

**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 KNOTEL, INC. and KNOTEL CANADA,
INC.

APPLICATION OF KNOTEL CANADA, INC. UNDER SECTION 46 OF
THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985,
c. C-36, AS AMENDED

**AFFIDAVIT OF ASHLEY JUNG
(sworn March 11, 2021)**

I, ASHLEY JUNG, of the City of Toronto, in the Province of Ontario, MAKE OATH AND
SAY:

1. I am an articling student at Cassels Brock & Blackwell LLP, Canadian counsel to Knotel Canada, Inc. ("**Knotel Canada**") in its capacity as foreign representative of itself and Knotel, Inc. (together, the "**Canadian Filing Entities**"), and, as such, have knowledge of the matters contained in this affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, believe the information to be true.
2. I affirm this affidavit in support of the application of Knotel Canada for certain relief for the Canadian Filing Entities pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"). Knotel Canada seeks, among other things, an order recognizing certain orders entered by the United States Bankruptcy Court for the District of Delaware (the "**U.S. Court**") in the Chapter 11 Cases of the Canadian Filing Entities.

3. Unless otherwise indicated, capitalized terms used in my affidavit and not otherwise defined shall have the meaning given to them in: (i) the affidavit of John M. Jureller sworn March 8, 2021 in these proceedings; and (ii) the supplemental affidavit of John M. Jureller sworn March 11, 2021 in these proceedings.

4. On March 8, 2021, the Debtors and Digiatech, LLC filed a joint motion with the U.S. Court seeking, among other things, approval of a settlement term sheet, amending the order setting out the bidding procedures, and setting out the terms for an amendment to the stalking horse agreement.

5. The U.S. Court granted the following orders on March 11, 2021, among others:

- (a) *Order Pursuant to Section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 Approving Compromise and Settlement Term Sheet among the Debtors, the Official Committee of Unsecured Creditors, and Digiatech LLC; (ii) Amending Bidding Procedures Order; (iii) Authorizing Amendments to the Stalking Horse Agreement; and (iv) Granting Related Relief* (Docket I.D. #417) (the “**Settlement Term Sheet Order**”), a copy of which is attached hereto as **Exhibit “A”**; and
- (b) *Amended Order Approving (i) The Debtors’ Entry Into The Stalking Horse Agreement And Related Expense Reimbursement (ii) The Bidding Procedures In Connection With The Sale Of All Or Substantially All Of The Debtors’ Assets, (iii) The Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases, (iv) The Form And Manner Of Notice Of The Sale Hearing, Assumption Procedures, And Auction Results, (v) Dates For An Auction And Sale Hearing And (vi) Granting Related Relief* (Docket I.D. #418) (the “**Order Amending Bidding Procedures**”), a copy of which is attached hereto as **Exhibit “B”**.

6. Knotel Canada is seeking recognition of the Settlement Term Sheet Order and the Order Amending Bidding Procedures.

SWORN BEFORE ME by video conference
by Ashley Jung at the City of Toronto in the
Province of Ontario, before me at the City
of Toronto in the Province of Ontario on
March 11, 2021 in accordance with O. Reg.
431/20, Administering Oath of Declaration
Remotely.



A commissioner for Taking Affidavits
(or as may be)

Kieran May
LSO# 79672P



Ashley Jung

This is Exhibit “**A**” referred to in the Affidavit of Ashley Jung sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.

A handwritten signature in black ink, appearing to read 'Kieran May', written in a cursive style.

Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

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

In re:

KNOTEL, INC., *et al.*,

Debtors.¹

)

) Chapter 11

)

) Case No. 21-10146 (MFW)

)

) (Jointly Administered)

)

)

**ORDER PURSUANT TO SECTION 105 OF THE BANKRUPTCY CODE AND
BANKRUPTCY RULE 9019 APPROVING COMPROMISE AND SETTLEMENT TERM
SHEET AMONG THE DEBTORS, THE OFFICIAL COMMITTEE OF UNSECURED
CREDITORS, AND DIGIATECH, LLC; (II) AMENDING BIDDING PROCEDURES
ORDER; (III) AUTHORIZING AMENDMENTS TO THE STALKING HORSE
AGREEMENT; AND (IV) GRANTING RELATED RELIEF**

Upon the joint motion [D.I. 366] (the “*Motion*”)² of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) and the stalking horse bidder and DIP lender Digiatech, LLC (“*Digiatech*”), for entry of an order pursuant to section 105 of title 11 of the United States Code (the “*Bankruptcy Code*”) and Rule 9019 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), (I) approving the compromise set forth in the settlement term sheet (the “*Term Sheet*”) by and among: (i) the Debtors; (ii) the Committee; and (iii) Digiatech (collectively, the “*Parties*”) attached hereto as Exhibit 1; (II) in connection therewith, amending the Bidding Procedures Order; (III) authorizing the Debtors and Digiatech to amend the Stalking Horse Agreement in conformity with the proposed settlement, and (IV) granting related relief, all

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/kotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Bidding Procedures Order, as applicable.

as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion and any objections thereto; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted.
2. Pursuant to section 105 of the Bankruptcy Code and Bankruptcy Rule 9019, the settlement evinced by the Term Sheet, a copy of which is attached hereto as Exhibit 1, is approved in all respects and incorporated herein as if set forth at length.
3. The Bidding Procedures Order is hereby amended to provide that the Termination Fee in the amount of \$2,100,000 is approved as set forth in the Stalking Horse Agreement.
4. The terms and conditions set forth in the Term Sheet shall be binding for all purposes in these cases as among and between all of the Parties.
5. The Debtors and Digiatech are authorized to enter into such amendments to the Stalking Horse Agreement as necessary to reflect the terms and conditions of the settlement set forth in the Term Sheet with the consent of the Committee, which consent shall not be unreasonably withheld.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

9. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of the Term Sheet, subsequent settlement agreement, and this Order.

Dated: March 11th, 2021
Wilmington, Delaware

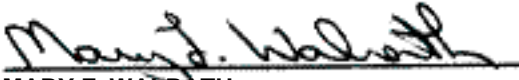

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Term Sheet

IN RE KNOTEL, INC., *ET AL.*
COMMITTEE SETTLEMENT TERM SHEET

THIS COMMITTEE SETTLEMENT TERM SHEET (THE “TERM SHEET”) SUMMARIZES CERTAIN KEY TERMS OF A GLOBAL RESOLUTION WITH RESPECT TO A SETTLEMENT AND COMPROMISE OF ALL CLAIMS AND CAUSES OF ACTION ASSERTED BY AND AMONG THE OFFICIAL COMMITTEE OF UNSECURED CREDITORS (THE “COMMITTEE”), DIGIATECH, LLC (“DIGIATECH”), NEWMARK PARTNERS, L.P. (“NEWMARK”), AND THE DEBTORS, INCLUDING, WITHOUT LIMITATION, A RELEASE AND WAIVER OF THE COMMITTEE’S CHALLENGE RIGHTS (AS DEFINED IN THE BIDDING PROCEDURES ORDER AND FINAL DIP ORDER) THAT THE COMMITTEE HAS OR COULD HAVE ASSERTED IN RESPECT OF THE PREPETITION SECURED DEBT OBLIGATIONS AND DIP OBLIGATIONS AND THE RELATED PREPETITION LIENS OF THE PREPETITION SECURED LENDER AND THE DIP LIENS OF THE DIP LENDER (EACH AS DEFINED IN THE FINAL DIP ORDER), THE DEBTORS’ MOTION TO SELL SUBSTANTIALLY ALL OF ITS ASSETS (THE “SALE MOTION”), AND DIGIATECH’S STALKING HORSE AGREEMENT AND CREDIT BID, AND SHALL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN, INCLUDING ANY NECESSARY AMENDMENTS TO THE STALKING HORSE AGREEMENT.

