Plan in accordance with the requirements of such Governmental Authorities. Sellers agree to cause the trustee of the trust fund for the Hourly DB Plan or the Salaried DB Plan to notionally segregate assets in the trust fund for such plan having a value equal to the Assumed DB Assets, as such value may be modified in accordance with the requirements of such Governmental Authorities, effective as of the Closing Date.

(iv) If the Hourly DC Plan or the Salaried DC Plan is one of the Partially Transferred Canadian Pension Plan, the provisions of this Section 7.9(b)(iv) shall apply. Immediately following the Closing Date, Sellers shall direct the funding agent for each such plan to notionally segregate assets in the Funding Arrangement for such plan attributable to the account balances for the Transferred Pension Plan Participants who are participants in such plan (the “**Assumed DC Assets**”). Concurrently, Sellers shall provide notice to Purchaser of such direction to the funding agent, and Sellers shall provide Purchaser with such details of the calculation of the Assumed DC Assets as Purchaser may reasonably require.

(v) Subject to Section 7.9(b)(ii), (iii) and (iv), Sellers agree to administer each Partially Transferred Canadian Pension Plan in respect of Transferred Pension Plan Participants, until the date on which the transfer of the Assumed DB Assets or the Assumed DC Assets to the Funding Arrangement to be established or otherwise provided for Purchaser’s Plan has been completed in accordance with Section 7.9(b)(vi) (the “**Partial Plan Transfer Date**”), in the same manner as it is being administered at the Closing Date but for the account of, and at the expense of, Purchaser or the Assumed DB Assets or Assumed DC Assets, as applicable, subject to any Laws and government regulations and policies. For greater certainty, Sellers shall not be obligated to pay any amounts to or in respect of each Partially Transferred Canadian Pension Plan and the Funding Arrangement therefor in respect of Transferred Pension Plan Participants after the Closing Date except for the account of, and at the expense of, Purchaser. Until the Partial Plan Transfer Date and subject to any other agreements which Sellers and Purchaser may make after the Closing, Sellers agree to receive and deposit contributions, if any, by Purchaser to the Funding Arrangement for the Partially Transferred Canadian Pension Plan and to credit such contributions to the Assumed DB Assets or Assumed DC Assets, as applicable. Until the Partial Plan Transfer Date, the Funding Arrangement for each Partially Transferred Canadian Pension Plans shall continue to be invested under the supervision of Sellers and the trustee or funding agent for each Partially Transferred Canadian Pension Plan, and the Assumed DB Assets and Assumed DC Assets shall be adjusted to reflect the investment performance of such Funding Arrangement. Sellers and the trustee or funding agent for each Partially Transferred Canadian Pension Plan shall act in a fiduciary capacity with reasonable diligence and prudence and in good faith in so doing and, provided they so act, neither Sellers nor the trustee or funding agent of each Partially Transferred Canadian Pension

Plan shall be liable for the investment performance of the Assumed DB Assets or Assumed DC Assets or responsible for any loss in the value of the Assumed DB Assets or Assumed DC Assets as the result of investment performance.

(vi) The fees of the actuary for each Partially Transferred Canadian Pension Plan, in respect of the assignment of the liability and responsibility under each Partially Transferred Canadian Pension Plan for Transferred Pension Plan Participants to Purchaser's Plan and for the transfer of the value of the Assumed DB Assets and Assumed DC Assets, as adjusted, to the Funding Arrangement to be arranged or otherwise provided by Purchaser therefor, shall be paid to the extent permissible from the assets of the applicable Partially Transferred Canadian Pension Plan. Purchaser shall be responsible for all expenses incurred in respect of the establishment of Purchaser's Plan and the trust fund or other Funding Arrangement therefor.

(c) Successor Plan Administrator. The obligations of Sellers set forth in Section 7.9(a) and Section 7.9(b) include certain obligations of Sellers to be performed by them in their capacities as administrators of the Canadian Pension Plans. If a successor administrator is appointed at any time for any of the Canadian Pension Plans, as contemplated pursuant to the provisions of the PBA, the obligations of any Sellers in their respective capacities as administrators of any of the Canadian Pension Plans shall be binding upon the successor administrator appointed in respect of that Canadian Pension Plan, which shall carry out such obligations pursuant to Section 7.9(a) and Section 7.9(b) as the successor administrator to Sellers.

Section 7.10 Non-Transferrable Insurance. ~~To the~~ Except as otherwise provided in this Agreement, and to the extent that any insurance policies that are not transferable at the Closing in accordance with the terms thereof cover any loss, Liability, claim, damage or expense relating to any Purchased Assets or Assumed Liabilities and such insurance policies continue after the Closing to permit claims to be made thereunder with respect to events occurring prior to the Closing, (a) Sellers shall hold such insurance policies in trust for the benefit of Purchaser and Purchaser shall have coverage thereunder and (b) Purchaser and Sellers shall cooperate with the other, as applicable, at the sole cost and expense of Purchaser, in good faith in submitting and pursuing such claims for the benefit of Purchaser and its Affiliates. Further, and except as otherwise provide in this Agreement, Sellers shall pay over to Purchaser promptly any insurance proceeds paid or recovered thereunder with respect to such claims. In the event Purchaser determines to purchase replacement coverage with respect to any such insurance policy, Sellers shall reasonably cooperate with Purchaser to terminate such insurance policy and shall, at the option of Purchaser, promptly pay over to Purchaser any refunded or returned insurance premiums received by Sellers in connection therewith or cause such premiums to be applied by the applicable carrier to the replacement coverage arranged by Purchaser.

Section 7.11 Use of Name. Each Seller agrees, and agrees to cause each of its Affiliates, (a) within thirty (30) calendar days after the Closing Date, to amend their respective corporate entity names and Fundamental Documents (including in connection with the Bankruptcy Cases or in any other legal case or proceeding in which any Seller is a party and for the purpose of winding up Sellers and their estates) that are required to change their respective entity names to a new name that is, in Purchaser's reasonable judgment, sufficiently dissimilar to

each Seller's respective present name and/or any Trademark used in connection with the Business so as to avoid confusion and make their respective present name available to Purchaser, (b) within ninety (90) calendar days after the Closing Date, to cease all use of the Trademarks "DCL," "Dominion Colour" and any other Trademark used in connection with the Business, or any name or Trademark that contains or comprises any such Trademarks or is an abbreviation, translation, transliteration or derivative thereof, an acronym therefor or otherwise confusingly similar thereto for any purpose; *provided, however*, that Sellers may use "f/k/a DCL Corporation" or such similar description in the title of the CCAA Proceeding or the US Bankruptcy Cases.

Section 7.12 License Approvals. At Purchaser's sole cost and expense, Sellers shall assist Purchaser with the preparation, filing and prosecution of each application, petition or other filing with any Governmental Authority with respect to obtaining the necessary Consents and approvals pertaining to transfer of any Licenses to Purchaser ("**License Approvals**"), including (i) making reasonably available to Purchaser the Sellers' employees responsible for managing the Licenses and Sellers' License counsel (subject to compliance with ethical rules) to assist and consult with Purchaser on the License Approvals, and (ii) participating in any legal proceedings reasonably requested by Purchaser to obtain such Licenses. Sellers shall promptly provide to Purchaser any necessary information for obtaining the Licenses, and shall direct all persons employed by, related to or under control of Sellers whose cooperation is reasonably necessary or convenient to Purchaser's application for Licenses in Purchaser's name, and shall provide any Licenses of Sellers for surrender when directed by Purchaser to do so.

Section 7.13 Trademarks and Patents. Prior to the Closing Date, Sellers shall (i) execute and record all documents, including all applicable filings with the United States Patent and Trademark Office and with the registries and other governmental authorities in all applicable foreign jurisdictions, and take all other actions necessary or desirable to validate, perfect and record ownership of all Registered Intellectual Property included in the Purchased Assets by Purchaser or its designee, and to ensure that the chain of title of all such Registered Intellectual Property reflects all prior acquisitions and transfers of each item of such Registered Intellectual Property as well the as assignment to Purchaser contemplated by this Agreement, such that Purchaser or its designee shall be identified in the records of each applicable registry or governmental authority as a current owner of record of each such item of Registered Intellectual Property without defects in chain of title and (ii) use commercially reasonable efforts to execute and record all documents (at Purchaser's expense), including all applicable filings with the United States Patent and Trademark Office and with the registries and other governmental authorities in all applicable foreign jurisdictions, and take all other actions necessary or desirable to release all existing and prior security interests recorded against all such Registered Intellectual Property.

Section 7.14 Replacement Financial Assurance. Purchaser acknowledges and agrees that it shall replace each Financial Assurance with a new financial assurance satisfactory to the applicable Governmental Authority or other Person holding such Financial Assurance (collectively, the "**Replacement Financial Assurance**") or take any other action, to the satisfaction of the applicable Governmental Authority or Person holding such Financial

Assurance, so that such Financial Assurance is returned to the relevant Seller or an Affiliate thereof or is otherwise cancelled at or prior to Closing.

Section 7.15 Supplement to Seller Disclosure Schedule. From time to time prior to the Closing, Sellers shall have the right (but not the obligation) to supplement or amend the Seller Disclosure Schedule hereto (each, a “**Schedule Supplement**”). Any disclosure in such Schedule Supplement shall not be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement; *provided, however*, that if any such Schedule Supplement discloses a matter that would lead to a failure to satisfy the condition in Section 9.2(a), Purchaser shall have ten (10) days following delivery of such Schedule Supplement to terminate this Agreement, and if Purchaser does not terminate this Agreement within such ten (10) day period, such Schedule Supplement shall thereafter be deemed to have cured any inaccuracy in or breach of any representation or warranty contained in this Agreement to which such Schedules Supplement relates; *provided, further, however*, that Sellers and Purchaser may supplement or amend Sections 1.1, 2.2(e), 5.8, 5.10(a), 5.12(a), 5.15, 5.17, 7.1(a), 7.1(b), 9.2(d) ~~of the Seller Disclosure Schedule, within (a) fifteen (15) days following the date of this Agreement with respect to Section 5.15 of the Seller Disclosure Schedule, and (b) ten (10) days following the date of this Agreement with respect to the other applicable Sections of the Seller Disclosure Schedule (in each case, which supplement and amendment shall be in form and substance acceptable to Sellers and Purchaser), which disclosure in such Schedule Supplements shall be deemed to have been made as of the date of this~~ in accordance with the terms of the Original Asset Purchase Agreement.

ARTICLE VIII TAX MATTERS

Section 8.1 Pre-Closing Taxes. Purchaser shall not be obligated to pay any Taxes (except for any Assumed Tax Liabilities) imposed by any Governmental Authority on any of the Sellers or the Business, or with respect to the Purchased Assets, in each case due or owing with respect to any taxable period (or portion thereof) ending on or prior to the Closing Date.

Section 8.2 Transfer Taxes. Notwithstanding Section 8.1, any and all stamp, duty, stamp duty, transfer, documentary, registration, ETA Taxes, business and occupation and other similar Taxes imposed by any Governmental Authority in connection with the Sale contemplated by this Agreement (the “**Transfer Taxes**”) shall be paid by Purchaser. Purchaser and Sellers shall cooperate in providing each other with any appropriate resale exemption certifications and other similar documentation; provided further that the parties shall reasonably cooperate in availing themselves of any available Tax elections or exemptions from any collection of (or otherwise reduce) any such Transfer Taxes.

(a) Purchaser and the Canadian Seller shall, to the extent applicable, jointly make election(s) under subsection 167(1) of the ETA in respect of the sale of the Canadian Purchased Assets, in the prescribed form, such that no ETA Tax is payable in respect of such sale. Purchaser shall timely file such election forms with the appropriate Governmental Authority in the prescribed manner. Notwithstanding such election, in the event that it is determined by a Governmental Authority that the Canadian Seller is liable to pay, collect or remit any ETA Taxes in respect of the sale of the Canadian Purchased Assets, Purchaser shall

forthwith pay such ETA Taxes, plus any applicable interest and penalties, to the Canadian Seller for remittance to the appropriate Governmental Authority.

(b) At the request of Purchaser, Purchaser and Canadian Seller shall, to the extent applicable, jointly make an election pursuant to section 22 of the Tax Act and the corresponding provisions of any applicable Canadian provincial income tax statute, in respect of the Canadian Seller transferring its Accounts Receivable (excluding, for certainty, any Excluded Assets) to Purchaser as part of the Canadian Purchased Assets. Purchaser and Canadian Seller agree to jointly make the necessary election(s) and to execute and file within the prescribed time the prescribed election form(s) required to give effect to the foregoing.

(c) At the request of Purchaser, Purchaser and Canadian Seller shall, to the extent applicable, jointly make an election under Section 20(24) of the Tax Act and the corresponding provisions of any applicable Canadian provincial income tax statute, in respect of amounts for future obligations and shall timely file such election(s) with the appropriate Governmental Authority. To the extent applicable for Canadian Tax purposes, Canadian Seller and Purchaser acknowledge that a portion of the Purchased Assets was transferred to Purchaser as payment by Canadian Seller to Purchaser for the assumption by Purchaser of any such future obligations of the Canadian Seller.

Section 8.3 Cooperation on Tax Returns and Tax Proceedings. Purchaser and Sellers shall cooperate fully and in good faith as and to the extent reasonably requested by the other party, in connection with the preparation and filing of Tax Returns and any Action with respect to Taxes (each, a “**Tax Proceeding**”) imposed on or with respect to the Purchased Assets or the Business. Such cooperation shall include the retention and (upon the other party’s request) the prompt provision of records and information which are reasonably relevant to any such Tax Return or Tax Proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Sellers and their Affiliates shall (a) abide by all record retention agreements entered into with any Governmental Authority and (b) give Purchaser thirty (30) days’ written notice prior to transferring, destroying or discarding any Tax records and, if Purchaser so requests, shall allow Purchaser to take possession of such Tax records. For greater certainty, Purchaser agrees that applicable former employees of the Sellers will provide reasonable assistance to Sellers in the preparation of Sellers’ financial statements for their respective fiscal year ends at no cost to Sellers. A Seller’s obligations under this Section 8.3 shall terminate upon the dissolution of such Seller.

ARTICLE IX CONDITIONS

Section 9.1 Conditions to Each Party’s Obligations. The respective obligations of Purchaser and Sellers to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived, to the extent permitted by applicable Law, by both Sellers and Purchaser in writing:

(a) No Injunctions or Restraints. No Governmental Order or other Law preventing consummation of the Sale shall be in effect or shall not have become final and

non-appealable and remain in effect for five (5) Business Days after notice of such Governmental Order or other Law has been received by Sellers and Purchaser.

(b) No DIP Facility Acceleration. No acceleration of the obligations evidenced by the DIP Credit Agreement shall have occurred and be continuing.

(c) Entry or Granting of Orders. The US Bankruptcy Court shall have entered the US Sale Procedures Order and the US Sale Order, and each shall be acceptable to Purchaser. The CCAA Court shall have granted the CCAA Initial Order, the CCAA Amended and Restated Initial Order, the CCAA Sale Procedures Order and the CCAA Sale Order, and each shall be acceptable to Purchaser.

(d) Competition Act Clearance. Competition Act Clearance, if required, shall have been obtained.

~~(e) Competition Authority Clearance. Competition Authority Clearance, if required, shall have been obtained.~~

Section 9.2 Conditions to the Obligations of Purchaser. The obligation of Purchaser to consummate the Sale shall be subject to the satisfaction, at or prior to the Closing, of each of the following conditions unless waived in writing, in whole or in part, by Purchaser:

(a) Representations and Warranties of Sellers. (i) Ignoring for purposes of this Section 9.2(a) any qualifications as to materiality or Material Adverse Effect contained in Article V, the representations and warranties of Sellers set forth in this Agreement (other than the Fundamental Representations of Sellers) shall be true and correct as of the date of ~~this~~the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), except in the case where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Material Adverse Effect, and (ii) the Fundamental Representations of Sellers shall be true and correct (other than *de minimis* inaccuracies) as of the date of ~~this~~the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date).

(b) Performance of Obligations. Each Seller shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Deliverables. Purchaser shall have been furnished with the documents set forth in Section 4.2(a).

(d) Consents. Purchaser shall have received all Consents set forth in Section 9.2(d) of the Seller Disclosure Schedule.

(e) No Material Adverse Effect. From the date of ~~this~~the Original Asset Purchase Agreement, no Material Adverse Effect shall have occurred.

(f) Designated Amount. As of the Closing, the Designated Amount shall not have been greater than the ~~applicable~~ amount set forth in the definition thereof.

(g) SER Merger Code. Purchaser shall have received confirmation from Sellers that the consultation process with the secretariat of the Social and Economic Council and the trade union (if any) in the sense of the SER Merger Code has been completed in full compliance with applicable Law.

