



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

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

THE HONOURABLE MR.

)

WEDNESDAY, THE 22ND

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;

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- (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 February 16, 2023 (such second report, including any supplements thereto, the “**Second Report**”), the affidavit of Nancy Thompson sworn February 22, 2023 and the exhibits attached thereto, 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 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

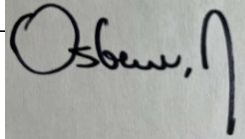
10. **THIS COURT ORDERS** that this Order shall have full force and effect in all provinces and territories in Canada.

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.

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SCHEDULE “A”

(Final Bidding Procedures)

**UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE AND ONTARIO
SUPERIOR COURT OF JUSTICE (COMMERCIAL LIST)**

In re:

DCL HOLDINGS (USA), INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 22-11319 (JKS)
)
) (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-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

ORDER
(Approval of the Stalking Horse APA,
Final Bidding Procedures, and ancillary matters)

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