THIS TERM SHEET SHALL BE BINDING AS TO THE KEY TERMS REFLECTED HEREIN BUT SHALL OTHERWISE BE SUBJECT TO THE EXECUTION OF DEFINITIVE DOCUMENTATION. THIS TERM SHEET DOES NOT CONTAIN ALL OF THE TERMS OF A PROPOSED PLAN OF LIQUIDATION OR AMENDMENT TO THE STALKING HORSE AGREEMENT.

Unless otherwise indicated, capitalized terms used but not defined in this Term Sheet shall have the meanings ascribed to them in the Sale Motion and Bidding Procedures Order, as applicable.

<u>SUMMARY OF KEY TERMS</u>	
Cash for Distribution to Holders of General Unsecured Claims	The sum of \$6.2 million (the “ <u>GUC Fund</u> ”) shall be set aside for distribution to holders of allowed general unsecured claims pursuant to a Plan of Liquidation (the “ <u>Plan</u> ”) at the Committee’s direction; <i>provided</i> that the Committee may elect to reallocate any portion of the GUC Fund to fund costs associated with administering the wind-down of the Debtors’ estates. The GUC Fund shall be funded first from available cash-on-hand in the Debtors’ estates (including the Settlement Proceeds previously received by the Debtors and Digiatech’s cash collateral) and second, to the extent that \$6.2 million does not remain in the Debtors’ estates at Closing, Digiatech will cause Newmark and Newmark agrees to fund the shortfall in accordance with its parent guarantee under Section 10.17 of the Stalking Horse Agreement, which guarantee shall be deemed to apply to the additional economic obligations under this Term Sheet and any definitive documents with respect thereto. To the extent that Digiatech breaches the Stalking Horse Agreement by not Closing as required, the releases set forth herein are void.

Waiver of Avoidance Actions by Digiatech	<p>Section 2.01(r) of the Stalking Horse Agreement shall be amended to provide for the sale of Avoidance Actions to Digiatech, excluding any Avoidance Actions against Insiders. In addition, the Stalking Horse Agreement shall be Amended to provide that Digiatech shall not sell, transfer, assign or convey the Avoidance Actions to any other person or entity and that Digiatech covenants and agrees that it will not pursue or attempt in any manner to collect on the Avoidance Actions, and that these provisions will survive the closing for a period of 6 years and 5 days.</p>
Claims against the Debtors' Directors and Other Estates' Claims Excluded from Sale and Transferred to Liquidating Trust	<p>The Stalking Horse Agreement shall be amended to exclude from the definition of Purchased Assets any claims and causes of action against the Debtors' current and former directors and/or officers (the "<u>D&O Claims</u>") and other estates' claims (together with the D&O Claims, the "<u>Estates Causes of Action</u>"). The Estates Causes of Action shall be conveyed and transferred to the Liquidating Trust under the Plan. The Plan will provide for a release of the sole independent director. Any D&O Claims against the current CIO, the COO, the CFO, and the GC will be limited to all available insurance proceeds; provided, however that if any of these individuals knowingly, recklessly, or through gross negligence take or took any action or fail or failed to act which jeopardizes insurance coverage and the insurance carrier therefore declines coverage, this limitation will no longer apply. The Plan will not otherwise limit the liability of or release any other current or former director and/or officer of the Debtors. For the avoidance of doubt, all cross claims, counterclaims, defenses and offsets of the potential defendants remain and are not waived. Potential defendants, if any, retain their rights of indemnity and advancement, if any and subject to the Bankruptcy Code. To the extent there is a joint or common interest privilege, that privilege, if any, is not being waived by the transfer of the potential causes of action.</p>
Waiver of Committee Challenge, withdrawal of objections and General Release	<p>All discovery in connection with the Committee's Challenge Rights will cease immediately upon the execution of this Term Sheet. Upon entry of an order by the Bankruptcy Court approving the settlement in this Term Sheet, the Committee agrees to immediately withdraw all outstanding discovery requests and deposition notices.</p> <p>Upon approval of this Term Sheet the Committee agrees to withdraw the Hilco objection [Docket No. 347].</p> <p>The Committee agrees to waive and release its Challenge Rights as defined under the Bidding Procedures Order [Docket No. 227] and the Final DIP Order [Docket No. 330], as well as any other claims, causes of action, or challenges against Digiatech, Newmark and any of its affiliates, representatives, etc. to the fullest extent permitted by law. The form and substance of such release shall be fully set forth in the definitive documents and shall be reasonably acceptable to the parties to this Term Sheet. Digiatech shall be entitled as the Buyer under the Stalking Horse Agreement to credit bid the full amount of the indebtedness and the obligations owing to it under the Prepetition Credit Agreements and the DIP Credit Agreement pursuant to 363(k) of the Bankruptcy Code and the Stalking Horse Bid shall be deemed a Qualified Bid at the Auction and the Committee agrees to waive all rights with respect thereto.</p> <p>Nothing in this Section shall in any way limit or release the obligations of Digiatech and Newmark under this Term Sheet and any definitive documents with respect thereto, under the Stalking Horse Agreement (as may be amended), the DIP Facility</p>