(h) Excess Availability. The Excess Availability (as defined in the DIP Credit Agreement, but also reflecting outstanding Obligations under the DIP Facility immediately prior to Closing) based on the borrowing base for the week prior to the week in which Closing is to occur shall not have been less than \$469,000.

(i) Designated Location. The Designated Location shall be delivered to Purchaser in a condition in which (i) operations of such facility have been ceased and (ii) such facility has been placed in a safe and secure idle state by the Canadian Seller.

Section 9.3 Conditions to the Obligations of Sellers. The obligation of Sellers to consummate the Sale shall be subject to the satisfaction at or prior to the Closing of each of the following conditions unless waived in writing, in whole or in part, by Sellers:

(a) Representations and Warranties of Purchaser. (i) The representations and warranties of Purchaser set forth in this Agreement (other than the Fundamental Representations of Purchaser) shall be true and correct as of the date of ~~this~~the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct as of such earlier date), provided that the condition set forth in this Section 9.3(a)(i) shall be deemed satisfied unless any failures to be so true and correct would be reasonably likely to, individually or in the aggregate, materially adversely affect Purchaser's ability to consummate the transactions contemplated by this Agreement, and (ii) the Fundamental Representations of Purchaser shall be true and correct (other than *de minimis* inaccuracies) as of the date of ~~this~~the Original Asset Purchase Agreement and as of the Closing as though made at and as of the Closing (except to the extent any such representation or warranty expressly relates to an earlier date, in which case such representation or warranty shall be true and correct as of such earlier date).

(b) Performance of Obligations. Purchaser shall have performed in all material respects all obligations required to be performed by it under this Agreement at or prior to the Closing.

(c) Excluded Cash. Sellers shall have received the Excluded Cash and Additional Cash Consideration. For the avoidance of doubt, that US Sellers shall have received \$1,425,000 and the Monitor, on behalf of the Canadian Seller, shall have received \$575,000, of the Designated Amount, free and clear of all Liens and claims, including the Liens and claims of Purchaser, DIP Lenders, and Pre-Petition Term Lenders: provided, however, that,

(i) the Designated Amount delivered to the Monitor, on behalf of the Canadian Seller, shall be subject to the administration charge granted in the CCAA Proceeding, and (ii) the CCAA Cash Pool shall be subject to the Liens and claims in the estate of the Canadian Seller in the CCAA Proceeding, other than the Liens and claims of the Purchaser and its Affiliates, DIP Lenders and their Affiliates, Pre-Petition Term Lenders and their Affiliates, and the US Sellers.

(d) Deliverables. Sellers shall have been furnished with the documents set forth in Section 4.2(b).

Section 9.4 Monitor's Certificate.

(a) Upon receipt of each of the Conditions Certificates, the Monitor shall (i) issue forthwith its Monitor's Certificate concurrently to Sellers and Purchaser, at which time the Closing will be deemed to have occurred; and (ii) file as soon as practicable a copy of the Monitor's Certificate with the Court (and shall provide a true copy of such filed certificate to Sellers and Purchaser).

(b) The parties hereto acknowledge and agree that the Monitor shall be entitled to file the Monitor's Certificate with the CCAA Court without independent investigation upon receiving the Conditions Certificates, and the Monitor will be relying exclusively on the basis of the Conditions Certificates and without any obligation whatsoever to verify the satisfaction or waiver of the applicable conditions and shall have no liability to Seller or Purchaser or any other Person as a result of filing the Monitor's Certificate upon receiving such Confirmation Certificates.

ARTICLE X TERMINATION PROCEDURES

Section 10.1 Termination. This Agreement may be terminated and the Sale contemplated in this Agreement may be abandoned at any time prior to the Closing Date, notwithstanding the fact that any requisite authorization and approval of the Sale shall have been received, as follows; *provided*, that if a Party does not exercise a right to terminate this Agreement within five (5) Business Days ~~(or in the case of Section 10.1(r), ten (10) Business Days)~~ of receipt of written notice from the other Party, in accordance with Section 12.5, of the circumstances creating such right to terminate, such Party shall be deemed to have waived the ability to terminate this Agreement for such circumstances:

(a) by the mutual written consent of Purchaser and Sellers;

(b) by Sellers, if Purchaser has breached any of its obligations under this Agreement or the Sale Orders, which breach would result in a failure of a conditions set forth in Section 9.1 or Section 9.3 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) days after the delivery of written notice by Sellers to Purchaser of such breach, and (ii) the End Date;

(c) by Purchaser or Sellers, if the Closing has not occurred by March 17, 2023 (the "**End Date**"); *provided*, that Purchaser and Sellers may mutually agree to extend such date;

provided, further, that the right to terminate this Agreement under this Section 10.1(c) shall not be available to any party who shall have been the cause of, or whose action or inaction shall have resulted in, the failure of the Closing to occur by such date;

(d) by Purchaser or Sellers, if there shall be any Governmental Order or other Law that makes consummation of the Sale illegal or otherwise prohibits restrains, or enjoins the consummation of the Sale and such Governmental Order or other Law shall have become final and non-appealable and remain in effect for five (5) Business Days after notice of such Governmental Order or other Law has been received by Sellers and Purchaser; *provided*, that the right to terminate this Agreement under this Section 10.1(d) shall not be available to any party who shall have been the cause of, or whose action or inaction shall have resulted in, the Governmental Order or other Law prohibiting, restraining, or enjoining the Sale;

(e) by Purchaser or Sellers upon the US Bankruptcy Court's or the CCAA Court's approval of Sellers' entry into or pursuit of an Alternative Restructuring Proposal; *provided*, that Sellers shall have the right to terminate this Agreement pursuant to this Section 10.1(e) only if they have complied in all material respects with the requirements of Section 7.7 hereof;

(f) by Sellers, if required in connection with the discharge of its or its directors or managers fiduciary duties in accordance with Section 7.6(a);

(g) by Purchaser, if any Seller has breached any of its obligations under this Agreement or the Sale Orders, which breach would result in a failure of a conditions set forth in Section 9.1 or Section 9.2 and which breach cannot be cured or has not been cured by the earlier of (i) twenty (20) days after the delivery of written notice by Purchaser to Sellers of such breach, and (ii) the End Date;

(h) by Purchaser, if (i) the US Bankruptcy Cases are converted to cases under chapter 7 of the US Bankruptcy Code, a trustee or examiner with expanded powers is appointed pursuant to the US Bankruptcy Code or the US Bankruptcy Court enters an Order pursuant to section 362 of the US Bankruptcy Code lifting the automatic stay with respect to any material portion of the Purchased Assets or (ii) the CCAA Proceeding is converted to a receivership or a bankruptcy under the BIA, a trustee in bankruptcy, receiver, receiver and manager or liquidator is appointed in respect of the Canadian Seller or its assets or business or if the CCAA Court grants an Order lifting the stay of proceeds with respect to any material portion of the Purchased Assets;

(i) [RESERVED];

(j) by Purchaser, upon (i) delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined in the US DIP Order), (ii) the DIP Agent exercising remedies under Section 9.1(a), (b), or (c) (except, for the avoidance of doubt, any such direction made in accordance with the Bid Procedures Order) of the DIP Credit Agreement, (iii) an Event of Default (as each is defined in the DIP Credit Agreement) pursuant to Section 8.14(d) (except any violation, breach, or default of a Financing Order arising from any Event of Default other than 8.14(i) or 8.14(m) (as modified for purposes of this clause (j)) shall not constitute an Event of Default for purposes of this clause (j)), 8.14(i), or 8.14(m) (provided that (A) references in Section 8.14(m)(i) or (ii)

therein to 15% shall be deemed to refer to 19% for purposes of this clause (j) and references to 80% shall be deemed to refer to 76% for purposes of this clause (j), and (B) the budget attached to the ~~interim~~final US DIP Order shall be used for the purposes of conducting the Section 8.14(m) testing for this clause (j)) of the DIP Credit Agreement (or a waiver of any Event of Default arising under Section 8.14(d), (i), or (m) of the DIP Credit Agreement (to the extent that it would constitute an Event of Default for purposes of the rights of Purchaser to terminate this Agreement under this clause (j)), without the consent of Purchaser), (iv) if the DIP Orders or the DIP Credit Agreement are modified in any respect materially adverse to the interests of Purchaser without the consent of Purchaser; provided, that the Purchaser shall not have any termination right arising out of (a) any variance from the budget attached to the interim US DIP Order which occurred prior to the date of this Agreement or (b) any Event of Default (as defined in the DIP Credit Agreement) previously disclosed to Purchaser in writing;

(k) by Purchaser, if for any reason whatsoever, Purchaser is unable to Credit Bid as part of the Purchase Price, in any amount Purchaser deems fit, for the Purchased Assets;

(l) by Purchaser, if the Sale Procedures Orders (including the Sale Procedures) or the Sale Orders are modified in any material respect without the consent of Purchaser;

(m) by Purchaser, if Sellers are unable to assign a Material Contract that Purchaser has elected to purchase and assume;

(n) by Purchaser, if the condition set forth in Section 9.2(f) is not capable of being satisfied;

(o) by Purchaser, if the Exit Costs exceed \$2,900,000 ~~plus the applicable limitation amount set forth in the definition of~~ **Designated Amount**;

(p) by Purchaser, if the Select Assumed Liabilities exceed \$6,500,000; or

(q) by Purchaser, if the amount necessary to conduct an orderly wind down of Sellers after the Closing Date exceeds the **applicable** limitation amount set forth in the definition of Designated Amount; ~~or.~~

~~(r) by Purchaser, if the Designated Amounts set forth in clauses (a), (b) or (c) of the definition thereof are adjusted by Sellers, in consultation with the Monitor; provided, that if the applicable notice period runs on this Section 10.1(r) termination without Purchaser electing to terminate this Agreement, the Designated Amounts in such clauses shall be automatically amended to be the final amounts as adjusted by Sellers as contemplated by the definition of "Designated Amounts" herein.~~

In the event of termination of this Agreement as permitted by Section 10.1, this Agreement shall become void and of no further force and effect, except for the provisions of ARTICLE XII, which shall remain in full force and effect, and nothing in this Agreement shall be deemed to

release or relieve any party from any Liability for any fraud or willful breach by such party of the terms and provisions of this Agreement.

ARTICLE XI NO SURVIVAL OF REPRESENTATIONS AND WARRANTIES AND CERTAIN COVENANTS

Section 11.1 No Survival of Representations and Warranties and Certain Covenants. None of the representations and warranties of Sellers or Purchaser contained in ARTICLE V and ARTICLE VI hereof, respectively, including the Seller Disclosure Schedule or any certificate or instrument delivered in connection herewith at or prior to the Closing, and none of the covenants contained in ARTICLE VII to be performed on or prior to the Closing shall survive the Closing other than Section 7.11(a). The Confidentiality Agreement and the parties' respective covenants and agreements set forth herein that by their specific terms contemplate performance after Closing shall survive the Closing indefinitely unless otherwise set forth herein.

ARTICLE XII MISCELLANEOUS

Section 12.1 Governing Law. This Agreement and all claims and causes of action that may be based on, arise out of, or relate to this Agreement or the negotiation, execution, or performance of this Agreement shall be governed by, and construed in accordance with, the Laws of the State of Delaware (without giving effect to any choice or conflict of laws principles), except to the extent that the Laws of such state are superseded by the US Bankruptcy Code or the CCAA, as applicable.

Section 12.2 Jurisdiction; Forum; Service of Process; Waiver of Jury. With respect to any Action arising out of or relating to this Agreement, each Seller and Purchaser hereby irrevocably:

(a) consents to the exclusive jurisdiction of (i) the US Bankruptcy Court, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement relating to the US Sellers and (ii) the CCAA Court, as the sole judicial forum for the adjudication of any matters arising under or in connection with the Agreement relating to the Canadian Seller. After US Sellers are no longer subject to the jurisdiction of the US Bankruptcy Court, the parties irrevocably submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States District Court for the District of Delaware ("**Selected Courts**") for any Action arising out of or relating to this Agreement or the other Transaction Documents and the transactions contemplated hereby and thereby (and agrees not to commence any Action relating hereto or thereto except in such courts) and waives any objection to venue being laid in the Selected Courts whether based on the grounds of forum non conveniens or otherwise, provided that the CCAA Court shall have jurisdiction over the Canadian Purchased Assets and the Canadian Assumed Liabilities;

(b) consents to service of process in any Action by the mailing of copies thereof by registered or certified mail, postage prepaid, or by recognized international express carrier or delivery service, to Sellers or Purchaser at their respective addresses referred to in

Section 12.5 hereof; *provided, however*, that nothing herein shall affect the right of any party hereto to serve process in any other manner permitted by law, and

(c) WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT OR THE OTHER TRANSACTION DOCUMENTS.

Section 12.3 Successors and Assigns. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement may be made by any party at any time, whether or not by operation of law, without the other party's prior written consent; *provided, however*, that if Purchaser is the Successful Bidder under the Sales Procedures, Purchaser may, without the consent of the other parties hereto, assign any of its rights, interests and obligations under this Agreement to one or more Affiliates of Purchaser or, with respect to the Assigned Claims and other rights to be assigned to the Trust pursuant to Section 7.6(d)(ii) and/or (iii), to the Trust, which assignment will not relieve Purchaser of any obligations hereunder. Except as specifically provided for herein, only the parties to this Agreement or their permitted assigns shall have rights under this Agreement.

Section 12.4 Entire Agreement; Amendment. This Agreement, the Confidentiality Agreement and the other Transaction Documents constitute the full and entire understanding and agreement between the parties with regard to the subjects hereof and supersede all prior agreements relating to the subject matter hereof. Except as expressly provided herein, neither this Agreement nor any term hereof may be amended, modified, supplemented, waived, discharged or terminated other than by a written instrument signed by Sellers and Purchaser expressly stating that such instrument is intended to amend, modify, supplement, waive, discharge or terminate this Agreement or such term hereof. No waiver of any of the provisions of this Agreement shall be deemed to or shall constitute a waiver of any other provision hereof (whether or not similar).

Section 12.5 Notices. All notices, requests, consents and other communications hereunder to any party shall be deemed to be sufficient if contained in a written instrument delivered in person or sent by electronic mail (with receipt confirmed), nationally recognized overnight courier or first class registered or certified mail, return receipt requested, postage prepaid, addressed to such party at the address set forth below or such other address as may hereafter be designated in writing by such party to the other party:

(a) if to Sellers or Seller, to:

Dominion Colour Corporation
1 Concorde Gate
Suite 608, Toronto, Ontario, Canada
M3C 3N6
Attention: Scott Davido, CRO
Email: scott.davido@ankura.com

with a copy (that shall not constitute notice) to:

King & Spalding LLP
1180 Peachtree Street, NE
Suite 1600
Atlanta, GA 30309
Attention: Jeff Dutson, Rahul Patel
Email: jdutson@kslaw.com, rpatel@kslaw.com

-and-

Blake Cassels & Graydon LLP
199 Bay Street
Suite 4000, Commerce Court West
Toronto, ON M5L 1A9
Attention: Linc Rogers, Milly Chow
Email: linc.rogers@blakes.com; milly.chow@blakes.com

(b) if to Purchaser, to:

c/o Blackstone Alternative Credit Advisors LP
345 Park Avenue
31st Floor
New York, NY 10154
Attn: Randy Kessler
Email: randall.kessler@blackstone.com

with copies (that shall not constitute notice) to:

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019-6099
Attention: Matthew Feldman, Jeffrey Pawlitz, Victor Okasmaa, and
Morgan McDevitt
Email: mfeldman@willkie.com, jpawlitz@willkie.com,
vokasmaa@willkie.com, and mmcdevitt@willkie.com

-and-

Cassels Brock & Blackwell LLP
40 King Street West
Suite 2100, Scotia Plaza
Toronto, ON M5H 3C2
Attention: Ryan Jacobs, Joseph Bellissimo, and Colin Ground
Email: rjacobs@cassels.com, jbellissimo@cassels.com, and
cground@cassels.com

All such notices, requests, consents and other communications shall be deemed to have been given or made if and when delivered personally or by overnight courier to the parties at the above addresses or sent by electronic transmission, with confirmation received, to the e-mail addresses specified above (or at such other address for a party as shall be specified by like notice).

Section 12.6 Delays or Omissions. Except as expressly provided herein, no delay or omission to exercise any right, power or remedy accruing to Sellers or Purchaser upon any breach or default of any party under this Agreement, shall impair any such right, power or remedy of Sellers or Purchaser nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, Permit, Consent or approval of any kind or character on the part of Sellers or Purchaser of any breach or default under this Agreement, or any waiver on the part of any such party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law, in equity, or otherwise afforded to Sellers or Purchaser shall be cumulative and not alternative.

Section 12.7 Counterparts. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties. Signed facsimile, email in pdf format or other electronically signed copies of this Agreement shall legally bind the parties to the same extent as original documents.