	and the Final DIP Order.
Waiver of Digiatech/Newmark Claims	Digiatech and Newmark and their respective parents, subsidiaries and affiliates agree to waive and release any and all claims for distributions against the estates, including any deficiency claims they may have, other than claims in connection with any breach of the Stalking Horse Agreement, and the DIP Facility (except as modified by this Term Sheet and any definitive documents with respect thereto).
Wind-Down Matters	<p>The Stalking Horse Agreement shall be amended to increase the wind-down budget from \$100,000 to \$500,000 (the “<u>Wind-Down Amount</u>”) which shall be funded by Digiatech as part of its Purchase Price (as defined in the Stalking Horse Agreement). Newmark agrees to guarantee Digiatech’s obligation to fund the Wind-Down Amount in accordance with its parent guarantee under Section 10.17 of the Stalking Horse Agreement.</p> <p>The Wind-Down Amount shall be used by the Debtors to prepare and obtain confirmation of a combined Disclosure Statement and Plan and the wind-down of the Debtors’ estates pursuant to a Wind-Down Budget, which shall be in form and substance reasonably acceptable to the Committee. The Committee shall select the Liquidating Trustee who shall be charged with the winding down of the Chapter 11 Cases. The Liquidating Trustee shall be responsible for filing the final tax returns and otherwise discharging the responsibilities set forth in the Plan and Liquidating Trust Agreement. This amount is in addition to the assumption of liabilities set forth in section 2.03(f) of the Stalking Horse Agreement and as clarified in the Bid Procedures Order.</p>
Plan of Liquidation	Shortly after the closing of the Sale to Digiatech, but without any cost or expense to Digiatech except as set forth in this Term Sheet, any definitive documents with respect thereto, the Stalking Horse Agreement, as may be amended, the DIP Facility, and the Final DIP Order, the Debtors shall file a combined Plan and Disclosure Statement, which will establish a Liquidating Trust, and proceed with a joint hearing consistent with the terms of this Term Sheet and otherwise subject to consent of the parties, which consent shall not be withheld unreasonably.
Amendments to Stalking Horse Agreement and Bidding Procedures Order	The Stalking Horse Agreement shall be amended as necessary to reflect the terms of this Term Sheet and the Global Settlement, including, without limitation, to provide that the Purchase Price shall be increased to reflect (i) the funding of the \$6.2m GUC Fund, (ii) the increase in the wind-down budget from \$100,000 to \$500,000 (a \$400,000 increase) and (iii) the settlement of the Employment Claim (as defined below) in the amount of \$110,000 (such amounts, collectively, the “ <u>Settlement Amounts</u> ”). In addition, Digiatech and the Debtors shall apply to the Bankruptcy Court to amend the Stalking Horse Agreement and the Bid Procedures Order to (i) reinstate the Termination Fee in the amount of \$2,100,000 as set forth in the Stalking Horse Agreement prior to its deemed amendment in connection with the entry of the Bidding Procedures Order; and (ii) provide that any Overbid (as defined therein) must include the Settlements Amounts, the Expense Reimbursement, and the Termination Fee, as applicable and subject to the approval of the Bankruptcy Court. If the Bankruptcy Court denies the Debtors and Digiatech’s request for the reinstatement of the Termination Fee, the Debtors and Digiatech shall seek approval of an increase of the Expense Reimbursement cap to \$750,000. For the avoidance of doubt, any Overbid by a subsequent successful bidder must assume and include the Settlement Amounts, Expense

	<p>Reimbursement, and, if applicable, the Termination Fee. In view of the concessions made by Digiatech and Newmark in connection with this Term Sheet, the Committee agrees to support such application. The Court's failure to grant such application for any reason will have no impact on this Term Sheet.</p> <p>On or before March 8, 2021, provided that the parties hereto shall have agreed upon a form of amendment to the Stalking Horse Agreement resolving the Offer Employees issues contemplated by this Term Sheet, the Debtors shall seek authority to approve this Term Sheet and the transactions contemplated hereby and the corresponding amendments to the Stalking Horse Agreement and the Bid Procedures Order.</p>
Canadian Insolvency Filings	Digiatech reaffirms its obligation under the Stalking Horse Agreement to pay Taxes (as defined in the Stalking Horse Agreement) of the Debtors which may become due and payable or otherwise arising in connection with the filing or administration of insolvency proceedings of the Debtors' direct Canadian subsidiaries, to the extent that such Taxes constitute Personal Liability Taxes (as defined in the Stalking Horse Agreement).
Employee Issues	<p>Notwithstanding anything set forth in Section 7.17 of the Stalking Horse Agreement to the contrary, Digiatech agrees to provide a list of Offer Employees (as defined in the Stalking Horse Agreement) to the Debtors no later than March 8, 2021 along with written offers of employment to certain officers of the Debtors. Digiatech shall have the right to supplement the list of Offer Employees to add additional employees at any time on or before the closing date.</p> <p>Section 7.17(a) of the Stalking Horse Agreement shall be amended to reflect this change.</p>
Counterparties	Digiatech is authorized to contact all landlords and contract counterparties in connection with negotiating proposed cure amounts and any other potential disputes.
Settlement of Employment Claim	Digiatech authorizes the Debtors to use available cash-on-hand in the Debtors' estates, if any, to pay the settlement of a threatened action by a former employee (the " <u>Employment Claim</u> ") in the amount of \$110k. This obligation will be considered payable under the Stalking Horse Agreement, and as such will be contingent upon Digiatech being the winning bidder and the Closing of the transactions contemplated under the Stalking Horse Agreement and subject to Newmark's parent guarantee under the Stalking Horse Agreement and this Term Sheet and any definitive documents with respect thereto.
Funding	Newmark agrees to provide Digiatech with the necessary funding in accordance with its parent guarantee under Section 10.17 of the Stalking Horse Agreement which shall be deemed to apply to the additional economic obligations under this Term Sheet and any definitive documents with respect thereto in order for Digiatech to fulfill its obligations under this Term Sheet and the Stalking Horse Agreement as of and after the closing date.
Sale Hearing; Request to Reschedule	In the event that no qualified bids are received by noon on March 12, 2021, the Committee will agree to the cancelling of the auction and will support a request by the Debtors and Digiatech to schedule the Sale Hearing as soon after noon on March 12 as practicable.

Closing	<p>The Debtors shall cooperate to close the transaction as soon as possible following the entry of the Sale Order in form and substance satisfactory to Digiatech on a date to be selected by Digiatech.</p> <p>At Closing the fees and expenses set forth and included in the DIP Budget for the DIP Lender and the Prepetition Secured Lender (as adequate protection) shall be paid for the period through and including the Closing Date.</p>
Preservation of Defenses and Set-Off Rights	For the avoidance of doubt, all defenses and set-off rights in connection with Digiatech's or any transferee of Digiatech's assertion of claims being transferred to Digiatech by the Debtors under the Stalking Horse Agreement are expressly preserved.
Access to Debtors' Books and Records	Section 7.06 of the Stalking Horse Agreement will be amended to provide the Committee, access to the Debtors' books and records and appropriate transition services subsequent to the closing of the Stalking Horse Agreement. ¹

Agreed and accepted by:

On behalf of Digiatech, LLC

By: 

Name: Michael Rispoli

Title: Chief Financial Officer

On behalf of Newmark Partners, L.P.

By: 

Name: Michael Rispoli

Title: Chief Financial Officer

On behalf of the Official Committee of Unsecured Creditors

By: _____

Name: _____

Title: _____

On behalf of Knotel, Inc. and its applicable affiliates

By: _____

Name: _____

Title: _____

¹ For the avoidance of doubt, section 7.06 of the Stalking Horse Agreement already provides these rights to the Debtors and any subsequently identified estate fiduciaries.

Closing	<p>The Debtors shall cooperate to close the transaction as soon as possible following the entry of the Sale Order in form and substance satisfactory to Digiatech on a date to be selected by Digiatech.</p> <p>At Closing the fees and expenses set forth and included in the DIP Budget for the DIP Lender and the Prepetition Secured Lender (as adequate protection) shall be paid for the period through and including the Closing Date.</p>
Preservation of Defenses and Set-Off Rights	For the avoidance of doubt, all defenses and set-off rights in connection with Digiatech's or any transferee of Digiatech's assertion of claims being transferred to Digiatech by the Debtors under the Stalking Horse Agreement are expressly preserved.
Access to Debtors' Books and Records	Section 7.06 of the Stalking Horse Agreement will be amended to provide the Committee, access to the Debtors' books and records and appropriate transition services subsequent to the closing of the Stalking Horse Agreement. ¹

Agreed and accepted by:

On behalf of Digiatech, LLC

By: _____

Name: _____

Title: _____

On behalf of Newmark Partners, L.P.

By: _____

Name: _____

Title: _____

**On behalf of the Official Committee of
Unsecured Creditors.**

By: _____

Name: *Michael Etkin*

Title: *Counsel to the Committee*

**On behalf of Knotel, Inc. and its applicable
affiliates**

By: _____

Name: _____

Title: _____

¹ For the avoidance of doubt, section 7.06 of the Stalking Horse Agreement already provides these rights to the Debtors and any subsequently identified estate fiduciaries.

Closing	<p>The Debtors shall cooperate to close the transaction as soon as possible following the entry of the Sale Order in form and substance satisfactory to Digiatech on a date to be selected by Digiatech.</p> <p>At Closing the fees and expenses set forth and included in the DIP Budget for the DIP Lender and the Prepetition Secured Lender (as adequate protection) shall be paid for the period through and including the Closing Date.</p>
Preservation of Defenses and Set-Off Rights	For the avoidance of doubt, all defenses and set-off rights in connection with Digiatech's or any transferee of Digiatech's assertion of claims being transferred to Digiatech by the Debtors under the Stalking Horse Agreement are expressly preserved.
Access to Debtors' Books and Records	Section 7.06 of the Stalking Horse Agreement will be amended to provide the Committee, access to the Debtors' books and records and appropriate transition services subsequent to the closing of the Stalking Horse Agreement. ¹

Agreed and accepted by:

On behalf of Digiatech, LLC

By: _____
Name: _____
Title: _____

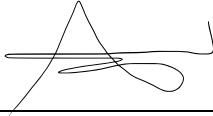
On behalf of Newmark Partners, L.P.

By: _____
Name: _____
Title: _____

On behalf of the Official Committee of Unsecured Creditors

By: _____
Name: _____
Title: _____

On behalf of Knotel, Inc. and its applicable affiliates

By:  _____
Name: Amit Khanna
Title: General Counsel

¹ For the avoidance of doubt, section 7.06 of the Stalking Horse Agreement already provides these rights to the Debtors and any subsequently identified estate fiduciaries.

This is Exhibit "**B**" referred to in the Affidavit of Ashley Jung sworn before me March 11, 2021 by videoconference in accordance with O. Reg 431/20.



Commissioner for Taking Affidavits (or as may be)

Kieran May
LSO# 79672P

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

In re

KNOTEL, INC., et al.,¹

Debtors.

Chapter 11

Case No. 21-10146 (MFW)

Jointly Administered

AMENDED ORDER APPROVING (I) THE DEBTORS' ENTRY INTO THE STALKING HORSE AGREEMENT AND RELATED EXPENSE REIMBURSEMENT (II) THE BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF ALL OR SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (III) THE PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (IV) THE FORM AND MANNER OF NOTICE OF THE SALE HEARING, ASSUMPTION PROCEDURES, AND AUCTION RESULTS, (V) DATES FOR AN AUCTION AND SALE HEARING AND (VI) GRANTING RELATED RELIEF

Upon the motion [Docket No. 16] (the “*Bidding Procedures Motion*”)² of the above-captioned debtors and debtors in possession (collectively, the “*Debtors*”) for entry of an order (the “*Original Bidding Procedures Order*”) [Docket No. 227], (a) authorizing the Debtors to enter into and perform under an asset purchase agreement attached to the Bidding Procedures Motion as Exhibit B (the “*Stalking Horse Agreement*”) between the Debtors and the Stalking Horse Bidder (as defined therein), subject to the solicitation of higher or otherwise better offers for the Debtors’ Assets (as defined therein); (b) approving the bidding procedures attached to the Original Bidding Procedures Order as Exhibit 1 (the “*Original Bidding Procedures*”) in connection with the sale of the Assets, (c) approving procedures for assuming and assigning executory contracts and

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“*PACER*”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

unexpired leases, including notice of proposed cure amounts, (d) approving the form and manner of (1) notice of the Auction and Sale Hearing (the “***Sale Notice***”), attached to the Original Bidding Procedures Order as Exhibit 2; (2) notice of the Assumption Procedures (the “***Assumption Notice***”), attached to the Original Bidding Procedures Order as Exhibit 3, and (3) notice of Successful Bidder and Back-Up Bidder (the “***Notice of Successful Bidder***”), attached to the Original Bidding Procedures Order as Exhibit 4, (e) establishing dates and deadlines in connection with the Sale and the approval thereof, including the Bid Deadline, the date of the Auction, if any, and the Sale Hearing, and (f) granting related relief, all as more fully set forth in the Bidding Procedures Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having authority to enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Bidding Procedures Motion in this district to be proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Bidding Procedures Motion to be in the best interests of the Debtors’ estates, their creditors, and other parties in interest; and this Court having found that the Debtors’ notice of the Bidding Procedures Motion and opportunity for a hearing on the Bidding Procedures Motion were appropriate and that no other notice thereof need be provided; and this Court having reviewed the Bidding Procedures Motion and the filed objections, and having heard the statements in support of the relief requested therein at a hearing before this Court on February 18, 2021 (the “***Bidding Procedures Hearing***”); and this Court having determined that the legal and factual bases set forth in the Bidding Procedures Motion and at the Bidding Procedures Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and based on the agreements set forth on the record at

the Bidding Procedures Hearing; and after due deliberation and sufficient cause appearing therefor, the Court entered the Original Bidding Procedures Order; and upon the *Joint Motion of the Debtors and Digiatech, LLC pursuant to section 105 of the Bankruptcy Code and Bankruptcy Rule 9019 for Entry of an Order (I) Approving Compromise and Settlement Term Sheet among the Debtors, the Official Committee of Unsecured Creditors, Digiatech, LLC, and Newmark Partners, L.P.; (II) Amending Bidding Procedures Order; (III) Authorizing Amendments to the Stalking Horse Agreement; and (IV) Granting Related Relief* [Docket No. 366] (the “**Settlement Motion**”) and, following the hearing before this Court to consider the Settlement Motion on March 11, 2021 at 10:00 a.m. (prevailing Eastern Time) (the “**Settlement Hearing**”), the Court’s Order approving the Settlement Motion (the “**Settlement Order**”), the Court further authorizes the amendment of the Original Bidding Procedures Order by and through the entry of this order (this “**Order**” or the “**Amended Bidding Procedures Order**”), as follows;

THE COURT HEREBY FINDS THAT:

A. Statutory Predicates. The predicates for the relief granted herein are sections 105, 363, 365, 503, and 507 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004 and 9014.