Section 12.8 Severability. In the event that any one or more of the provisions of this Agreement becomes or is declared by a court of competent jurisdiction to be illegal, unenforceable or void, this Agreement shall continue in full force to the maximum extent permitted by Law and effect without said provisions; *provided* that no such severability shall be effective if it materially changes the economic benefit of this Agreement to any party. Any provision held invalid or unenforceable only in part or degree will remain in full force to the maximum extent permitted by Law to the extent not held invalid or unenforceable.

Section 12.9 Titles and Subtitles. The table of contents, titles, subtitles, and section headings used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement.

Section 12.10 No Public Announcement. Absent the prior written consent of the other party, neither Sellers nor Purchaser shall make any press release, public announcement or securities filing with any Governmental Authority concerning the transactions contemplated by the Transaction Documents, except as and to the extent that any such party shall be obligated to make any such disclosure by this Agreement or by applicable Law, and then only after giving the other party hereto adequate time to review such disclosure and consider in good faith the comments of the other party hereto and consultation as to such comments with such party as to the content of such disclosure; *provided, however*, that nothing in this Section 12.10 shall restrict the parties hereto from making disclosures to the US Bankruptcy Court or CCAA Court or in filings in the US Bankruptcy Court or CCAA Court; *provided, further, however*, that, to the

extent practicable, the disclosing party provides the non-disclosing party with copies of all such filings or disclosures concerning the transactions contemplated by the Transaction Documents, to be delivered to such non-disclosing party at least two (2) Business Days in advance of any such filing or disclosure and that the disclosing party shall consider in good faith any comments made by the non-disclosing party to such filings or disclosures. Notwithstanding anything to the contrary herein or in the Confidentiality Agreement, the parties hereto and each of their respective employees, representatives or other agents, are permitted to disclose to any and all Persons the tax treatment and tax structure of the transactions and all materials of any kind (including opinions or other tax analyses) that are or have been provided to such parties related to such tax treatment and tax structure; *provided, however*, that the foregoing permission to disclose the tax treatment and tax structure does not permit the disclosure of any information that is not relevant to understanding the tax treatment or tax structure of the transactions (including the identity of any party and the amounts paid in connection with the transactions); *provided, further, however*, that the tax treatment and tax structure shall be kept confidential to the extent necessary to comply with securities Laws.

Section 12.1 Specific Performance. Subject to ARTICLE X, Sellers and Purchaser agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the parties fail to take any action required of it hereunder to consummate the transactions contemplated by this Agreement. It is accordingly agreed that, subject to ARTICLE X, (a) Sellers or Purchaser will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the parties' respective covenants and agreements under this Agreement that survive the Closing, without the requirement of posting a bond or other security, and without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the transactions contemplated by this Agreement and without that right, neither Sellers nor Purchaser would have entered into this Agreement. The remedies available to Sellers or Purchaser pursuant to this Section 12.11 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Seller or Purchaser from seeking to collect or collecting damages. In no event will this Section 12.11 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty of any Seller made herein.

Section 12.1 Free and Clear Transfer. Pursuant to section 363(f) of the US Bankruptcy Code and section 36 of the CCAA, upon the granting of the applicable Sales Orders, the transfer of the Purchased Assets shall be free and clear of any and all Liens (other than Permitted Liens, but excluding clause (iv) thereof), including any Liens or claims arising out of any bulk transfer Laws, and the parties shall take such steps as may be necessary or appropriate to so provide in the Sale Orders.

Section 12.1 Non-Recourse. All claims, obligations, liabilities, or causes of action that may be based upon, in respect of, arise under, out or by reason of, be connected with, or relate in any manner to this Agreement or the other Transaction Documents, or the negotiation, execution or performance of this Agreement or any other Transaction Documents (including any

representation or warranty made in connection with or as an inducement to this Agreement or any other Transaction Documents) or the transactions contemplated hereby or thereby may be made only against (and are those solely of) the Persons that are expressly identified as parties to this Agreement and the other Transaction Documents. No other Person, including any of their past, present or future Affiliates, directors, officers, employees, incorporators, members, partners, managers, stockholders, agents, attorneys, or representatives of, or any financial advisors or lenders to any of the foregoing shall have any liabilities for any claims, causes of action, obligations, or liabilities arising under, out of, in connection with, or related in any manner to this Agreement or based on, in respect of, or by reason of this Agreement or the other Transaction Documents, or the negotiation, execution, performance, or breach thereof.

Section 12.1 Action by US Sellers. Holdings shall be entitled to act on behalf of each US Seller for any action required or permitted to be taken by any US Seller under this Agreement.

Section 12.1 Third Party Beneficiaries. Except as otherwise set forth herein, the terms and provisions of this Agreement are intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

SELLERS:

H.I.G. Colors Holdings Inc.

By: _____
 Name:
 Title:

H.I.G. Colors, Inc.

By: _____
 Name:
 Title:

DCL Holdings (USA), Inc.

By: _____
 Name:
 Title:

DCL Corporation (USA), LLC

By: _____
 Name:
 Title:

DCL Corporation (BP), LLC

By: _____
 Name:
 Title:

Dominion Colour Corporation (USA)

By: _____
 Name:
 Title:

DCL Corporation

By: _____
 Name:
 Title:

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed as of the date first above written.

PURCHASER:

Pigments Holdings, Inc.

By: _____

Name:

Title:

EXHIBIT A
DUTCH DEED OF TRANSFER

EXHIBIT B
BID DIRECTION LETTER


EXHIBIT C
SALE PROCEDURES

Summary report:	
Litera® Change-Pro for Word 10.8.2.11 Document comparison done on 2/13/2023 11:19:06 PM	
Style name: Standard	
Intelligent Table Comparison: Active	
Original DMS: iw://NYCDMS/NewYork/60902651/1	
Modified DMS: iw://NYCDMS/NewYork/60902651/22	
Changes:	
Add	168
Delete	167
Move From	9
Move To	9
Table Insert	0
Table Delete	0
Table moves to	0
Table moves from	0
Embedded Graphics (Visio, ChemDraw, Images etc.)	0
Embedded Excel	0
Format changes	1
Total Changes:	354

This is **Exhibit "F"** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE AND ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

In re:)	
)	Chapter 11
)	
DCL HOLDINGS (USA), INC., <i>et al.</i> , ¹)	Case No. 22-11319 (JKS)
)	
Debtors.)	(Jointly Administered)
)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF DCL CORPORATION

**BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL ASSETS OF DCL HOLDINGS (USA), INC.
AND CERTAIN DEBTOR AFFILIATES**

On [____], 2023, the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) entered the *Order (I) Authorizing the Debtors to Enter into and Perform Under the Stalking Horse Asset Purchase Agreement, (II) Approving Bidding Procedures for the Sale of the Debtors’ Assets, (III) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (IV) Scheduling Bid Deadlines and an Auction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Assumption and Assignment Procedures, and (VII) Granting Related Relief* [Docket No. ____] (the “U.S. Bidding Procedures Order”),² by which the U.S. Court approved the following procedures. These Bidding Procedures, among other things, set forth the process by which the U.S. Debtors are authorized, in consultation with the Consultation Parties, to conduct an auction (the “Auction”), if any, for the sale of all or substantially all of the Debtors’ assets by which the U.S. Court approved the procedures set forth herein (the “U.S. Bidding Procedures”)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: DCL Holdings (USA), Inc. (5472); DCL Corporation (BP), LLC (5462); H.I.G. Colors Holdings, Inc. (6233); H.I.G. Colors, Inc. (4305); DCL Corporation (USA) LLC (5534); and Dominion Colour Corporation (USA) (7076). The location of DCL Holdings (USA), Inc.’s corporate headquarters and the Debtors’ service address is: 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6.

² All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the applicable Bidding Procedures Order.

with respect to the U.S. Debtors³ and their business and assets (collectively, the “U.S. Assets”), in the cases commenced by the U.S. Debtors under the provisions of chapter 11 of title 11 of the United States Code before the U.S. Court (the “Chapter 11 Cases”).

On [●], 2023, the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court” and together with the U.S. Court, the “Bankruptcy Courts”) granted an Order (the “Canadian Bidding Procedures Order” and together with the U.S. Bidding Procedures Order, the “Bidding Procedures Orders”)⁴, by which the Canadian Court approved these Bidding Procedures with respect to DCL Corporation (the “Canadian Debtor” and together with the U.S. Debtors, the “Debtors” or “the DCL Group”) and its business and assets (collectively, the “Canadian Assets” and together with the U.S. Assets, the “Assets”), in the proceedings commenced by the Canadian Debtor pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) before the Canadian Court (the “CCAA Proceedings” and together with the Chapter 11 Cases, the “Bankruptcy Cases”).

Notwithstanding the coordination of these Bidding Procedures, all matters related to these Bidding Procedures as they relate to the U.S. Debtors and the U.S. Assets shall remain under the sole and exclusive jurisdiction of the U.S. Court and all matters related to these Bidding Procedures as they relate to the Canadian Debtor and the Canadian Assets shall remain under the sole and exclusive jurisdiction of the Canadian Court.

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties, to sell all or substantially all of the Assets or their business through a going concern sale (or partial sales) of all, substantially all, or certain of the Assets of the DCL Group (the “Sale”).

“Consultation Parties” in these Bidding Procedures shall be (i) Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Canadian Debtor (the “CCAA Monitor”), (ii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the debtor-in-possession credit agreement dated December 22, 2022 with the Debtors in the Bankruptcy Cases (the “DIP Agent”), (iii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the Debtors’ prepetition credit agreement dated April 25, 2018, as amended (the “ABL Agent”), (iv) the Pre-Petition Term Loan Agent (together with the DIP Agent and the ABL Agent, the “Agents”), and (v) the statutory creditors committee appointed on December 30, 2022 in the Chapter 11 Cases (the “Creditors Committee”). For avoidance of doubt, the foregoing shall include the CCAA Monitor, Agents and Creditor Committee’s respective advisors. Notwithstanding the foregoing or any other provision of these Bidding Procedures, the Agents shall only be consulted to the extent that the Agents confirm that neither they nor any of the lenders under their respective credit facilities (nor any of their affiliates) intend to participate in these Bidding Procedures as a bidder. If an Agent or lender under a credit facility (or one of its affiliates) participates as a bidder but later withdraws from the process (or has its bid terminated, if applicable), it can become a Consultation Party by confirming in writing to the Debtors and the

³ The “U.S. Debtors” are H.I.G. Colours Holdings Inc., H.I.G. Color, Inc., DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, and Dominion Color Corporation (USA).

⁴ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the U.S. Bidding Procedures Order or Canadian Bidding Procedures Order, as applicable.

Monitor that it has withdrawn from the process as a bidder and will not re-enter the process as a bidder.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

Copies of the U.S. Bidding Procedures Order or other documents related thereto are available upon request to Kroll Restructuring Administration LLC by calling (888) 510-7189 (US/Canada toll free) or +1 (646) 440-4160 (International), emailing DCLInfo@ra.kroll.com, or visiting the Debtors' restructuring website at <https://cases.ra.kroll.com/DCL>.

Copies of the Canadian Bidding Procedures Order or other documents related thereto are available on the website of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Canadian Debtor in the CCAA Proceedings, at <https://www.alvarezandmarsal.com/DCLCanada>.

Stalking Horse Bid

Pigments Holdings, Inc. (including its assignees or designees, the “Stalking Horse Bidder”) submitted a bid (the “Stalking Horse Bid”) pursuant to a stalking horse asset purchase agreement (as amended, amended and restated, supplemented, or otherwise modified, the “Stalking Horse APA”) for certain of the Assets to set a floor for the Sale. Having announced and received approval of the designation of the Stalking Horse Bid from the Bankruptcy Courts, the Debtors will now conduct a round of open bidding intended to obtain the highest or otherwise best bid(s) for the Assets or business of Debtors, which may culminate in an auction (the “Auction”) for such Assets or business if competing bids are received.

Key Dates

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Assets or business or any portions thereof. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until March 10, 2023 at 5:00 p.m. (prevailing Eastern time) (the “Bid Deadline”).

The key dates for the Sale process are as follows:⁵

March 10, 2023 at 5:00 p.m. (prevailing Eastern time)	Bid Deadline - Due Date for Bids and Deposits
---	---

⁵ These dates are subject to extension or adjournment as provided for herein.

March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder (each as defined herein).
March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth (i) the highest or otherwise best fully binding offer for the Assets and/or (ii) the highest or otherwise best fully binding offer(s) for all or any portion of the Assets.
March 13, 2023 at 10:00 a.m. (prevailing Eastern time)	Auction (if necessary), which will be held at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	U.S. Sale Hearing (as defined herein), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, Wilmington, Delaware 19801.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	Canadian Sale Hearing (as defined herein), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

Unless otherwise approved by the Bankruptcy Courts, no modification, extension, waiver or addition to these Bidding Procedures shall be inconsistent with the Stalking Horse APA, these Bidding Procedures Orders or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

All References to “business day” in these Bidding Procedures means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the applicable laws of, or are in fact closed in, the state of Delaware or the province of Ontario.

A. Submissions to the Debtors.

These Bidding Procedures set forth the terms by which prospective bidders, if any, may participate in the process set forth in these Bidding Procedures and qualify for and participate in an Auction, if any, thereby competing to make the highest or otherwise best offer for the Assets or any portion thereof. The Debtors will offer for sale the Assets, as well as consider other investment or other transactions, through an Auction. The Debtors, in consultation with the Consultation Parties, may consider non-overlapping bids from multiple bidders (including multiple non-overlapping bids submitted by the same bidder) for the Assets. The Stalking Horse APA and Stalking Horse Bid referenced herein provide for the Stalking Horse Bidder’s acquisition of substantially all of the Assets, subject to the terms and conditions thereof.

B. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity (other than the Stalking Horse Bidder) interested in consummating a Sale (a “Potential Bidder”) must deliver or have previously delivered to the Debtors:

- (1) an executed confidentiality agreement on terms acceptable to the Debtors (a “Confidentiality Agreement”), to the extent not already executed;
- (2) in a form acceptable to the Debtors and their advisors, in consultation with the Consultation Parties: (x) evidence of the financial capability to consummate the Sale, and (y) if required, a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with the Sale; and
- (3) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate such person’s or entity’s fitness to participate in the process set forth in these Bidding Procedures.

C. Due Diligence.

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors’ electronic data room and to additional non-public information regarding the Debtors. **No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors.** The Debtors will provide to each Potential Bidder that satisfies the foregoing, commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors’ electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline, the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or the Sale to any person except to a Potential Bidder or to such Potential Bidder’s duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide such information to Potential Bidders who, at such time and in the Debtors’ reasonable business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right to, in consultation with the Consultation Parties, withhold or redact any diligence materials that the Debtors determine in the Debtors’ reasonable business judgment are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Debtors determine is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information

of any kind whatsoever to any person that is not determined to be a Potential Bidder or who has not executed a Confidentiality Agreement with the Debtors.

All due diligence requests must be directed to TM Capital Corp., 641 Lexington Ave., 32nd Floor, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).

(a) Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale or any transaction relating to the Debtors between and amongst Potential Bidders shall exclusively be through the Debtors and the Debtors' advisors. Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors expressly consent in advance and in writing to such communication.

(b) Due Diligence of Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding the ability of the Potential Bidder to consummate the Sale. Failure by a Potential Bidder to comply with such reasonable 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 Potential Bidder or that a bid made by such Potential Bidder is not a Bid.

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable Confidentiality Agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with Bankruptcy Cases, in each case in accordance with the terms of any applicable Confidentiality Agreement.

Notwithstanding the foregoing and the provisions contained in any applicable Confidentiality Agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of the applicable Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable Confidentiality Agreement with respect to a particular bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

D. Qualified Bidders.

- (a) A "Qualified Bidder" is a Potential Bidder (i) who demonstrates the financial capability to consummate the Sale (as determined by the Debtors in consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within one (1) business days after the Bid Deadline, the Debtors' advisors will notify each Potential Bidder in writing whether such

Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times.

- (b) If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Qualified Bidder's Deposit (as defined herein) and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.
- (c) For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder after the Bid Deadline that its bid is not a Qualifying Bid (a "Non-Qualifying Bid") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.
- (d) Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may also be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

E. Bid Requirements.

A proposal, solicitation, or offer (each, a "Bid") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements") as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a "Qualified Bid"). The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times.

- (a) **Assets.** Each Bid must clearly state which Assets that the Qualified Bidder is agreeing to purchase and assume.
- (b) **Assumption of Obligations.** Each Bid must clearly state which liabilities and obligations of the Debtors the Qualified Bidder is agreeing to assume.
- (c) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets, including and identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and assumed liabilities (the "Purchase Price"). Each Bid that exceeds the aggregate amount of the Debtors' pre-petition secured debt shall, if requested by the Monitor, include an allocation of the Purchase Price between the U.S. Assets and the Canadian Assets. Except as may be provided in the Stalking Horse Bid, Potential Bidders shall not

include in their Bid a proposed use of any cash component of the Purchase Price that would be received by the Debtors if such Potential Bidder were the Successful Bidder (as defined herein).

- (d) **Minimum Overbid.** At a minimum, each Bid must have a Purchase Price that in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal to or greater than the aggregate unadjusted Purchase Price payable to the Debtors under the Stalking Horse Bid,⁶ plus \$2,250,000 ("Minimum Overbid"); *provided*, however, the Debtors may deem this criterion satisfied if non-overlapping Bids that can effectively be combined to form one operative bid that would otherwise satisfy the Bid Requirements, in the aggregate, meet the Minimum Overbid (such bids, "Aggregate Bids") (the amount of the Minimum Overbid shall be confirmed by the Debtors with Potential Bidders prior to the Bid Deadline).
- (e) **Markup of the Stalking Horse APA.** Each Bid must be accompanied by an executed asset purchase or transaction agreement ("APA"), as well in the case of an asset purchase agreement, a redline of such agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA provided by the Debtors to Potential Bidders. Each such agreement must provide a representation that the Qualified Bidder will: (i) with respect to the U.S. Assets, (A) make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), if applicable, and (B) submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; and (ii) with respect to the Canadian Assets, make all necessary filings under the (A) *Competition Act*, R.S.C., 1985, c. C-34, as amended (the "Competition Act"), and (B) *Investment Canada Act*, R.S. C., 1985, c. 28 (1st Supp.) (the "ICA"), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid or Bids in the case of an Aggregated Bid.
- (f) **Deposit.** Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the "Deposit").
- (g) **Qualified Bid Documents.** Each Bid must include a duly executed, non-contingent APA, a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the APA clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Purchase Price and assets

⁶ Which amount is comprised as provided in Section 3.1 of the Stalking Horse APA.

to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the “Qualified Bid Documents”).

- (h) **Demonstrated Financial Capacity.** A Qualified Bidder must have, in the Debtors’ business judgment, after consultation with the Consultation Parties, the necessary financial capacity to consummate the proposed transactions required by its Bid. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the transactions set forth in its Bid with cash on hand, each Bid must include written evidence of unconditional committed financing from a reputable financing institution, to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors, in consultation with the Consultation Parties.
- (i) **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the Debtors in their business judgment, after consultation with the Consultation Parties.
- (j) **Identity.** Each Bid must fully disclose the identity of each entity that is bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Qualified Bidder if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors be associated with any Bid (including any Overbid (as defined herein) at the Auction). Each Bid must also include contact information for the specific persons and counsel whom TM Capital Corp., King & Spalding LLP and Blake, Cassels & Graydon LLP should contact regarding such Bid. All information disclosed pursuant to this paragraph shall be made available by the Debtors to the Consultation Parties promptly upon the Debtors’ receipt thereof but in any event no later than one (1) business day following the Bid Deadline.
- (k) **Adequate Assurance of Future Performance.** Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection

with the proposed Sale; (ii) provide for the payment of all cure costs related to such executory contracts and unexpired leases by the Qualified Bidder; and (iii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.

- (l) **Time Frame for Closing.** A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors, after consultation with the Consultation Parties, which time frame shall include a closing by no later than March 17, 2023.
- (m) **Binding and Irrevocable.** A Qualified Bidder's Bid for the Assets shall be irrevocable unless and until the Debtors accept a higher Bid for the Assets other than such Qualified Bidder's Bid and such Qualified Bidder is not selected as the Backup Bidder (as defined herein) for the Assets.
- (n) **Expenses; Disclaimer of Fees.** Each Bid (other than a Stalking Horse Bid, solely to the extent set forth in the Stalking Horse APA) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder, solely to the extent set forth in the Stalking Horse APA) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction, if any, 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.
- (o) **Authorization.** Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (p) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors, their business and the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents, the Debtors and/or the Assets in making its Bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the Debtors' business, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Qualified Bidder's APA.

- (q) **Adherence to Bidding Procedures.** By submitting its Bid, each Qualified Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction, if any.
- (r) **Government Approvals.** Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals.
- (s) **Government Approvals Timeframe.** Each Bid must set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.
- (t) **Consent to Jurisdiction.** The Qualified Bidder must submit to the jurisdiction of the Bankruptcy Courts and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, if any, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the transactions contemplated thereby, as applicable.
- (u) **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **5:00 p.m. (prevailing Eastern Time)** on March 10, 2023 by:
- (i) **Debtors.** DCL Holdings (USA), Inc. and DCL Corporation, 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6, Attn: Scott Davido (Scott.Davido@ankura.com).
 - (ii) **Debtors' U.S. Counsel.** King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: Jeffrey R. Dutson (jdutson@kslaw.com).
 - (iii) **Debtors' U.S. Co-Counsel.** Richards, Layton & Finger, PA , 920 N King Street, Wilmington, Delaware 19801, Attn: Amanda R. Steele (steele@rlf.com).
 - (iv) **Debtors' Canadian Counsel.** Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 4000, Commerce Court West, Toronto, Ontario, M5L 1A9, Attn: Linc Rogers (linc.rogers@blakes.com); Milly Chow (milly.chow@blakes.com).
 - (v) **Debtors' Financial Advisors.** Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, New York 10017, Attn: Scott Davido (Scott.Davido@ankura.com); Jonathan Morrison (Jonathan.Morrison@ankura.com).

- (vi) **Debtors' Investment Banker.** TM Capital Corp., 641 Lexington Avenue, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).
- (vii) **CCAA Monitor.** Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, Royal Bank South Tower, Toronto Ontario M5J 2J1, Attn. Josh Nevsky (jnevsky@alvarezandmarsal.com); Steve Ferguson (sferguson@alvarezandmarsal.com).

- (v) The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than four hours after the Debtors' receipt of such bid.

F. Right to Credit Bid.

The Stalking Horse Bidder shall be considered a Qualified Bidder with respect to its right to acquire all or any of the Assets by credit bid.

G. Auction.

The Debtors, in the exercise of their business judgment and in a manner consistent with their fiduciary duties, shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid for the Assets (the "Baseline Bid"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder at least one (1) Business Day prior to the Auction. The Debtors shall also provide copies of all Qualified Bids and the Qualified Bid Documents supporting such bids to any Qualified Bidder at least one (1) Business Day prior to the Auction. When determining the highest or otherwise best Qualified Bid, and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties and in the exercise of their business judgment and in a manner consistent with their fiduciary duties, consider the following factors in addition to any other factors that the Debtors deem appropriate after consultation with the Consulting Parties: (a) the number, type, and nature of any changes to the Stalking Horse APA, if any, requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents; and (e) the tax consequences of such Qualified Bid; (collectively, the "Bid Assessment Criteria"). For purposes of determining the highest or otherwise best Qualified Bid, one dollar of the credit bid amount of the Stalking Horse Bid shall be equal in all respects to one dollar of cash that may be bid by another Qualified Bidder and the Baseline Bid may be an Aggregated Bid comprised of more than one non-overlapping bids.

If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, then the Debtors shall cancel the Auction, and shall designate the Stalking Horse Bid as the Successful Bid, and pursue entry of the order approving a Sale of the Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

The Auction, if any, shall take place at 10:00 a.m. (**prevailing Eastern Time**) on **March 13, 2023** at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY, or such later date and time as selected by the Debtors after consultation with the Consultation Parties. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties.

In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Bankruptcy Courts, serve on the Notice Parties and the service list in the CCAA Proceedings and cause to be published on the website maintained by Kroll, the U.S. Debtors' claims and noticing agent in the Chapter 11 Cases, located at <https://cases.ra.kroll.com/DCL> (the "Kroll Website") and on the CCAA Monitor's website located at <https://www.alvarezandmarsal.com/DCLCanada> (the "CCAA Monitor's Website"), a notice containing the following information (as applicable): (a) a statement that the Auction for the Assets has been canceled; (b) the identity of the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the Kroll Website or the CCAA Monitor's Website; and (d) the date, time, and location of the Sale Hearing.

The Auction, if any, shall be conducted in a timely fashion according to the following procedures:

(a) The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s). The Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including determining whether to adjourn the Auction to facilitate separate discussions between Qualified Bidders, the Debtors, and the Consultation Parties, as applicable. The Debtors shall maintain a written transcript of the Auction and all Bids made and announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only Qualified Bidders and their legal and financial advisors, including the Stalking Horse Bidder, the members and advisors of the Creditors Committee and the CCAA Monitor and its advisors, shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction, if any. Any creditor of the Debtors that has provided written notice of its intent to observe the Auction to the Debtors (email is sufficient) at least one (1) business day prior to the start of the Auction shall be able to attend and observe the Auction.

(b) Terms of Overbids.

“Overbid” means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

- (i) **Minimum Overbid Increment.** The initial Overbid(s) for the Assets shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount that is not less than \$250,000, and successive Overbids higher than the previous bid, as Debtors shall, in consultation with the Consultation Parties, announce at the Auction (the “Minimum Overbid Increment”).

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid may include: (a) cash; and (b) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of the such secured creditors’ allowed secured claim including, for the avoidance of doubt, a Bid by the Stalking Horse Bidder up to the full amount of the Pre-Petition Term Loan Obligations (as defined in the Stalking Horse APA); *provided, however*, that nothing herein shall impact any parties’ rights with respect to challenges to the liens or claims of a Secured Creditor.

- (ii) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (iii) **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 after consultation with the Consultation Parties, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified in the initial applicable Overbid round, an Overbid as being higher or otherwise better than the Initial Minimum Overbid, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall 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 based on, among other things, the Bid Assessment Criteria.

(c) Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

- (i) The Auction, if any, shall continue until there is one Bid or Aggregated Bid for the Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid for the Assets. Each such Bid shall be declared the “Successful Bid” and such Qualified Bidder(s), the “Successful Bidder,” at which point the Auction will be closed. The Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Courts of the Successful Bid.
- (ii) The Successful Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors after consultation with the Consultation Parties.
- (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.
- (iv) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (v) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one (1) business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (as defined herein), to be filed with the Bankruptcy Courts.

(e) No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating at the Auction, if any, will be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Bid is a good-faith, *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

(f) Backup Bidder.

- (i) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Assets, the Qualified Bidder (or Qualified Bidders holding an Aggregate Bid) with the next-highest or otherwise second-best Bid (or Aggregate Bid) at the Auction for such Assets, as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the “Backup Bid”), shall be required to serve as a backup bidder(s) (the “Backup Bidder”) for such Assets, and each Qualified Bidder(s) shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
- (ii) The identity of the Backup Bidder and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Bid(s) (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder’s Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.
- (iii) If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed the Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Courts.

(g) Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties, in any manner that will

best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the Sale, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the Sale Hearings (as defined herein) in open court without further notice; (c) modifying these Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids; *provided, however*, that any modification, extension, waiver, or addition to these Bidding Procedures shall not be inconsistent with the Bidding Procedures Orders, or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

H. Approval of Sale.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the “**U.S. Sale Hearing**”) is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) **on March 16, 2023** before the Honorable [●], at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, 3rd Floor, Wilmington, Delaware 19801.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the “**Canadian Sale Hearing**” and together with the U.S. Sale Hearing, the “**Sale Hearings**”) is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) **on March 16, 2023** before the Honorable [●], at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

The Sale Hearings may be a joint hearing in accordance with the applicable cross-border protocols and may be continued to a later date by the Debtors, after consultation with the Consultation Parties and the consent of the Successful Bidder, by sending notice prior to, or making an announcement at, the Sale Hearings. No further notice of any such continuance will be required to be provided to any party (including the Successful Bidder).

At the Sale Hearings, the Debtors, in consultation with the Consultation Parties, shall present the Successful Bid(s) to the Bankruptcy Courts for approval.

I. Return of Deposits

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors’ estates absent further order of the Bankruptcy Courts or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearings. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a transaction because of a breach or failure to perform on the part of the Successful Bidder (or

Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors and shall be divided as between the U.S. Debtors and the Canadian Debtor based on the Purchase Price allocation as set forth in the Stalking Horse APA.

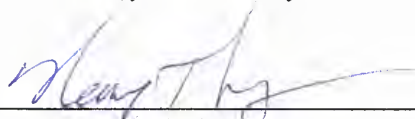
J. Fiduciary Out.

Subject to the terms of the Stalking Horse APA, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with its fiduciary obligations under applicable law; *provided, however*, that the Debtors shall provide the Consultation Parties and the Stalking Horse Bidder with advance written notice of such action or inaction within two (2) business days prior to taking such action or inaction.

This is **Exhibit "G"** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE AND ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

In re:)	
)	Chapter 11
DCL HOLDINGS (USA), INC., <i>et al.</i> , ¹)	Case No. 22-11319 (JKS)
Debtors.)	(Jointly Administered)
)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF DCL CORPORATION ~~(the “Applicant”)~~

**BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL ASSETS OF DCL HOLDINGS (USA), INC.
AND CERTAIN DEBTOR AFFILIATES**

On [____], 2023, the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) entered the *Order (I) Authorizing the Debtors to Enter into and Perform Under the Stalking Horse Asset Purchase Agreement, (II) Approving Bidding Procedures for the Sale of the Debtors’ Assets, (III) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (IV) Scheduling Bid Deadlines and an Auction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Assumption and Assignment Procedures, and ~~(VII)~~ (VII) Granting Related Relief* [Docket No. ____] (the “U.S. Bidding Procedures Order”),² by which the U.S. Court approved the following procedures. These Bidding Procedures, among other things, set forth the process by which the U.S. Debtors are authorized, in consultation with the Consultation Parties, to conduct an auction (the “Auction”), if any, for the sale of all or substantially all of the Debtors’ assets by which the U.S. Court approved the procedures set forth

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: DCL Holdings (USA), Inc. (5472); DCL Corporation (BP), LLC (5462); H.I.G. Colors Holdings, Inc. (6233); H.I.G. Colors, Inc. (4305); DCL Corporation (USA) LLC (5534); and Dominion Colour Corporation (USA) (7076). The location of DCL Holdings (USA), Inc.’s corporate headquarters and the Debtors’ service address is: 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6.

² All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the applicable Bidding Procedures Order.

herein (the “U.S. Bidding Procedures”) with respect to the U.S. Debtors³ and their business and assets (collectively, the “U.S. Assets”), in the cases commenced by the U.S. Debtors under the provisions of chapter 11 of title 11 of the United States Code before the U.S. Court (the “Chapter 11 Cases”).

On [●], 2023, the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court” and together with the U.S. Court, the “Bankruptcy Courts”) granted an Order (the “Canadian Bidding Procedures Order” and together with the U.S. Bidding Procedures Order, the “Bidding Procedures Orders”)⁴, by which the Canadian Court approved these Bidding Procedures with respect to DCL Corporation (the “Canadian Debtor” and together with the U.S. Debtors, the “Debtors” or “the DCL Group”) and its business and assets (collectively, the “Canadian Assets” and together with the U.S. Assets, the “Assets”), in the proceedings commenced by the Canadian Debtor pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) before the Canadian Court (the “CCAA Proceedings” and together with the Chapter 11 Cases, the “Bankruptcy Cases”).

Notwithstanding the coordination of these Bidding Procedures, all matters related to these Bidding Procedures as they relate to the U.S. Debtors and the U.S. Assets shall remain under the sole and exclusive jurisdiction of the U.S. Court and all matters related to these Bidding Procedures as they relate to the Canadian Debtor and the Canadian Assets shall remain under the sole and exclusive jurisdiction of the Canadian Court.

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties, to sell all or substantially all of the Assets or their business through a going concern sale (or partial sales) of all, substantially all, or certain of the Assets of the DCL Group (the “Sale”).

“Consultation Parties” in these Bidding Procedures shall be (i) Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Canadian Debtor (the “CCAA Monitor”), (ii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the debtor-in-possession credit agreement dated December 22, 2022 with the Debtors in the Bankruptcy Cases (the “DIP Agent”), (iii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the Debtors’ prepetition credit agreement dated April 25, 2018, as amended (the “ABL Agent”), ~~and~~ (iv) the Pre-Petition Term Loan Agent (together with the DIP Agent and the ABL Agent, the “Agents”), and (v) the statutory creditors committee appointed on December 30, 2022 in the Chapter 11 Cases (the “Creditors Committee”). For avoidance of doubt, the foregoing shall include the CCAA Monitor ~~and~~, Agents and Creditor Committee’s respective advisors. Notwithstanding the foregoing or any other provision of these Bidding Procedures, the Agents shall only be consulted to the extent that the Agents confirm that neither they nor any of the lenders under their respective credit facilities (nor any of their

³ The “U.S. Debtors” are H.I.G. Colours Holdings Inc., H.I.G. Color, Inc., DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, and Dominion Color Corporation (USA).