B. Notice of Bidding Procedures Motion. The Debtors’ notice of the Bidding Procedures Motion, the Bidding Procedures Hearing, and the entry of the Original Bidding Procedures Order was sufficient under the circumstances of this case and complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the applicable Local Rules. Accordingly, no other or further notice of the Bidding Procedures Motion or the entry of the Original Bidding Procedures Order is necessary or required.

C. Notice of Settlement Motion. As provided in the Settlement Order, the Debtors’ notice of the Settlement Motion, the Settlement Hearing, and the entry of the Settlement Order was sufficient under the circumstances of this case and complied with all applicable requirements of

the Bankruptcy Code, the Bankruptcy Rules, and the applicable Local Rules. Accordingly, no other or further notice of the amendment of the Original Bidding Procedures Order or the entry of this Amended Bidding Procedures Order is necessary or required.

D. Bidding Procedures and Amended Bidding Procedures. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, as modified herein pursuant to the Settlement Order (the “*Amended Bidding Procedures*”) attached hereto as Exhibit 1, which were developed in good faith, are fair, reasonable, and appropriate under the circumstances, and are designed to maximize the recovery on, and realizable value of, the Debtors’ assets (including, for the avoidance of doubt, any causes of action belonging to the Debtors, rights under leases or other contracts, and intellectual property rights or other intangible assets) (the “*Assets*”), as determined by the Debtors in an exercise of their business judgment.

E. Sale Notice. The Sale Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale, including: (i) the date, time, and place of the Auction (if one is held); (ii) the Original Bidding Procedures and certain dates and deadlines related thereto; (iii) the objection deadline for the Sale and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the assets for sale; (v) representations describing the Sale as being free and clear of liens, claims, interests, and other encumbrances; and (vi) notice of the proposed assumption and assignment of the Assigned Contracts to the Successful Bidder and the rights, procedures, and deadlines for objecting thereto, and no other or further notice of the Sale shall be required.

F. Assumption Procedures. The Contract Assumption Notice (as defined herein) is reasonably calculated to provide counterparties to the Assigned Contracts with proper notice of

the intended assumption and assignment of their executory contracts, any Cure Payments (as defined herein), and the Assumption Procedures (as defined herein).

G. Other Findings. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the preceding findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the preceding conclusions of law constitute findings of fact, they are adopted as such.

IT IS HEREBY ORDERED THAT:

1. The Bidding Procedures Motion is granted to the extent set forth in this Order.
2. All objections to the relief requested in the Bidding Procedures Motion that have not been withdrawn, waived, or settled prior to or at the Bidding Procedures Hearing are overruled.

I. Important Dates and Deadlines

3. **Bid Deadline.** March 12, at 10:00 a.m., prevailing Eastern Time, is the deadline by which all Bids must be actually received by the parties specified in the Original Bidding Procedures and/or the Amended Bidding Procedures.

4. **Auction.** March 12, at 2:00 p.m., prevailing Eastern Time, is the date and time the Auction, if one is needed, will be held in accordance with the Original Bidding Procedures and/or the Amended Bidding Procedures by video via Zoom or a similar service. The Debtors shall send written notice of the date, time, and place of the Auction to the Qualified Bidders no later than two hours before such Auction, and will post notice of the date, time, and place of the Auction no later than two business days before such Auction on the website of the Debtors' notice, claims, and solicitation agent at <https://www.omniagentsolutions.com/knotel>. Any interested party seeking to attend the Auction via Zoom meeting room shall contact proposed Debtors' counsel Milbank LLP

at least one day prior to the start of the Auction as set forth in the Original Bidding Procedures and/or the Amended Bidding Procedures.

5. **Sale Objection Deadline.** March 16, 2021, at 12:00 p.m., prevailing Eastern Time (the “***Sale Objection Deadline***”) is the deadline by which objections to the entry of an order by the Court approving the Sale, including to the Stalking Horse Agreement, the *First Amendment to Stalking Horse Agreement* dated as of March 11, 2021 (the “***Amendment to the Stalking Horse Agreement***”), attached hereto as Exhibit 2, the conduct of the Auction and the choice of Successful Bidder and/or Back-Up Bidder, the assumption of any Assigned Contract and adequate assurance of future performance (other than objections to Cure Amounts and the Subsequently Designated Assigned Contracts, as defined in paragraph 25(g) herein) (each a “***Sale Objection***” and collectively, the “***Sale Objections***”) shall be filed. Such objections must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be actually received by: (i) counsel to the Debtors, Milbank LLP, 2029 Century Park East, 33rd Floor, Los Angeles, California 90067, Attn: Mark Shinderman, Esq. (email mshinderman@milbank.com) and Daniel Denny, Esq. (email ddenny@milbank.com); (ii) counsel to the Stalking Horse Bidder, Sullivan & Worcester LLP, 1633 Broadway, New York, New York 10019, Attn: Jeffrey R. Gleit, Esq (email jgleit@sullivanlaw.com); (iii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Joseph McMahon (email Joseph.McMahon@UST.DNJ.GOV); and (iv) counsel to the Official Committee of Unsecured Creditors (the “***Committee***”), Lowenstein Sandler LLP, One Lowenstein Drive, Roseland, New Jersey 07068, Attn: Michael Etkin (email metkin@lowenstein.com), Bruce Buechler (email bbuechler@lowenstein.com), and Wojciech Jung (email wjung@lowenstein.com) (the parties identified in (i) through (iv), collectively, the

“Objection Notice Parties”). Any party or entity who fails to timely make an objection to the Sale on or before the Sale Objection Deadline shall be forever barred from asserting any objection to the Sale, including with respect to the transfer of the assets free and clear of all liens, claims, encumbrances, and other interests.

6. **Reply Deadline.** All replies to any Sale Objection, except for those filed after the Sale Objection Deadline, must be filed by 12 noon (prevailing Eastern Time) on March 17, 2021 (the **“Reply Deadline”**).

7. **Sale Hearing.** March 18, 2021, at 2:00 p.m. (prevailing Eastern Time) is the date and time for the hearing for the Court to consider the Successful Bid; *provided, however*, that the Sale Hearing may be continued by the Debtors in accordance with the Original Bidding Procedures and/or the Amended Bidding Procedures or by further Order of the Court, from time to time, without further notice to creditors or parties in interest.

8. **Subsequently Designated Assigned Contracts Objection Deadline.** March 24, 2021, at 4:00 p.m., prevailing Eastern Time (the **“Subsequently Designated Assigned Contracts Objection Deadline”**) is the deadline by which Contract Objections with respect to the Subsequently Designated Assigned Contracts shall be filed. Such objections must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be actually received by the Objection Notice Parties. Any party or entity who fails to timely make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.

9. **Adequate Assurance.** The Stalking Horse Bidder shall provide information regarding adequate assurance of future performance to counterparties of proposed Assigned Contracts no later than March 10, 2021 (eight (8) days before the scheduled Sale Hearing). Objections to adequate assurance of future performance of the Assigned Contracts by the Successful Bidder must be filed with the Court and served on the Objection Notice Parties no later than the Sale Objection Deadline.