⁴ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the U.S. Bidding Procedures Order or Canadian Bidding Procedures Order, as applicable.

affiliates) intend to participate in these Bidding Procedures as a bidder. If an Agent or lender under a credit facility (or one of its affiliates) participates as a bidder but later withdraws from the process (or has its bid terminated, if applicable), it can become a Consultation Party by confirming in writing to the Debtors and the Monitor that it has withdrawn from the process as a bidder and will not re-enter the process as a bidder.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

Copies of the U.S. Bidding Procedures Order or other documents related thereto are available upon request to Kroll Restructuring Administration LLC by calling (888) 510-7189 (US/Canada toll free) or +1 (646) 440-4160 (International), emailing DCLInfo@ra.kroll.com, or visiting the Debtors' restructuring website at <https://cases.ra.kroll.com/DCL>.

Copies of the Canadian Bidding Procedures Order or other documents related thereto are available on the website of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Canadian Debtor in the CCAA Proceedings, at <https://www.alvarezandmarsal.com/DCLCanada>.

Stalking Horse Bid

Pigments Holdings, Inc. (including its assignees or designees, the “Stalking Horse Bidder”) submitted a bid (the “Stalking Horse Bid”) pursuant to a stalking horse asset purchase agreement (as amended, amended and restated, supplemented, or otherwise modified, the “Stalking Horse APA”) for certain of the Assets to set a floor for the Sale. Having announced and received approval of the designation of the Stalking Horse Bid from the Bankruptcy Courts, the Debtors will now conduct a round of open bidding intended to obtain the highest or otherwise best bid(s) for the Assets or business of Debtors, which may culminate in an auction (the “Auction”) for such Assets or business if competing bids are received.

Key Dates

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Assets or business or any portions thereof. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until March 10, 2023 at 5:00 p.m. (prevailing Eastern time) (the “Bid Deadline”).

The key dates for the Sale process are as follows:⁵

⁵ These dates are subject to extension or adjournment as provided for herein.

March 10, 2023 at 5:00 p.m. (prevailing Eastern time)	Bid Deadline - Due Date for Bids and Deposits
March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder (each as defined herein).
March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth (i) the highest or otherwise best fully binding offer for the Assets and/or (ii) the highest or otherwise best fully binding offer(s) for all or any portion of the Assets.
March 13, 2023 at 10:00 a.m. (prevailing Eastern time)	Auction (if necessary), which will be held at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	U.S. Sale Hearing (as defined herein), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, Wilmington, Delaware 19801.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	Canadian Sale Hearing (as defined herein), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

Unless otherwise approved by the Bankruptcy Courts, no modification, extension, waiver or addition to these Bidding Procedures shall be inconsistent with the Stalking Horse APA, these Bidding Procedures Orders or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

All References to “business day” in these Bidding Procedures means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the applicable laws of, or are in fact closed in, the state of Delaware or the province of Ontario.

A. Submissions to the Debtors.

These Bidding Procedures set forth the terms by which prospective bidders, if any, may participate in the process set forth in these Bidding Procedures and qualify for and participate in an Auction, if any, thereby competing to make the highest or otherwise best offer for the Assets or any portion thereof. The Debtors will offer for sale the Assets, as well as consider other investment or other transactions, through an Auction. The Debtors, in consultation with the Consultation Parties, may consider non-overlapping bids from multiple bidders (including multiple non-overlapping bids submitted by the same bidder) for the Assets. The Stalking Horse

APA and Stalking Horse Bid referenced herein provide for the Stalking Horse Bidder's acquisition of substantially all of the Assets, subject to the terms and conditions thereof.

B. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity (other than the Stalking Horse Bidder) interested in consummating a Sale (a "Potential Bidder") must deliver or have previously delivered to the Debtors:

- (1) an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"), to the extent not already executed;
- (2) in a form acceptable to the Debtors and their advisors, in consultation with the Consultation Parties: (x) evidence of the financial capability to consummate the Sale, and (y) if required, a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder's obligations in connection with the Sale; and
- (3) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate such person's or entity's fitness to participate in the process set forth in these Bidding Procedures.

C. Due Diligence.

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors' electronic data room and to additional non-public information regarding the Debtors. **No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors.** The Debtors will provide to each Potential Bidder that satisfies the foregoing, commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors' electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline, the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or the Sale to any person except to a Potential Bidder or to such Potential Bidder's duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide such information to Potential Bidders who, at such time and in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right to, in consultation with the Consultation Parties, withhold or redact any diligence materials that the Debtors determine in the Debtors' reasonable

business judgment are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Debtors determine is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any person that is not determined to be a Potential Bidder or who has not executed a Confidentiality Agreement with the Debtors.

All due diligence requests must be directed to TM Capital Corp., 641 Lexington Ave., 32nd Floor, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).

(a) Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale or any transaction relating to the Debtors between and amongst Potential Bidders shall exclusively be through the Debtors and the Debtors' advisors. Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors expressly consent in advance and in writing to such communication.

(b) Due Diligence of Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding the ability of the Potential Bidder to consummate the Sale. Failure by a Potential Bidder to comply with such reasonable 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 Potential Bidder or that a bid made by such Potential Bidder is not a Bid.

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable Confidentiality Agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with Bankruptcy Cases, in each case in accordance with the terms of any applicable Confidentiality Agreement.

Notwithstanding the foregoing and the provisions contained in any applicable Confidentiality Agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of the applicable Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable Confidentiality Agreement with respect to a particular bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

D. Qualified Bidders.

- (a) A "Qualified Bidder" is a Potential Bidder (i) who demonstrates the financial capability to consummate the Sale (as determined by the Debtors in consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the

Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within one (1) business days after the Bid Deadline, the Debtors' advisors will notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times.

- (b) If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Qualified Bidder's Deposit (as defined herein) and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.
- (c) For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder after the Bid Deadline that its bid is not a Qualifying Bid (a "Non-Qualifying Bid") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.
- (d) Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may also be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

E. Bid Requirements.

A proposal, solicitation, or offer (each, a "Bid") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements") as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a "Qualified Bid"). The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times.

- (a) **Assets.** Each Bid must clearly state which Assets that the Qualified Bidder is agreeing to purchase and assume.
- (b) **Assumption of Obligations.** Each Bid must clearly state which liabilities and obligations of the Debtors the Qualified Bidder is agreeing to assume.
- (c) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets, including and identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and

assumed liabilities (the “Purchase Price”). Each Bid that exceeds the aggregate amount of the Debtors’ pre-petition secured debt shall, if requested by the Monitor, include an allocation of the Purchase Price between the U.S. Assets and the Canadian Assets. Except as may be provided in the Stalking Horse Bid, Potential Bidders shall not include in their Bid a proposed use of any cash component of the Purchase Price that would be received by the Debtors if such Potential Bidder were the Successful Bidder (as defined herein).

- (d) **Minimum Bid Overbid.** At a minimum, each Bid must have a Purchase Price that in the Debtors’ reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal to or greater than the aggregate unadjusted Purchase Price payable to the Debtors under the Stalking Horse Bid,⁶ plus \$250,000 ~~2,250,000~~ (“Minimum Overbid”); *provided*, however, the Debtors may deem this criterion satisfied if non-overlapping Bids that can effectively be combined to form one operative bid that would otherwise satisfy the Bid Requirements, in the aggregate, meet the Minimum Overbid (such bids, “Aggregate Bids”) (the amount of the Minimum Overbid shall be confirmed by the Debtors with Potential Bidders prior to the Bid Deadline).
- (e) **Markup of the Stalking Horse APA.** Each Bid must be accompanied by an executed asset purchase or transaction agreement (“APA”), as well in the case of an asset purchase agreement, a redline of such agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA provided by the Debtors to Potential Bidders. Each such agreement must provide a representation that the Qualified Bidder will: (i) with respect to the U.S. Assets, (A) make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the “HSR Act”), if applicable, and (B) submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; and (ii) with respect to the Canadian Assets, make all necessary filings under the (A) *Competition Act*, R.S.C., 1985, c. C-34, as amended (the “Competition Act”), and (B) *Investment Canada Act*, R.S. C., 1985, c. 28 (1st Supp.) (the “ICA”), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid or Bids in the case of an Aggregated Bid.

⁶ Which amount is comprised ~~of (i) Credit Bids as provided in Section 3.1 of \$45,000,000, (ii) amount sufficient to repay the DIP Facility and cash collateralize any outstanding letters of credit or financial assurances issued under the DIP Facility, and (iii) Assumed Liabilities. The quantum of items (ii) and (iii) may be based on reasonable estimates of the Debtors following consultation with the Consultation Parties and the Stalking Horse Bidder.~~ the Stalking Horse APA.

- (f) **Deposit.** Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the “Deposit”).
- (g) **Qualified Bid Documents.** Each Bid must include a duly executed, non-contingent APA, a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the APA clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Purchase Price and assets to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the “Qualified Bid Documents”).
- (h) **Demonstrated Financial Capacity.** A Qualified Bidder must have, in the Debtors’ business judgment, after consultation with the Consultation Parties, the necessary financial capacity to consummate the proposed transactions required by its Bid. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the transactions set forth in its Bid with cash on hand, each Bid must include written evidence of unconditional committed financing from a reputable financing institution, to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors, in consultation with the Consultation Parties.
- (i) **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the Debtors in their business judgment, after consultation with the Consultation Parties.
- (j) **Identity.** Each Bid must fully disclose the identity of each entity that is bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Qualified Bidder if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the

Debtors be associated with any Bid (including any Overbid (as defined herein) at the Auction). Each Bid must also include contact information for the specific persons and counsel whom TM Capital Corp., King & Spalding LLP and Blake, Cassels & Graydon LLP should contact regarding such Bid. All information disclosed pursuant to this paragraph shall be made available by the Debtors to the Consultation Parties promptly upon the Debtors' receipt thereof but in any event no later than one (1) business day following the Bid Deadline.

- (k) Adequate Assurance of Future Performance.** Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection with the proposed Sale; (ii) provide for the payment of all cure costs related to such executory contracts and unexpired leases by the Qualified Bidder; and (iii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.
- (l) Time Frame for Closing.** A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors, after consultation with the Consultation Parties, which time frame shall include a closing by no later than March 17, 2023.
- (m) Binding and Irrevocable.** A Qualified Bidder's Bid for the Assets shall be irrevocable unless and until the Debtors accept a higher Bid for the Assets other than such Qualified Bidder's Bid and such Qualified Bidder is not selected as the Backup Bidder (as defined herein) for the Assets.
- (n) Expenses; Disclaimer of Fees.** Each Bid (other than a Stalking Horse Bid, solely to the extent set forth in the Stalking Horse APA) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder, solely to the extent set forth in the Stalking Horse APA) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction, if any, 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.
- (o) Authorization.** Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.

- (p) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors, their business and the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents, the Debtors and/or the Assets in making its Bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the Debtors' business, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Qualified Bidder's APA.
- (q) **Adherence to Bidding Procedures.** By submitting its Bid, each Qualified Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction, if any.
- (r) **Government Approvals.** Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals.
- (s) **Government Approvals Timeframe.** Each Bid must set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.
- (t) **Consent to Jurisdiction.** The Qualified Bidder must submit to the jurisdiction of the Bankruptcy Courts and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, if any, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the transactions contemplated thereby, as applicable.
- (u) **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **5:00 p.m. (prevailing Eastern Time)** on March 10, 2023 by:
- (i) **Debtors.** DCL Holdings (USA), Inc. and DCL Corporation, 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6, Attn: Scott Davido (Scott.Davido@ankura.com).
 - (ii) **Debtors' U.S. Counsel.** King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: Jeffrey R. Dutson (jdutson@kslaw.com).

- (iii) **Debtors' U.S. Co-Counsel.** Richards, Layton & Finger, PA , 920 N King Street, Wilmington, Delaware 19801, Attn: Amanda R. Steele (steele@rlf.com).
- (iv) **Debtors' Canadian Counsel.** Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 4000, Commerce Court West, Toronto, Ontario, M5L 1A9, Attn: Linc Rogers (linc.rogers@blakes.com); Milly Chow (milly.chow@blakes.com).
- (v) **Debtors' Financial Advisors.** Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, New York 10017, Attn: Scott Davido (Scott.Davido@ankura.com); Jonathan Morrison (Jonathan.Morrison@ankura.com).
- (vi) **Debtors' Investment Banker.** TM Capital Corp., 641 Lexington Avenue, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).
- (vii) **CCAA Monitor.** Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, Royal Bank South Tower, Toronto Ontario M5J 2J1, Attn. Josh Nevsky (jnevsky@alvarezandmarsal.com); Steve Ferguson (sferguson@alvarezandmarsal.com).

(v) The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than four hours after the Debtors' receipt of such bid.

F. Right to Credit Bid.

The ~~avoidance of doubt, the~~ Stalking Horse Bidder shall be considered a Qualified Bidder with respect to its right to acquire all or any of the Assets by credit bid.

G. Auction.

The Debtors, in the exercise of their business judgment and in a manner consistent with their fiduciary duties, shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid for the Assets (the "Baseline Bid"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder at least one (1) Business Day prior to the Auction. The Debtors shall also provide copies of all Qualified Bids and the Qualified Bid Documents supporting such bids to any Qualified Bidder at least one (1) Business Day prior to the Auction. When determining the highest or otherwise best Qualified Bid, and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties and in the exercise of their business judgment and in a manner consistent with their fiduciary duties, consider the following factors in addition to any other factors that the Debtors deem appropriate after consultation with the Consulting Parties: (a) the number, type, and nature of any changes to the Stalking Horse APA, if any, requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of

the Qualified Bidder's ability to close the Sale and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents; and (e) the tax consequences of such Qualified Bid; (collectively, the "Bid Assessment Criteria"). For ~~the avoidance of doubt, (i) when~~ purposes of determining the highest or otherwise best Qualified Bid, one dollar of the credit bid amount of the Stalking Horse Bid shall be equal in all respects to one dollar of cash that may be bid by another Qualified Bidder and ~~(ii)~~ the Baseline Bid may be an Aggregated Bid comprised of more than one non-overlapping bids.

If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, then the Debtors shall cancel the Auction, and shall designate the Stalking Horse Bid as the Successful Bid, and pursue entry of the order approving a Sale of the Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

The Auction, if any, shall take place at 10:00 a.m. **(prevailing Eastern Time) on March 13, 2023** at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY, or such later date and time as selected by the Debtors after consultation with the Consultation Parties, ~~and subject to the consent.~~ The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties.

In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Bankruptcy Courts, serve on the Notice Parties and the service list in the CCAA Proceedings and cause to be published on the website maintained by Kroll, the U.S. Debtors' claims and noticing agent in the Chapter 11 Cases, located at <https://cases.ra.kroll.com/DCL> (the "Kroll Website") and on the CCAA Monitor's website located at <https://www.alvarezandmarsal.com/DCLCanada> (the "CCAA Monitor's Website"), a notice containing the following information (as applicable): (a) a statement that the Auction for the Assets has been canceled; (b) the identity of the ~~Stalking Horse~~ Successful Bidder.; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the Kroll Website or the CCAA Monitor's Website; and (d) the date, time, and location of the Sale Hearing.

The Auction, if any, shall be conducted in a timely fashion according to the following procedures:

(a) The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s). The Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including determining whether to adjourn the Auction to facilitate separate discussions between Qualified Bidders, the Debtors, and the Consultation Parties, as applicable. The Debtors shall maintain a written transcript of the Auction and all Bids made and

announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only Qualified Bidders and their legal and financial advisors, including the Stalking Horse Bidder, the members and advisors of ~~any official committee appointed by the Office of the United States Trustee pursuant to section 1102 of the Bankruptcy Code~~ the Creditors Committee and the CCAA Monitor and its advisors, shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction, if any. Any creditor of the Debtors that has provided written notice of its intent to observe the Auction to the Debtors (email is sufficient) at least one (1) business day prior to the start of the Auction shall be able to attend and observe the Auction.

(b) Terms of Overbids.

“Overbid” means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

- (i) **Minimum Overbid Increment.** The initial Overbid(s) for the Assets shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount that is not less than \$250,000, and successive Overbids higher than the previous bid, as Debtors shall, in consultation with the Consultation Parties, announce at the Auction (the “Minimum Overbid Increment”).

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid may include: (a) cash; and (b) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of the such secured creditors’ allowed secured claim including, for the avoidance of doubt, a Bid by the Stalking Horse Bidder up to the full amount of the Pre-Petition Term Loan Obligations (as defined in the Stalking Horse ~~Credit Bid Amount~~ APA); *provided, however*, that nothing herein shall impact any parties’ rights with respect to challenges to the liens or claims of a Secured Creditor.

- (ii) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (iii) **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 after consultation with the Consultation Parties, but shall otherwise comply with the terms of these Bidding Procedures.

- (iv) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified in the initial applicable Overbid round, an Overbid as being higher or otherwise better than the Initial Minimum Overbid, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the "Prevailing Highest Bid"). The Debtors shall 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 based on, among other things, the Bid Assessment Criteria.

(c) Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties ~~and subject to the consent of the Stalking Horse Bidder~~, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

- (i) The Auction, if any, shall continue until there is one Bid or Aggregated Bid for the Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid for the Assets. Each such Bid shall be declared the "Successful Bid" and such Qualified Bidder(s), the "Successful Bidder," at which point the Auction will be closed. The Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Courts of the Successful Bid.
- (ii) The Successful Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The

Successful Bid may not be assigned to any party without the consent of the Debtors after consultation with the Consultation Parties.

- (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.
- (iv) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (v) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one (1) business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (as defined herein), to be filed with the Bankruptcy Courts.

(e) No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating at the Auction, if any, will be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Bid is a good-faith, *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

(f) ~~H.~~ Backup Bidder.

- (i) ~~(a)~~ Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Assets, the Qualified Bidder (or Qualified Bidders holding an Aggregate Bid) with the next-highest or otherwise second-best Bid (or Aggregate Bid) at the Auction for such Assets, as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the “Backup Bid”), shall be required to serve as a backup bidder(s) (the “Backup Bidder”) for such Assets, and each Qualified Bidder(s) shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
- (ii) ~~(b)~~ The identity of the Backup Bidder and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Bid(s) (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder’s Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.

- (iii) ~~(e)~~ If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed the Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder's Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Courts.

(g) ~~I~~-Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties ~~and the consent of the Stalking Horse Bidder~~, in any manner that will best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the Sale, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the Sale Hearings (as defined herein) in open court without further notice; (c) modifying these Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids; *provided, however*, that any modification, extension, waiver, or addition to these Bidding Procedures shall not be inconsistent with the ~~Stalking Horse APA, the Bidding Procedures Orders~~, or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

H. ~~J~~-Approval of Sale.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the "**U.S. Sale Hearing**") is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) on **March 16, 2023** before the Honorable [●], at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, 3rd Floor, Wilmington, Delaware 19801.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the "**Canadian Sale Hearing**") and together with the U.S. Sale Hearing, the "**Sale Hearings**") is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) on **March 16, 2023** before the Honorable [●], at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

The Sale Hearings may be a joint hearing in accordance with the applicable cross-border protocols and may be continued to a later date by the Debtors, after

consultation with the Consultation Parties and the consent of the Successful Bidder, by sending notice prior to, or making an announcement at, the Sale Hearings. No further notice of any such continuance will be required to be provided to any party (including the Successful Bidder).

At the Sale Hearings, the Debtors, in consultation with the Consultation Parties, shall present the Successful Bid(s) to the Bankruptcy Courts for approval.

I. ~~K.~~ Return of Deposits

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Courts or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearings. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a transaction because of a breach or failure to perform on the part of the Successful Bidder (or Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors and shall be divided as between the U.S. Debtors and the Canadian Debtor based on the Purchase Price allocation as set forth in the Stalking Horse APA.

J. ~~L.~~ Fiduciary Out.

Subject to the terms of the Stalking Horse APA, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with its fiduciary obligations under applicable law; *provided, however*, that the Debtors shall provide the Consultation Parties and the Stalking Horse Bidder with advance written notice of such action or inaction within two (2) business days prior to taking such action or inaction.

Document comparison by Workshare Compare on Tuesday, February 14, 2023
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Description	TOR_2024-#13170891-v5-DCL_-_Bidding_Procedures_C URRENT
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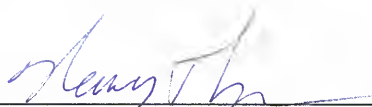
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Moved cell	
Split/Merged cell	
Padding cell	

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Deletions	30
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Moved to	0
Style changes	0
Format changes	0
Total changes	69

This is **Confidential Exhibit “1”** referred to in the

Affidavit of Scott Davido

sworn before me by video conference
this 15th day of February, 2023



A Commissioner, etc.

Nancy Ann Thompson, a Commissioner, etc.,
Province of Ontario, for Blake, Cassels & Graydon LLP,
Barristers and Solicitors. Expires July 13, 2024.

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION (the "**Applicant**")

CONFIDENTIAL EXHIBIT

**CONFIDENTIAL EXHIBIT 1 -
Unredacted APA Disclosure Schedules
TO THE AFFIDAVIT OF SCOTT DAVIDO
SWORN FEBRUARY 15, 2023**

TO BE FILED SEPARATELY WITH THE COURT

Court File No.: CV-22-00691990-00CL

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL CORPORATION**

Applicant

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

Proceeding commenced at Toronto

**AFFIDAVIT OF SCOTT DAVIDO
(SWORN FEBRUARY 15, 2023)****BLAKE, CASSELS & GRAYDON LLP**
199 Bay Street
Suite 4000, Commerce Court West
Toronto Ontario M5L 1A9**Linc Rogers** LSO #43562N
Tel: 416-863-4168
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Tel: 416-863-2594
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Email: alexia.parente@blakes.com

Lawyers for the Applicant

TAB 3

Court File No. CV-22-00691990-00CL

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.)	WEDNESDAY, THE 22 ND
)	
JUSTICE OSBORNE)	DAY OF FEBRUARY, 2023

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF DCL CORPORATION (the “**Applicant**”)

**ORDER
(Approval of the Stalking Horse APA,
Final Bidding Procedures, and ancillary matters)**

THIS MOTION, made by DCL Corporation (the “**Applicant**”) pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”), for an Order, among other things:

- (i) authorizing the Applicant to enter into an agreement, *nunc pro tunc*, between Pigments Holdings, Inc. (the “**Stalking Horse Bidder**”) and the DCL Group dated as of December 21, 2022, as amended and restated pursuant to an amended and restated asset purchase agreement dated February 13, 2023 (the “**Stalking Horse APA**”), attached as Exhibit “**D**” to the affidavit of Scott Davido sworn February 15, 2023 (the “**Third Davido Affidavit**”), to acquire substantially all of the DCL Group’s assets inclusive of assets held by the Applicant (collectively, the “**Assets**”) and approving the Stalking Horse APA as a stalking horse bid;

- 2 -

- (ii) deeming the Stalking Horse APA as a Qualified Bid for the purposes of the Final Bidding Procedures, as defined below;
- (iii) approving the bidding procedures substantially in the form attached hereto as **Schedule “A”** (the “**Final Bidding Procedures**”) to allow the Applicant, together with other members of the DCL Group, to solicit and identify bids in addition to the Stalking Horse APA for the purpose of selling substantially all of the Assets; and
- (iv) sealing the confidential exhibit to the Third Davido Affidavit (the “**Confidential Exhibit**”),

was heard this day by judicial video conference via Zoom in Toronto, Ontario.

ON READING the material filed, including the Notice of Motion, the Third Davido Affidavit and the exhibits attached thereto, including the Confidential Exhibit, the second report of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Applicant (the “**Monitor**”) dated [●], 2023 (such second report, including any supplements thereto, the “**Second Report**”), and on hearing the submissions of counsel for the Applicant, counsel for the Monitor, counsel for the Stalking Horse Bidder, and of those other parties listed on the Counsel Slip, and on being advised that the Applicant’s Service List was served with the Motion Record herein;

DEFINITIONS

1. **THIS COURT ORDERS** that all capitalized terms used herein and not otherwise defined shall have the meaning given to them in the Third Davido Affidavit or the Final Bidding Procedures, as applicable.

SERVICE

2. **THIS COURT ORDERS** that the time for service of the Notice of Motion and the Motion Record in respect of this Motion is hereby abridged so that this Motion is properly returnable today and hereby dispenses with further service thereof.

THE STALKING HORSE APA

3. **THIS COURT ORDERS** that (i) the Applicant is hereby authorized to execute the Stalking Horse APA, *nunc pro tunc*, and to make such non-material alterations, changes, amendments, deletions or additions thereto as may be agreed to by the parties with the consent of the Monitor; provided however, the Stalking Horse APA may be amended in accordance with the terms thereof and as provided for in the Final Bidding Procedures including in connection with any auction conducted in connection therewith, and (ii) the bid made by the Stalking Horse Bidder pursuant to the Stalking Horse APA is hereby approved as the stalking horse bid.

4. **THIS COURT ORDERS** that the Stalking Horse APA is hereby deemed to be a Qualified Bid in accordance with the terms of the Final Bidding Procedures.

5. **THIS COURT ORDERS** that nothing herein approves the sale and vesting of the Canadian Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA, and that the approval of any sale of the Canadian Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA, if the Stalking Horse APA is the Successful Bid, will be determined on a subsequent motion to be held before this Court in accordance with the Final Bidding Procedures.

6. **THIS COURT ORDERS** that pursuant to clause 7(3)(c) of the *Canada Personal Information Protection and Electronic Documents Act*, and pursuant to section 18 of the *Act Respecting the Protection of Personal Information in the Private Sector*, R.S.Q. c P-39.1, the Applicant may disclose personal information of identifiable individuals to Potential Bidders for

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the Canadian Assets and to their advisors, but only to the extent desirable or required to negotiate and attempt to complete one or more sales of the Canadian Assets (each, a “Sale”). Each Potential Bidder to whom such personal information is disclosed shall maintain and protect the privacy of such information and limit the use of such information to its evaluation of the Sale, and if it does not complete a Sale, shall return all such information to the Applicant, or in the alternative destroy all such information.

THE FINAL BIDDING PROCEDURES

7. **THIS COURT ORDERS** that the Final Bidding Procedures (subject to any amendments thereto that may be made in accordance therewith) are hereby approved and the Applicant, subject to the oversight of the Monitor, shall be authorized and directed to perform its obligations thereunder and to do all things reasonably necessary to perform its obligations thereunder, including to solicit Qualified Bids from Potential Bidders as contemplated by the Final Bidding Procedures.

8. **THIS COURT ORDERS** that the Applicant, the Monitor (without derogating from any rights or protections afforded to the Monitor at law or pursuant to any other Order of this Court) and their respective affiliates, partners, directors, employees, advisors, agents and controlling persons shall have no liability with respect to any and all losses, claims, damages or liability of any nature or kind to any person in connection with or as a result of the Final Bidding Procedures, except to the extent of such losses, claims, damages or liabilities resulting from the gross negligence or willful misconduct of the Applicant or the Monitor, as applicable, in performing their obligations under the Final Bidding Procedures, as determined by this Court. For the avoidance of doubt, nothing in this paragraph 7 shall limit any liability of the Applicant pursuant to or in connection with the Stalking Horse APA.

SEALING OF CONFIDENTIAL EXHIBIT

9. **THIS COURT ORDERS** that the Confidential Exhibit, being the unredacted version of the disclosure schedules to the Stalking Horse APA, be sealed, kept confidential and not form part of the public record, and that the Confidential Exhibit shall be placed separate and apart from all other contents of the Court file, in a sealed envelope attached to a notice that sets out the title of these proceedings and a statement that the contents are subject to a sealing order and shall only be opened upon further order of this Court.

GENERAL

10. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

11. **THIS COURT ORDERS** that the Applicant and the Monitor may from time to time apply to this Court for advice and directions in the discharge of their respective powers and duties hereunder or under the Final Bidding Procedures.

12. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada, the United Kingdom, the Netherlands, the United States or any other foreign jurisdiction, to give effect to this Order and to assist the Applicant, the Monitor and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the Applicant and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant representative status to the Monitor in any foreign proceeding, or to assist the Applicant and the Monitor and their respective agents in carrying out the terms of this Order.

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13. **THIS COURT ORDERS** that the Applicant and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

SCHEDULE “A”
(Final Bidding Procedures)

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE AND ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

In re:)	
)	Chapter 11
)	
DCL HOLDINGS (USA), INC., <i>et al.</i> , ¹)	Case No. 22-11319 (JKS)
)	
Debtors.)	(Jointly Administered)
)	

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT
OF DCL CORPORATION

**BIDDING PROCEDURES FOR THE SALE OF
SUBSTANTIALLY ALL ASSETS OF DCL HOLDINGS (USA), INC.
AND CERTAIN DEBTOR AFFILIATES**

On [____], 2023, the United States Bankruptcy Court for the District of Delaware (the “U.S. Court”) entered the *Order (I) Authorizing the Debtors to Enter into and Perform Under the Stalking Horse Asset Purchase Agreement, (II) Approving Bidding Procedures for the Sale of the Debtors’ Assets, (III) Scheduling Hearings and Objection Deadlines with Respect to the Sale, (IV) Scheduling Bid Deadlines and an Auction, (V) Approving the Form and Manner of Notice Thereof, (VI) Approving Contract Assumption and Assignment Procedures, and (VII) Granting Related Relief* [Docket No. ____] (the “U.S. Bidding Procedures Order”),² by which the U.S. Court approved the following procedures. These Bidding Procedures, among other things, set forth the process by which the U.S. Debtors are authorized, in consultation with the Consultation Parties, to conduct an auction (the “Auction”), if any, for the sale of all or substantially all of the Debtors’ assets by which the U.S. Court approved the procedures set forth herein (the “U.S. Bidding Procedures”)

¹ The Debtors in these chapter 11 cases, along with the last four digits of each of the Debtors’ respective federal tax identification numbers, are as follows: DCL Holdings (USA), Inc. (5472); DCL Corporation (BP), LLC (5462); H.I.G. Colors Holdings, Inc. (6233); H.I.G. Colors, Inc. (4305); DCL Corporation (USA) LLC (5534); and Dominion Colour Corporation (USA) (7076). The location of DCL Holdings (USA), Inc.’s corporate headquarters and the Debtors’ service address is: 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6.

² All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the applicable Bidding Procedures Order.

with respect to the U.S. Debtors³ and their business and assets (collectively, the “U.S. Assets”), in the cases commenced by the U.S. Debtors under the provisions of chapter 11 of title 11 of the United States Code before the U.S. Court (the “Chapter 11 Cases”).

On [●], 2023, the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court” and together with the U.S. Court, the “Bankruptcy Courts”) granted an Order (the “Canadian Bidding Procedures Order” and together with the U.S. Bidding Procedures Order, the “Bidding Procedures Orders”)⁴, by which the Canadian Court approved these Bidding Procedures with respect to DCL Corporation (the “Canadian Debtor” and together with the U.S. Debtors, the “Debtors” or “the DCL Group”) and its business and assets (collectively, the “Canadian Assets” and together with the U.S. Assets, the “Assets”), in the proceedings commenced by the Canadian Debtor pursuant to the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “CCAA”) before the Canadian Court (the “CCAA Proceedings” and together with the Chapter 11 Cases, the “Bankruptcy Cases”).

Notwithstanding the coordination of these Bidding Procedures, all matters related to these Bidding Procedures as they relate to the U.S. Debtors and the U.S. Assets shall remain under the sole and exclusive jurisdiction of the U.S. Court and all matters related to these Bidding Procedures as they relate to the Canadian Debtor and the Canadian Assets shall remain under the sole and exclusive jurisdiction of the Canadian Court.

These Bidding Procedures set forth the process by which the Debtors are authorized, in consultation with the Consultation Parties, to sell all or substantially all of the Assets or their business through a going concern sale (or partial sales) of all, substantially all, or certain of the Assets of the DCL Group (the “Sale”).

“Consultation Parties” in these Bidding Procedures shall be (i) Alvarez & Marsal Canada Inc., in its capacity as court-appointed monitor of the Canadian Debtor (the “CCAA Monitor”), (ii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the debtor-in-possession credit agreement dated December 22, 2022 with the Debtors in the Bankruptcy Cases (the “DIP Agent”), (iii) Wells Fargo Bank, National Association, in its capacity as administrative agent under the Debtors’ prepetition credit agreement dated April 25, 2018, as amended (the “ABL Agent”), (iv) the Pre-Petition Term Loan Agent (together with the DIP Agent and the ABL Agent, the “Agents”), and (v) the statutory creditors committee appointed on December 30, 2022 in the Chapter 11 Cases (the “Creditors Committee”). For avoidance of doubt, the foregoing shall include the CCAA Monitor, Agents and Creditor Committee’s respective advisors. Notwithstanding the foregoing or any other provision of these Bidding Procedures, the Agents shall only be consulted to the extent that the Agents confirm that neither they nor any of the lenders under their respective credit facilities (nor any of their affiliates) intend to participate in these Bidding Procedures as a bidder. If an Agent or lender under a credit facility (or one of its affiliates) participates as a bidder but later withdraws from the process (or has its bid terminated, if applicable), it can become a Consultation Party by confirming in writing to the Debtors and the

³ The “U.S. Debtors” are H.I.G. Colours Holdings Inc., H.I.G. Color, Inc., DCL Corporation (BP), LLC, DCL Holdings (USA), Inc., DCL Corporation (USA) LLC, and Dominion Color Corporation (USA).

⁴ All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the U.S. Bidding Procedures Order or Canadian Bidding Procedures Order, as applicable.

Monitor that it has withdrawn from the process as a bidder and will not re-enter the process as a bidder.

To the extent that these Bidding Procedures require the Debtors to consult with any Consultation Party in connection with making a determination or taking any action, or in connection with any other matter related to these Bidding Procedures or at the Auction, if any, the Debtors shall do so in a regular and timely manner prior to making such determination or taking any such action.