10. **Cigna.** Notwithstanding anything in this Order to the contrary, unless Cigna (as defined in the Objection of Cigna [D.I. 119] (“*Cigna Objection*”)) and the Debtors agree otherwise, the Debtors shall, not later than 4:00 p.m. two (2) business days prior to the Sale Hearing, provide to Cigna, through its counsel of record: (i) written notice of Debtors’ irrevocable (subject to closing of the Sale) decision as to whether it proposes to assume and assign the Cigna Agreements (as defined in the Cigna Objection) to the Successful Bidder as part of the Sale, or reject the Cigna Agreements as of the Closing Date; (ii) the identity of the Successful Bidder; and (iii) adequate assurance information for the Successful Bidder, including a good faith estimate as to the number of employees of the Debtors who will become employees of the Successful Bidder.

II. Stalking Horse and Bid Protections.

11. The Debtors are hereby authorized to select Digiatech, LLC, together with any designated affiliate thereof, as the Stalking Horse Bidder (the “*Stalking Horse Bidder*”).

12. The Debtors are authorized, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code, to enter into and perform under the Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, subject to the solicitation of higher or otherwise better offers for the Purchased Assets (as defined in the Stalking Horse Agreement) and entry of the Sale Order.

13. The Stalking Horse Agreement and the Amendment to the Stalking Horse Agreement are authorized and approved in the forms attached to the Bidding Procedures Motion as Exhibit B, and to this Order as Exhibit 2, respectively, as the stalking horse bid for the Purchased Assets (the “*Stalking Horse Bid*”), and is binding as between the Debtors and the Stalking Horse Bidder, provided, however, except for the Committee, which has waived and released its Challenge Rights as defined under the Original Bidding Procedures Order and the Final DIP Order (as set forth in Paragraphs 38 and 39 below), any other party in interest’s right to object to the Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, is preserved and will be heard in connection with the Sale Hearing if the Stalking Horse is the Successful Bidder and if a timely objection is filed. Notwithstanding the foregoing, if as a result of objections sustained by the Court to the Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, said changes would result in a Material Adverse Effect (as defined in the Stalking Horse Agreement), the Stalking Horse Bidder reserves its right to exercise any rights provided thereunder together with all other rights of the Stalking Horse Bidder under the Stalking Horse Agreement, all of which shall be expressly preserved, notwithstanding the entry of this Order.

14. (a) Section 363(k) of the Bankruptcy Code, including the Court’s authority as set forth therein, shall be applicable to the Stalking Horse Bid, (b) the Stalking Horse Bidder shall be deemed a Qualified Bidder, and (c) the Stalking Horse Bid shall be deemed a Qualified Bid for all purposes under this Order and the Amended Bidding Procedures.

15. The Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, shall be binding and enforceable as between the Debtors and the Stalking Horse Bidder in accordance with its terms subject to entry of the Sale Order. The failure to describe

specifically or include any provision of the Stalking Horse Agreement, the Amendment to the Stalking Horse Agreement, or related documents in the Bidding Procedures Motion or herein shall not diminish or impair the effectiveness of such provision as to such parties. The Stalking Horse Agreement, the Amendment to the Stalking Horse Agreement, and any related agreements, documents or other instruments may be modified, amended or supplemented by the parties thereto, solely in accordance with the terms thereof, without further order of the Court.

16. The Termination Fee and Expense Reimbursement (each as defined in the Stalking Horse Agreement, and collectively, the “***Bid Protections***”) are approved in their entirety, with the Expense Reimbursement limited to documented and reasonable expenses relating to the Sale, and subject to review by the Office of the United States Trustee and the Committee. The obligation of the Debtors to pay the Bid Protections shall (i) be subject to the terms of the Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, (ii) be the joint and several obligation of the Debtors and payable only upon the closing of a higher or otherwise better bid for the Sale of the Assets, (iii) constitute an administrative expense of the Debtors under section 364(c)(1) of the Bankruptcy Code with priority over any and all administrative expenses of the kind specified in section 503(b) or 507(b) of the Bankruptcy Code, and (iv) survive the termination of the Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, or dismissal or conversion of the Chapter 11 Cases.

17. Subject to this Order, the Amended Bidding Procedures and entry of the Sale Order, the Debtors and Stalking Horse Bidder are granted all rights and remedies provided to them under the Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, including, without limitation, the right to specifically enforce the Stalking Horse Agreement, as

amended by the Amendment to the Stalking Horse Agreement (including with respect to the Bid Protections) in accordance with its terms.

III. Auction, Amended Bidding Procedures, Sale Notice, and Related Relief.

18. The Amended Bidding Procedures, including the Bid Protections contained therein, substantially in the form attached hereto as Exhibit 1, are incorporated herein and are hereby approved in their entirety, and the Amended Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale. Any party desiring to submit a Bid shall comply with the Amended Bidding Procedures and this Order. The Debtors are authorized to take any and all reasonable actions necessary to implement the Amended Bidding Procedures, subject to the provisions of this Order.

19. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Order, this Order does not approve the sale of the Assets or authorize the consummation of the Sale, such approval and authorization (if any) to be considered only at the Sale Hearing and all rights of all parties in interest to object to such approval and authorization are reserved.

20. Subject to the terms of the Amended Bidding Procedures, in the event of a competing Qualified Bid, the Stalking Horse Bidder will be entitled, but not obligated, to submit overbids and will be entitled in any such overbids to credit bid all of its claims pursuant to section 363(k) of the Bankruptcy Code, including the Court's authority as set forth therein.

21. Except as provided in the Stalking Horse Agreement, no person or entity shall be entitled to any expense reimbursement, break-up fee, topping, termination, or other similar fee or payment in connection with any Sale, and by submitting a bid, such person or entity is deemed to have waived their right to request or file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

22. Any deposit provided by a Qualified Bidder shall be held in a segregated account by the Debtors or their agent in accordance with the Amended Bidding Procedures, and shall not become property of the Debtors' bankruptcy estates unless and until released to the Debtors pursuant to the terms of the purchase agreement with such Qualified Bidder or order of this Court.

23. The Sale Notice, substantially in the form attached to the Original Bidding Procedures Order as Exhibit 2, is hereby approved. As soon as was reasonably practicable following the entry of the Original Bidding Procedures Order, the Debtors caused the Original Bidding Procedures, the Sale Notice, and the Assumption Notice to be served upon the following parties, and their respective counsel, if known (collectively, the "*Notice Parties*"): (a) counsel to the Committee; (b) the U.S. Trustee for the District of Delaware; (c) the United States Attorney's Office for the District of Delaware; (d) the Internal Revenue Service; (e) the attorneys general for the states in which the Debtors operate; (f) any parties known or reasonably believed to have expressed an interest in the Debtors' assets; (g) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets; (h) any party that has requested notice pursuant to Bankruptcy Rule 2002; and (i) all known creditors of the Debtors. In addition, as soon as was practicable, after entry of the Original Bidding Procedures Order, the Debtors published the Sale Notice, with any modification necessary for ease of publication, once in The New York Times National Edition to provide notice to any other potential interested parties. Moreover, as soon as practicable after entry of this Order, in the event the Debtors receive any Qualified Bids, the Debtors shall provide electronic notice of this Order and the Amended Bidding Procedures to any Qualified Bidder prior to the start of the Auction.