Copies of the U.S. Bidding Procedures Order or other documents related thereto are available upon request to Kroll Restructuring Administration LLC by calling (888) 510-7189 (US/Canada toll free) or +1 (646) 440-4160 (International), emailing DCLInfo@ra.kroll.com, or visiting the Debtors' restructuring website at <https://cases.ra.kroll.com/DCL>.

Copies of the Canadian Bidding Procedures Order or other documents related thereto are available on the website of Alvarez & Marsal Canada Inc., in its capacity as monitor of the Canadian Debtor in the CCAA Proceedings, at <https://www.alvarezandmarsal.com/DCLCanada>.

Stalking Horse Bid

Pigments Holdings, Inc. (including its assignees or designees, the “Stalking Horse Bidder”) submitted a bid (the “Stalking Horse Bid”) pursuant to a stalking horse asset purchase agreement (as amended, amended and restated, supplemented, or otherwise modified, the “Stalking Horse APA”) for certain of the Assets to set a floor for the Sale. Having announced and received approval of the designation of the Stalking Horse Bid from the Bankruptcy Courts, the Debtors will now conduct a round of open bidding intended to obtain the highest or otherwise best bid(s) for the Assets or business of Debtors, which may culminate in an auction (the “Auction”) for such Assets or business if competing bids are received.

Key Dates

These Bidding Procedures provide interested parties with the opportunity to qualify for and participate in the Auction to be conducted by the Debtors and to submit competing bids for the Assets or business or any portions thereof. The Debtors shall assist interested parties in conducting their respective due diligence investigations and shall accept Bids until March 10, 2023 at 5:00 p.m. (prevailing Eastern time) (the “Bid Deadline”).

The key dates for the Sale process are as follows:⁵

March 10, 2023 at 5:00 p.m. (prevailing Eastern time)	Bid Deadline - Due Date for Bids and Deposits
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⁵ These dates are subject to extension or adjournment as provided for herein.

March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to determine which Bids are Qualified Bids and notify each Potential Bidder in writing whether such Potential Bidder is a Qualified Bidder (each as defined herein).
March 12, 2023 at 5:00 p.m. (prevailing Eastern time)	Debtors to provide the Stalking Horse Bidder and each Qualified Bidder a schedule setting forth (i) the highest or otherwise best fully binding offer for the Assets and/or (ii) the highest or otherwise best fully binding offer(s) for all or any portion of the Assets.
March 13, 2023 at 10:00 a.m. (prevailing Eastern time)	Auction (if necessary), which will be held at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	U.S. Sale Hearing (as defined herein), which will be held at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, Wilmington, Delaware 19801.
March 16, 2023 at [●] [a/p].m. (prevailing Eastern time)	Canadian Sale Hearing (as defined herein), which will be held at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

Unless otherwise approved by the Bankruptcy Courts, no modification, extension, waiver or addition to these Bidding Procedures shall be inconsistent with the Stalking Horse APA, these Bidding Procedures Orders or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

All References to “business day” in these Bidding Procedures means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the applicable laws of, or are in fact closed in, the state of Delaware or the province of Ontario.

A. Submissions to the Debtors.

These Bidding Procedures set forth the terms by which prospective bidders, if any, may participate in the process set forth in these Bidding Procedures and qualify for and participate in an Auction, if any, thereby competing to make the highest or otherwise best offer for the Assets or any portion thereof. The Debtors will offer for sale the Assets, as well as consider other investment or other transactions, through an Auction. The Debtors, in consultation with the Consultation Parties, may consider non-overlapping bids from multiple bidders (including multiple non-overlapping bids submitted by the same bidder) for the Assets. The Stalking Horse APA and Stalking Horse Bid referenced herein provide for the Stalking Horse Bidder’s acquisition of substantially all of the Assets, subject to the terms and conditions thereof.

B. Potential Bidders.

To participate in the bidding process or otherwise be considered for any purpose under these Bidding Procedures, a person or entity (other than the Stalking Horse Bidder) interested in consummating a Sale (a “Potential Bidder”) must deliver or have previously delivered to the Debtors:

- (1) an executed confidentiality agreement on terms acceptable to the Debtors (a “Confidentiality Agreement”), to the extent not already executed;
- (2) in a form acceptable to the Debtors and their advisors, in consultation with the Consultation Parties: (x) evidence of the financial capability to consummate the Sale, and (y) if required, a written commitment from the equity holder(s) of the Potential Bidder to be responsible for the Potential Bidder’s obligations in connection with the Sale; and
- (3) any other evidence the Debtors, in consultation with the Consultation Parties, may reasonably request to evaluate such person’s or entity’s fitness to participate in the process set forth in these Bidding Procedures.

C. Due Diligence.

Only Potential Bidders shall be eligible to receive due diligence information and access to the Debtors’ electronic data room and to additional non-public information regarding the Debtors. **No Potential Bidder will be permitted to conduct any due diligence that includes confidential information without entering into a Confidentiality Agreement with the Debtors.** The Debtors will provide to each Potential Bidder that satisfies the foregoing, commercially reasonable due diligence information, as requested by such Potential Bidder in writing, as soon as reasonably practicable after such request, and the Debtors shall post all written due diligence provided to any Potential Bidder to the Debtors’ electronic data room. For all Potential Bidders, the due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline, the Debtors shall have no obligation to furnish any due diligence information.

The Debtors shall not furnish any confidential information relating to the Assets, liabilities of the Debtors, or the Sale to any person except to a Potential Bidder or to such Potential Bidder’s duly authorized representatives to the extent provided in the applicable Confidentiality Agreement. The Debtors and their advisors shall coordinate all reasonable requests from Potential Bidders for additional information and due diligence access; *provided that* the Debtors may decline to provide such information to Potential Bidders who, at such time and in the Debtors’ reasonable business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Potential Bidder intends in good faith to, or has the capacity to, consummate the Sale.

The Debtors also reserve the right to, in consultation with the Consultation Parties, withhold or redact any diligence materials that the Debtors determine in the Debtors’ reasonable business judgment are sensitive or otherwise not appropriate for disclosure to a Potential Bidder who the Debtors determine is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information

of any kind whatsoever to any person that is not determined to be a Potential Bidder or who has not executed a Confidentiality Agreement with the Debtors.

All due diligence requests must be directed to TM Capital Corp., 641 Lexington Ave., 32nd Floor, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).

(a) Communications with Potential Bidders.

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive communications related to Bids, the Sale or any transaction relating to the Debtors between and amongst Potential Bidders shall exclusively be through the Debtors and the Debtors' advisors. Communications between and amongst Potential Bidders is expressly prohibited unless the Debtors expressly consent in advance and in writing to such communication.

(b) Due Diligence of Potential Bidders.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding the ability of the Potential Bidder to consummate the Sale. Failure by a Potential Bidder to comply with such reasonable 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 Potential Bidder or that a bid made by such Potential Bidder is not a Bid.

The Debtors and each of their respective advisors and representatives shall be obligated to maintain in confidence any confidential information in accordance with any applicable Confidentiality Agreement, except as otherwise set forth in these Bidding Procedures. Each recipient of confidential information agrees to use, and to instruct their advisors and representatives to use, such confidential information only in connection with the evaluation of Bids during the bidding process or otherwise in connection with Bankruptcy Cases, in each case in accordance with the terms of any applicable Confidentiality Agreement.

Notwithstanding the foregoing and the provisions contained in any applicable Confidentiality Agreement, the Debtors and the Debtors' advisors may disclose confidential information: (i) with the prior written consent of the applicable Potential Bidder; (ii) to the applicable Potential Bidder; (iii) in accordance with these Bidding Procedures, including to any Consultation Party; and (iv) as otherwise required or allowed by any applicable Confidentiality Agreement with respect to a particular bidder or other agreement, law, court or other governmental order, or regulation, including, as appropriate, to regulatory agencies.

D. Qualified Bidders.

- (a) A "Qualified Bidder" is a Potential Bidder (i) who demonstrates the financial capability to consummate the Sale (as determined by the Debtors in consultation with the Consultation Parties), (ii) whose Bid is a Qualified Bid, and (iii) that the Debtors, in consultation with the Consultation Parties, determine should be considered a Qualified Bidder. Within one (1) business days after the Bid Deadline, the Debtors' advisors will notify each Potential Bidder in writing whether such

Potential Bidder is a Qualified Bidder. The Stalking Horse Bidder shall be deemed a Qualified Bidder for all purposes under these Bidding Procedures and at all times.

- (b) If any Potential Bidder is determined by the Debtors, in consultation with the Consultation Parties, not to be a Qualified Bidder, the Debtors will refund such Qualified Bidder's Deposit (as defined herein) and all accumulated interest thereon on or within five (5) business days after the Bid Deadline.
- (c) For the avoidance of doubt, the Debtors, in consultation with the Consultation Parties, expressly reserve the right to notify a Potential Bidder after the Bid Deadline that its bid is not a Qualifying Bid (a "Non-Qualifying Bid") and permit a Potential Bidder to revise or supplement a Non-Qualifying Bid to make it a Qualified Bid.
- (d) Between the date that the Debtors notify a Potential Bidder that it is a Qualified Bidder and the Auction, if any, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Except as otherwise set forth in the Stalking Horse APA, without the written consent of the Debtors, in consultation with the Consultation Parties, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase their consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided that* any Qualified Bid may also be improved at the Auction, if any, as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

E. Bid Requirements.

A proposal, solicitation, or offer (each, a "Bid") by a Qualified Bidder that is submitted in writing and satisfies each of the following requirements (the "Bid Requirements") as determined by the Debtors, in their reasonable business judgment and after consultation with the Consultation Parties, shall constitute a "Qualified Bid"). The Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under these Bidding Procedures and at all times.

- (a) **Assets.** Each Bid must clearly state which Assets that the Qualified Bidder is agreeing to purchase and assume.
- (b) **Assumption of Obligations.** Each Bid must clearly state which liabilities and obligations of the Debtors the Qualified Bidder is agreeing to assume.
- (c) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets, including and identifying separately any cash and non-cash components, which non-cash components shall be limited only to credit-bids and assumed liabilities (the "Purchase Price"). Each Bid that exceeds the aggregate amount of the Debtors' pre-petition secured debt shall, if requested by the Monitor, include an allocation of the Purchase Price between the U.S. Assets and the Canadian Assets. Except as may be provided in the Stalking Horse Bid, Potential Bidders shall not

include in their Bid a proposed use of any cash component of the Purchase Price that would be received by the Debtors if such Potential Bidder were the Successful Bidder (as defined herein).

- (d) **Minimum Overbid.** At a minimum, each Bid must have a Purchase Price that in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, has a monetary value equal to or greater than the aggregate unadjusted Purchase Price payable to the Debtors under the Stalking Horse Bid,⁶ plus \$2,250,000 ("Minimum Overbid"); *provided*, however, the Debtors may deem this criterion satisfied if non-overlapping Bids that can effectively be combined to form one operative bid that would otherwise satisfy the Bid Requirements, in the aggregate, meet the Minimum Overbid (such bids, "Aggregate Bids") (the amount of the Minimum Overbid shall be confirmed by the Debtors with Potential Bidders prior to the Bid Deadline).
- (e) **Markup of the Stalking Horse APA.** Each Bid must be accompanied by an executed asset purchase or transaction agreement ("APA"), as well in the case of an asset purchase agreement, a redline of such agreement marked to reflect the amendments and modifications made to the form of the Stalking Horse APA provided by the Debtors to Potential Bidders. Each such agreement must provide a representation that the Qualified Bidder will: (i) with respect to the U.S. Assets, (A) make all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), if applicable, and (B) submit and pay the fees associated with all necessary filings under the HSR Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving HSR Act approval will be a consideration in determining the highest or otherwise best Bid; and (ii) with respect to the Canadian Assets, make all necessary filings under the (A) *Competition Act*, R.S.C., 1985, c. C-34, as amended (the "Competition Act"), and (B) *Investment Canada Act*, R.S. C., 1985, c. 28 (1st Supp.) (the "ICA"), if applicable, and submit and pay the fees associated with all necessary filings under the Competition Act as soon as reasonably practicable; understanding that the timing and likelihood of receiving Competition Act and ICA approval will be a consideration in determining the highest or otherwise best Bid or Bids in the case of an Aggregated Bid.
- (f) **Deposit.** Each Bid, other than the Stalking Horse Bid, must be accompanied by a cash deposit in the amount equal to ten percent (10%) of the aggregate cash Purchase Price of the Bid, to be held in an interest-bearing escrow account to be identified and established by the Debtors (the "Deposit").
- (g) **Qualified Bid Documents.** Each Bid must include a duly executed, non-contingent APA, a schedule of assumed contracts to the extent applicable to the Bid, and a copy of the APA clearly marked to show all changes requested by the Qualified Bidder, including those related to the respective Purchase Price and assets

⁶ Which amount is comprised as provided in Section 3.1 of the Stalking Horse APA.

to be acquired by such Qualified Bidder, as well as all other material documents integral to such bid (the “Qualified Bid Documents”).

- (h) **Demonstrated Financial Capacity.** A Qualified Bidder must have, in the Debtors’ business judgment, after consultation with the Consultation Parties, the necessary financial capacity to consummate the proposed transactions required by its Bid. To the extent that a Bid is not accompanied by evidence of the Qualified Bidder’s capacity to consummate the transactions set forth in its Bid with cash on hand, each Bid must include written evidence of unconditional committed financing from a reputable financing institution, to the satisfaction of the Debtors in consultation with the Consultation Parties, that demonstrates that the Qualified Bidder has: (i) received sufficient debt and/or equity funding commitments to satisfy the Qualified Bidder’s Purchase Price and other obligations under its Bid; and (ii) adequate working capital financing or resources to finance going concern operations for the Assets and the proposed transactions. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions reasonably acceptable to the Debtors, in consultation with the Consultation Parties.
- (i) **Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence, but may be subject to the accuracy at the closing of specified representations and warranties or the satisfaction at the closing of specified conditions, which shall be acceptable to the Debtors in their business judgment, after consultation with the Consultation Parties.
- (j) **Identity.** Each Bid must fully disclose the identity of each entity that is bidding or otherwise participating in connection with such Bid (including each equity holder or other financial backer of the Qualified Bidder if such Qualified Bidder is an entity formed for the purpose of consummating the proposed transaction contemplated by such Bid), and the complete terms of any such participation. Each Bid must also fully disclose whether any current or former officer, director or equity holder of the Debtors, or any entity affiliated with any current or former officer, director or equity holder of the Debtors, will be bidding or otherwise participating in connection with such Bid. Under no circumstances shall any undisclosed insiders, principals, equity holders, or financial backers of the Debtors be associated with any Bid (including any Overbid (as defined herein) at the Auction). Each Bid must also include contact information for the specific persons and counsel whom TM Capital Corp., King & Spalding LLP and Blake, Cassels & Graydon LLP should contact regarding such Bid. All information disclosed pursuant to this paragraph shall be made available by the Debtors to the Consultation Parties promptly upon the Debtors’ receipt thereof but in any event no later than one (1) business day following the Bid Deadline.
- (k) **Adequate Assurance of Future Performance.** Each Bid must (i) identify the executory contracts and unexpired leases to be assumed and assigned in connection

with the proposed Sale; (ii) provide for the payment of all cure costs related to such executory contracts and unexpired leases by the Qualified Bidder; and (iii) demonstrate, in the Debtors' reasonable business judgment, after consultation with the Consultation Parties, that the Qualified Bidder can provide adequate assurance of future performance under all such executory contracts and unexpired leases.

- (l) **Time Frame for Closing.** A Bid by a Qualified Bidder must be reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors, after consultation with the Consultation Parties, which time frame shall include a closing by no later than March 17, 2023.
- (m) **Binding and Irrevocable.** A Qualified Bidder's Bid for the Assets shall be irrevocable unless and until the Debtors accept a higher Bid for the Assets other than such Qualified Bidder's Bid and such Qualified Bidder is not selected as the Backup Bidder (as defined herein) for the Assets.
- (n) **Expenses; Disclaimer of Fees.** Each Bid (other than a Stalking Horse Bid, solely to the extent set forth in the Stalking Horse APA) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder, solely to the extent set forth in the Stalking Horse APA) will be permitted to request, nor be granted by the Debtors, at any time, whether as part of the Auction, if any, 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.
- (o) **Authorization.** Each Bid must contain evidence that the Qualified Bidder has obtained authorization or approval from its board of directors (or a comparable governing body acceptable to the Debtors, in consultation with the Consultation Parties) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (p) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Qualified Bidder: (i) has had an opportunity to conduct any and all due diligence regarding the Debtors, their business and the Assets prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents, the Debtors and/or the Assets in making its Bid; (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, regarding the Assets or the Debtors' business, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Qualified Bidder's APA.