IV. The Assumption and Assignment Procedures.

24. The procedures set forth below regarding the assumption and assignment of the executory contracts and unexpired leases proposed to be assumed by the Debtors pursuant to

section 365(b) of the Bankruptcy Code and assigned to the Successful Bidder pursuant to section 365(f) of the Bankruptcy Code in connection with the Sale (the “*Assumption Procedures*”) are hereby approved to the extent set forth herein.

25. These Assumption Procedures shall govern the assumption and assignment of all of the Debtors’ executory contracts and unexpired leases to be assumed and assigned in connection with the Sale (each, an “*Assigned Contract*,” and, collectively, the “*Assigned Contracts*”), subject to the payment of any payments necessary to cure any defaults arising under any Assigned Contract (the “*Cure Payments*”):

- a. **Contract Assumption Notice.** On or prior to February 22, 2021 (the “*Assumption Notice Deadline*”), the Debtors filed with the Court and served a notice of contract assumption (the “*Assumption Notice*”), in substantially the form attached to the Original Bidding Procedures Order as Exhibit 3, via overnight delivery on all counterparties to all potential Assigned Contracts (each, a “*Counterparty*” and, collectively, the “*Counterparties*”). The Assumption Notice included, without limitation, a list of Assigned Contracts (the “*Assigned Contract List*”) that may be assumed and assigned in connection with the Sale and the Cure Payment, if any, that the Debtors believe is required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) for each of the Assigned Contracts. If no Cure Payment is listed on the Assigned Contracts List for a particular Assigned Contract, the Debtors’ asserted Cure Payment for such Assigned Contract shall be deemed to be \$0.00; *provided, however*, if an Assigned Contract is not listed on the Assigned Contracts List attached to an Assumption Notice, supplemental Assumption Notice or revised Assumption Notice at all, it may not be assumed and assigned via the Bidding Procedures Motion. If a Counterparty objects to the Cure Payment, the Counterparty must file with the Court and serve on the Objection Notice Parties a written objection (a “*Contract Objection*”) on or before the Sale Objection Deadline. Service of an Assumption Notice does not constitute an admission that such contract is an executory contract or unexpired lease or that such stated Cure Payment constitutes a claim against the Debtors or a right against the Successful Bidder (all rights with respect thereto being expressly reserved). Further, the inclusion of a contract or lease on the Assumption Notice is not a guarantee that such contract will ultimately be assumed and assigned. The Debtors were permitted to

amend or modify the Assumption Notice no later than March 8, 2021 (ten (10) days prior to the Sale Hearing), except as provided below with respect to Subsequently Designated Assigned Contracts.

- b. Cure Payments.** The payment of the applicable Cure Payments specified in the Assumption Notice by the Successful Bidder or the Debtors, as applicable, after the expiration of the applicable objection period and the failure of any applicable Counterparty to object to the proposed Cure Payment or to the assumption or assignment of its executory contract or unexpired lease, shall (i) effect a cure of all defaults existing thereunder as of the filing of the Assumption Notice, and (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default.
- c. Cure Objections and Contract Objections.**

 - a. Objections, if any, to any proposed Cure Payments of an Assignment Contract (each, as defined above, a “***Cure Objection***”), must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection and the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served, so as to be actually received by, the Objection Notice Parties, before March 12, 2021 at 5:00 p.m. (prevailing Eastern Time) (the “***Cure Objection Deadline***”), except as otherwise set forth below with respect to Assigned Contracts added to the Assigned Contracts List (or for which a previously stated Cure Payment associated with any Assigned Contract is modified) less than ten (10) days but no later than one (1) day prior to the Sale Hearing (collectively, the “***Subsequently Designated Assigned Contracts***”). If the parties are unable to consensually resolve a Cure Objection timely filed by the Cure Objection Deadline prior to the Sale Hearing, the amount to be paid or reserved shall be the subject of a status conference at the time of the Sale Hearing and, if necessary, determined at a hearing on March 23, 2021, at 2:00 p.m. prevailing Eastern Time or such other date determined by the Court.
 - b. Objections, if any, to the proposed assumption and assignment of a contract or lease other than with respect to any proposed Cure Amount, including objections to adequate assurance of future performance (each a “***Contract Objection***”), must (i) be in writing, (ii) comply with the

applicable provisions of the Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served, so as to be actually received by, the Objection Notice Parties, before the Sale Objection Deadline, except as otherwise set forth below with respect to Subsequently Designated Assigned Contracts.

- d. Changes to Assigned Contract List and Cure Payments.** Up until one (1) day prior to the Sale Hearing, the Debtors are authorized but not directed, to (i) add previously omitted Assigned Contracts to the Assigned Contracts List as contracts that may be assumed and assigned to a Successful Bidder in accordance with the definitive agreement for the Sale, or (ii) modify the previously stated Cure Payment associated with any Assigned Contract; *provided however*, objections to the Subsequently Designated Assigned Contracts shall be filed by the Subsequently Designated Assigned Contracts Deadline. Such objections must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be actually received by the Objection Notice Parties. Any party or entity who fails to timely make an objection with respect to the Subsequently Designated Assigned Contracts on or before the Subsequently Designated Assigned Contracts Deadline shall be forever barred from asserting any objection with respect to the Subsequently Designated Assigned Contracts.
- e. Changes to Assigned Contract List and Cure Payments.** Up until one (1) day prior to Closing of the Sale, the Debtors are authorized, but not directed, to remove an Assigned Contract from the Assigned Contract List that a successful bidder proposes be assumed and assigned in connection with the Sale (excluding the Cigna Agreements).
- f. Notice of Successful Bidder/Adequate Assurance Objections.** As soon as practicable after the conclusion of the Auction and in no event later than 12 hours after the conclusion of the Auction, the Debtors shall file with the Court and post on the case website, <https://www.omniagentsolutions.com/knotel>, and, if possible, shall email to each non-debtor counterparty to the Assigned Contracts or their counsel, the notice, substantially in the form attached to the Original Bidding Procedures Order as Exhibit 4 thereto (the “**Notice of Successful Bidder**”), identifying any Successful Bidder and Back-Up Bidder, together with a copy of the Successful Bidder’s proposed purchase agreement and financial and other information

regarding adequate assurance of future performance of the Assigned Contracts, and serve the Notice of Successful Bidder on the Counterparties by overnight delivery, and the Counterparties shall file any Contract Objections solely on the basis of adequate assurance of future performance by the Successful Bidder other than any Stalking Horse Bidder (each, an “**Adequate Assurance Objection**”) not later than the Sale Objection Deadline.

- g. **Assigned Contracts.** At the Sale Hearing, the Debtors will seek Court approval of the assumption and assignment to the Successful Bidder of the Assigned Contracts; *provided* that, in the event the Successful Bidder is not the Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by such Successful Bidder will be heard at a subsequent hearing, as set forth in paragraph 25(i) below. The inclusion of an Assigned Contract on an Assumption Notice will not (a) obligate the Debtors to assume any Assigned Contract listed thereon nor the Successful Bidder to take assignment of such Assigned Contract or (b) constitute any admission or agreement of the Debtors that such Assigned Contract is an executory contract.