- (q) **Adherence to Bidding Procedures.** By submitting its Bid, each Qualified Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction, if any.
- (r) **Government Approvals.** Each Bid must include a description of all governmental, licensing, regulatory, or other approvals or consents that are required to close the proposed Sale, together with evidence satisfactory to the Debtors, after consultation with the Consultation Parties, of the ability to obtain such consents or approvals in a timely manner, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such consents or approvals.
- (s) **Government Approvals Timeframe.** Each Bid must set forth an estimated timeframe for obtaining any required internal, governmental, licensing, regulatory or other approvals or consents for consummating any proposed Sale.
- (t) **Consent to Jurisdiction.** The Qualified Bidder must submit to the jurisdiction of the Bankruptcy Courts and waive any right to a jury trial in connection with any disputes relating to Debtors' qualification of bids, the Auction, if any, the construction and enforcement of these Bidding Procedures, the Sale documents, and the closing of the transactions contemplated thereby, as applicable.
- (u) **Bid Deadline.** Each Bid must be transmitted via email (in .pdf or similar format) so as to be **actually received** on or before **5:00 p.m. (prevailing Eastern Time)** on March 10, 2023 by:
- (i) **Debtors.** DCL Holdings (USA), Inc. and DCL Corporation, 1 Concorde Gate, Suite 608, Toronto, Ontario (Canada) M3C 3N6, Attn: Scott Davido (Scott.Davido@ankura.com).
 - (ii) **Debtors' U.S. Counsel.** King & Spalding LLP, 1180 Peachtree Street NE, Atlanta, Georgia 30309, Attn: Jeffrey R. Dutson (jdutson@kslaw.com).
 - (iii) **Debtors' U.S. Co-Counsel.** Richards, Layton & Finger, PA , 920 N King Street, Wilmington, Delaware 19801, Attn: Amanda R. Steele (steele@rlf.com).
 - (iv) **Debtors' Canadian Counsel.** Blake, Cassels & Graydon LLP, 199 Bay Street, Suite 4000, Commerce Court West, Toronto, Ontario, M5L 1A9, Attn: Linc Rogers (linc.rogers@blakes.com); Milly Chow (milly.chow@blakes.com).
 - (v) **Debtors' Financial Advisors.** Ankura Consulting Group, LLC, 485 Lexington Avenue, 10th Floor, New York, New York 10017, Attn: Scott Davido (Scott.Davido@ankura.com); Jonathan Morrison (Jonathan.Morrison@ankura.com).

- (vi) **Debtors' Investment Banker.** TM Capital Corp., 641 Lexington Avenue, New York, New York 10022, Attn: Anthony Giorgio (agiorgio@TMCapital.com).
 - (vii) **CCAA Monitor.** Alvarez & Marsal Canada Inc., 200 Bay Street, Suite 2900, Royal Bank South Tower, Toronto Ontario M5J 2J1, Attn. Josh Nevsky (jnevsky@alvarezandmarsal.com); Steve Ferguson (sferguson@alvarezandmarsal.com).
- (v) The Debtors shall promptly provide a copy of each bid to each of the Consultation Parties, but in no event later than four hours after the Debtors' receipt of such bid.

F. Right to Credit Bid.

The Stalking Horse Bidder shall be considered a Qualified Bidder with respect to its right to acquire all or any of the Assets by credit bid.

G. Auction.

The Debtors, in the exercise of their business judgment and in a manner consistent with their fiduciary duties, shall evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' judgment, after consultation with the Consultation Parties, the highest or otherwise best Qualified Bid for the Assets (the "Baseline Bid"), and provide copies of the applicable Qualified Bid Documents supporting the applicable Baseline Bid to each Qualified Bidder at least one (1) Business Day prior to the Auction. The Debtors shall also provide copies of all Qualified Bids and the Qualified Bid Documents supporting such bids to any Qualified Bidder at least one (1) Business Day prior to the Auction. When determining the highest or otherwise best Qualified Bid, and selecting the winning bidder, as compared to other Qualified Bids, the Debtors may, in consultation with the Consultation Parties and in the exercise of their business judgment and in a manner consistent with their fiduciary duties, consider the following factors in addition to any other factors that the Debtors deem appropriate after consultation with the Consulting Parties: (a) the number, type, and nature of any changes to the Stalking Horse APA, if any, requested by the Qualified Bidder, including the type and amount of Assets sought and obligations to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Qualified Bidder's ability to close the Sale and the timing thereof; (d) the net economic effect of any changes to the value to be received by the Debtors' estates from the transaction contemplated by the Qualified Bid Documents; and (e) the tax consequences of such Qualified Bid; (collectively, the "Bid Assessment Criteria"). For purposes of determining the highest or otherwise best Qualified Bid, one dollar of the credit bid amount of the Stalking Horse Bid shall be equal in all respects to one dollar of cash that may be bid by another Qualified Bidder and the Baseline Bid may be an Aggregated Bid comprised of more than one non-overlapping bids.

If no Qualified Bids other than the Stalking Horse Bid are received by the Bid Deadline, then the Debtors shall cancel the Auction, and shall designate the Stalking Horse Bid as the Successful Bid, and pursue entry of the order approving a Sale of the Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

The Auction, if any, shall take place at 10:00 a.m. (**prevailing Eastern Time**) on **March 13, 2023** at the offices of King & Spalding LLP, 1185 Avenue of the Americas, New York, NY, or such later date and time as selected by the Debtors after consultation with the Consultation Parties. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time or location of the Auction to Qualified Bidders and the Consultation Parties.

In the event the Debtors determine not to hold an Auction for some or all of the Assets, the Debtors shall file with the Bankruptcy Courts, serve on the Notice Parties and the service list in the CCAA Proceedings and cause to be published on the website maintained by Kroll, the U.S. Debtors' claims and noticing agent in the Chapter 11 Cases, located at <https://cases.ra.kroll.com/DCL> (the "Kroll Website") and on the CCAA Monitor's website located at <https://www.alvarezandmarsal.com/DCLCanada> (the "CCAA Monitor's Website"), a notice containing the following information (as applicable): (a) a statement that the Auction for the Assets has been canceled; (b) the identity of the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the Kroll Website or the CCAA Monitor's Website; and (d) the date, time, and location of the Sale Hearing.

The Auction, if any, shall be conducted in a timely fashion according to the following procedures:

(a) The Debtors Shall Conduct the Auction.

The Debtors and their professionals shall direct and preside over the Auction, if any, in consultation with the Consultation Parties. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid(s). The Debtors explicitly reserve the right, in their business judgment and after consultation with the Consultation Parties, to exercise their discretion in conducting the Auction, including determining whether to adjourn the Auction to facilitate separate discussions between Qualified Bidders, the Debtors, and the Consultation Parties, as applicable. The Debtors shall maintain a written transcript of the Auction and all Bids made and announced at the Auction, if any, including the Baseline Bid, all applicable Overbids, and the Successful Bid.

Only Qualified Bidders and their legal and financial advisors, including the Stalking Horse Bidder, the members and advisors of the Creditors Committee and the CCAA Monitor and its advisors, shall be entitled to attend the Auction, if any, and the Qualified Bidders shall appear at the Auction in person and may speak or bid themselves or through duly authorized representatives. Only Qualified Bidders shall be entitled to bid at the Auction, if any. Any creditor of the Debtors that has provided written notice of its intent to observe the Auction to the Debtors (email is sufficient) at least one (1) business day prior to the start of the Auction shall be able to attend and observe the Auction.

(b) Terms of Overbids.

“Overbid” means any bid made at the Auction, if any, by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid(s). Each applicable Overbid must comply with the following conditions:

- (i) **Minimum Overbid Increment.** The initial Overbid(s) for the Assets shall provide for total consideration to the Debtors with a value that exceeds the value of the consideration under the Baseline Bid by an incremental amount that is not less than \$250,000, and successive Overbids higher than the previous bid, as Debtors shall, in consultation with the Consultation Parties, announce at the Auction (the “Minimum Overbid Increment”).

The Debtors reserve the right, in consultation with the Consultation Parties, to announce reductions or increases in the Minimum Overbid Increment at any time during the Auction, if any. Additional consideration in excess of the amount set forth in the respective Baseline Bid may include: (a) cash; and (b) in the case of a Bid by a Secured Creditor, a credit bid of up to the full amount of the such secured creditors’ allowed secured claim including, for the avoidance of doubt, a Bid by the Stalking Horse Bidder up to the full amount of the Pre-Petition Term Loan Obligations (as defined in the Stalking Horse APA); *provided, however*, that nothing herein shall impact any parties’ rights with respect to challenges to the liens or claims of a Secured Creditor.

- (ii) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of applicable Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, after consultation with the Consultation Parties, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
- (iii) **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 after consultation with the Consultation Parties, but shall otherwise comply with the terms of these Bidding Procedures.
- (iv) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified in the initial applicable Overbid round, an Overbid as being higher or otherwise better than the Initial Minimum Overbid, or in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall 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 based on, among other things, the Bid Assessment Criteria.

(c) Consideration of Overbids.

The Debtors reserve the right, in their reasonable business judgment and after consultation with the Consultation Parties, to adjourn the Auction, if any, one or more times to, among other things: (i) facilitate discussions between and amongst the Debtors, the Qualified Bidders and the Consultation Parties, as appropriate; (ii) allow Qualified Bidders to consider how they wish to proceed; and (iii) provide Qualified Bidders the opportunity to provide the Debtors and the Consultation Parties with such additional evidence as the Debtors, in their reasonable business judgment, after consultation with the Consultation Parties, may require that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed transaction at the prevailing Overbid amount.

(d) Closing the Auction.

- (i) The Auction, if any, shall continue until there is one Bid or Aggregated Bid for the Assets that the Debtors determine, in their reasonable business judgment, after consultation with the Consultation Parties, to be the highest or otherwise best Bid for the Assets. Each such Bid shall be declared the “Successful Bid” and such Qualified Bidder(s), the “Successful Bidder,” at which point the Auction will be closed. The Auction, if any, shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Successful Bid is conditioned upon approval by the Bankruptcy Courts of the Successful Bid.
- (ii) The Successful Bidder shall, within one (1) business day after the conclusion of the Auction, submit to the Debtors fully executed revised documentation memorializing the terms of the Successful Bid. The Successful Bid may not be assigned to any party without the consent of the Debtors after consultation with the Consultation Parties.
- (iii) For the avoidance of doubt, nothing in these Bidding Procedures shall prevent the Debtors from exercising their respective fiduciary duties under applicable law.
- (iv) The Debtors shall not consider any Bids or Overbids submitted after the conclusion of the Auction, if any, and any such Bids or Overbids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
- (v) As soon as reasonably practicable after closing the Auction, if any, and in any event not less than one (1) business day following closing the Auction, the Debtors shall cause a notice of Successful Bid and Successful Bidder, and the Qualified Bid Documents for the Successful Bid and Backup Bid (as defined herein), to be filed with the Bankruptcy Courts.

(e) No Collusion; Good-Faith *Bona Fide* Offer.

Each Qualified Bidder participating at the Auction, if any, will be required to confirm on the record at the Auction that: (i) it has not engaged in any collusion with respect to the bidding; and (ii) its Bid is a good-faith, *bona fide* offer and it intends to consummate the proposed transaction if selected as the Successful Bidder.

(f) Backup Bidder.

- (i) Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted for the Assets, the Qualified Bidder (or Qualified Bidders holding an Aggregate Bid) with the next-highest or otherwise second-best Bid (or Aggregate Bid) at the Auction for such Assets, as determined by the Debtors in the exercise of their reasonable business judgment, after consultation with the Consultation Parties (the “Backup Bid”), shall be required to serve as a backup bidder(s) (the “Backup Bidder”) for such Assets, and each Qualified Bidder(s) shall agree and be deemed to agree to be the Backup Bidder if so designated by the Debtors.
- (ii) The identity of the Backup Bidder and the amount and material terms of the Backup Bid shall be announced by the Debtors at the conclusion of the Auction, if any, at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bidder shall be required to keep its Bid(s) (or if the Backup Bidder submits one or more Overbids at the Auction, its final Overbid) open and irrevocable until the closing of the transaction with the applicable Successful Bidder. The Backup Bidder’s Deposit shall be held in escrow until the closing of the transaction with the applicable Successful Bidder.
- (iii) If the Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed the Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of such Backup Bidder without further order of the Court or notice to any party. In such case, the defaulting Successful Bidder’s Deposit shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder, including with respect to specific performance.

All Qualified Bids (other than the Successful Bid and the Backup Bid) shall be deemed rejected by the Debtors on and as of the date of approval of the Successful Bid and Backup Bid by the Bankruptcy Courts.

(g) Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures, in their reasonable business judgment and after consultation with the Consultation Parties, in any manner that will

best promote the goals of the bidding process, or impose, at or prior to the Auction, if any, additional customary terms and conditions on the Sale, including, without limitation: (a) extending the deadlines set forth in these Bidding Procedures; (b) adjourning the Auction, at the Auction and/or adjourning the Sale Hearings (as defined herein) in open court without further notice; (c) modifying these Bidding Procedures and/or adding procedural rules or methods of bidding that are reasonably necessary or advisable under the circumstances for conducting the Auction; (d) canceling the Auction; (e) waiving, or imposing additional, terms and conditions set forth herein with respect to Potential Bidders and (f) rejecting any or all bids or Bids; *provided, however*, that any modification, extension, waiver, or addition to these Bidding Procedures shall not be inconsistent with the Bidding Procedures Orders, or any other Order of the Bankruptcy Courts, unless otherwise ordered by the Bankruptcy Courts.

H. Approval of Sale.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the “**U.S. Sale Hearing**”) is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) **on March 16, 2023** before the Honorable [●], at the United States Bankruptcy Court for the District of Delaware, 824 Market Street N, 3rd Floor, Wilmington, Delaware 19801.

A hearing to consider approval of the Sale of the Assets to the Successful Bidder (the “**Canadian Sale Hearing**” and together with the U.S. Sale Hearing, the “**Sale Hearings**”) is currently scheduled to take place on or before [●] (**prevailing Eastern Time**) **on March 16, 2023** before the Honorable [●], at the Ontario Superior Court of Justice (Commercial List), 330 University Avenue, Toronto, Ontario M5G 1R7.

The Sale Hearings may be a joint hearing in accordance with the applicable cross-border protocols and may be continued to a later date by the Debtors, after consultation with the Consultation Parties and the consent of the Successful Bidder, by sending notice prior to, or making an announcement at, the Sale Hearings. No further notice of any such continuance will be required to be provided to any party (including the Successful Bidder).

At the Sale Hearings, the Debtors, in consultation with the Consultation Parties, shall present the Successful Bid(s) to the Bankruptcy Courts for approval.

I. Return of Deposits

The Deposits of all Qualified Bidders shall be held in one or more interest-bearing escrow accounts by the Debtors, but shall not become property of the Debtors’ estates absent further order of the Bankruptcy Courts or as expressly provided below. The Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Backup Bidder shall be returned to such Qualified Bidder not later than five (5) business days after the Sale Hearings. The Deposit of the Backup Bidder, if any, shall be returned to such Backup Bidder no later than three (3) business days after the closing of the transaction with the Successful Bidder. Upon the return of the Deposits, their respective owners shall receive any and all interest that will have accrued thereon. If the Successful Bidder timely closes on its transaction, its Deposit shall be credited towards the applicable purchase price(s). If the Successful Bidder (or Backup Bidder, if applicable) fails to consummate a transaction because of a breach or failure to perform on the part of the Successful Bidder (or

Backup Bidder, if applicable), the Debtors will not have any obligation to return the Deposit deposited by the Successful Bidder (or Backup Bidder, if applicable), and such Deposit shall irrevocably become property of the Debtors and shall be divided as between the U.S. Debtors and the Canadian Debtor based on the Purchase Price allocation as set forth in the Stalking Horse APA.

J. Fiduciary Out.

Subject to the terms of the Stalking Horse APA, nothing in these Bidding Procedures shall require the board of directors, board of managers, or such similar governing body of any of the Debtors to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, to the extent such board of directors, board of managers, or such similar governing body determines, based on the written advice of counsel, that taking such action, or refraining from taking such action, as applicable, is required to comply with its fiduciary obligations under applicable law; *provided, however*, that the Debtors shall provide the Consultation Parties and the Stalking Horse Bidder with advance written notice of such action or inaction within two (2) business days prior to taking such action or inaction.

Court File No.: CV-22-00691990-00CL

IN THE MATTER OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C., 1985 c. C-36AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL Corporation
Applicant**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

Proceeding Commenced at Toronto

**ORDER
(Approval of the Stalking Horse APA,
Final Bidding Procedures, and ancillary matters)****BLAKE, CASSELS & GRAYDON LLP**
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Lawyers for the Applicant

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF DCL Corporation
Applicant

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

Proceeding commenced at Toronto

**MOTION RECORD
(Returnable February 22, 2023)**

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