- h. **Dispute Resolution.** To the extent that the parties are unable to consensually resolve any Contract Objection prior to the commencement of the Sale Hearing, including, without limitation, any dispute with respect to the cure amount required to be paid to the applicable Counterparty under Bankruptcy Code sections 365(b)(1)(A) and (B) (any such dispute, a “**Cure Dispute**”), such Contract Objection will be adjudicated at the Sale Hearing or at such other date and time as may be fixed by the Court; *provided, however*, (A) Contract Objections to Assigned Contracts added to the Assigned Contract List up until ten (10) days prior to the Sale Hearing shall be heard and resolved at the Sale Hearing; and (B) Contract Objections to the Subsequently Designated Assigned Contracts shall be heard and resolved at a subsequent hearing before the Court at such day and time as may be fixed by the Court.

- i. **Back-Up Bidder Adequate Assurance Objections.** In the event that a Successful Bidder does not consummate the Sale and a Back-Up Bidder has been previously identified, the Debtors shall file with the Court and post on the case website, <https://www.omniagentsolutions.com/knotel>, a Notice of Intent to Proceed with Back-Up Bid, together with a copy of the Back-Up Bidder’s proposed purchase agreement and financial and other information regarding adequate assurance of future performance of the Assigned Contracts by the Back-Up Bidder (including the name of the Back-Up Bidder and description of its business), and serve

the Notice of Intent to Proceed with Back-Up Bid on the Counterparties by overnight delivery, and the Counterparties shall have seven (7) days to file and serve on the Objection Notice Parties a Contract Objection solely on the basis of adequate assurance of future performance by the Back-Up Bidder. If any objections are filed, the Debtors shall schedule a hearing, which may be expedited, upon reasonable notice under the circumstances (which shall be no less than ten (10) days after the Notice of Intent to Proceed with Back-Up Bid is filed), with respect to such Contract Objections.

- j. Contract Assumption or Deemed Rejection at Closing.** No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order authorizing the assumption and assignment of such Assigned Contracts or (ii) the date the Sale has closed. Any executory contracts and unexpired leases that are not Assigned Contracts will be deemed rejected at Closing.

26. Any party failing to timely file an objection to the Cure Payment or the proposed assumption and assignment of an Assigned Contract listed on the Contract Assumption Notice is deemed to have consented to (a) such Cure Payment, (b) the assumption and assignment of such Assigned Contract, (c) the related relief requested in the Bidding Procedures Motion, and (d) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Payments, the assumption and assignment of the Assigned Contract, adequate assurance of future performance, the relief requested in the Bidding Procedures Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Successful Bidder for purposes of section 365(c)(1) of the Bankruptcy Code, and from asserting any additional cure or other amounts against the Debtors and the Successful Bidder, as applicable, with respect to such party's Assigned Contract.

V. Assumption Notice and Notice of Successful Bidder.

27. The Assumption Notice attached to the Original Bidding Procedures Order as Exhibit 3 and the Notice of Successful Bidder attached to the Original Bidding Procedures Order as Exhibit 4 are hereby approved.

28. To provide the Counterparties with information concerning the Successful Bidder and any back-up bidder who may be assigned their contracts or leases and enable them to object to such assignment on adequate assurance grounds (to the extent the Successful Bidder/Back-up Bidder is not the Stalking Horse Bidder), as soon as practicable after the Auction and in no event less than twelve (12) hours after the Auction, the Debtors shall file with the Court and serve on all Counterparties the Notice of Successful Bidder.

VI. Back-Up Bidder.

29. Following entry of the Sale Order, if the Successful Bidder fails to consummate the Successful Bid, the Debtors may designate the Back-Up Bid, which can be the Stalking Horse Bid, to be the new Successful Bid and the Back-Up Bidder to be the new Successful Bidder, and file a Notice of Intent to Proceed with Back-Up Bid in accordance with paragraph 25 above. Subject to resolution of any adequate assurance objections filed pursuant to paragraph 25 above, which may be heard on reasonable notice under the circumstances (which shall be no less than ten (10) days after the Notice of Intent to Proceed with Back-Up Bid is filed), the Debtors will be authorized, but not required, to consummate the transaction with the Back-Up Bidder without further order of this Court, so long as such Back-Up Bid shall have been approved in connection with the Court's approval of the Successful Bid, or subject to Court approval if not. In such case of a breach or failure to perform on the part of the Successful Bidder and in such other circumstances as may be specified in the definitive documentation governing the Successful Bid, the defaulting Successful Bidder's deposit shall be forfeited to the Debtors. The Debtors' right to seek all available damages,

including specific performance, from any defaulting Successful Bidder (including any Back-Up Bidder designated as a Successful Bidder) in accordance with the terms of the Amended Bidding Procedures are reserved.

30. Notwithstanding anything to the contrary in the Amended Bidding Procedures, the Stalking Horse Bidder, if selected as Back-Up Bidder at the Auction, shall keep its bid in place until the Closing of the Successful Bid.

VII. Access to Debtors' Employees.

31. The Stalking Horse Bidder and any subsequently Qualified Bidder shall have access to the Debtors' employees upon request to the Debtors, with notice to the Committee.

32. The Stalking Horse Bidder or Qualified Bidder may meet with the Debtors' employees in groups only, together with a representative from the Debtors, subject to agreed upon discussion points with the Debtors. The Debtors will consult with the Committee regarding any bidder's proposed meetings with employees in advance of any such meeting(s).

33. For a period of one year from the Auction, the Stalking Horse Bidder agrees, if it is not the Successful Bidder, not to solicit, hire, or retain as a consultant, any current employee of the Debtors' unless such employee has been terminated by the Debtors or the Successful Bidder.

VIII. Committee Consultation Rights.

34. The Debtors shall consult with the Committee prior to authorizing any communication between bidders.

35. The Debtors shall share copies of any bids received with the Committee's professionals immediately following the Bid Deadline.

36. The Committee shall be consulted by the Debtors prior to any changes made to the Amended Bidding Procedures.

37. The Debtors shall consult with the Committee in determining the Successful Bid.

IX. Waiver and Release of Committee's Challenge Rights.

38. The Committee has waived and released its Challenge Rights as defined under the Original Bidding Procedures Order and the Final DIP Order, as well as any other claims, causes of action, or challenges against the Stalking Horse Bidder, Newmark Partners, L.P. ("***Newmark***") and any of their affiliates or representatives to the fullest extent permitted by law. The form and substance of the Committee's release shall be fully set forth in the definitive documents and shall be reasonably acceptable to the parties to the settlement Term Sheet attached to the Settlement Order as Exhibit 1 (the "***Term Sheet***"). Nothing in the release shall in any way limit or release the obligations of the Stalking Horse Bidder and Newmark under the Term Sheet and any definitive documents with respect thereto, the Stalking Horse Agreement (as amended by the Amendment to the Stalking Horse Agreement), the DIP Facility or the Final DIP Order.

39. Upon entry of this Order, (a) the Stalking Horse Bidder shall be automatically entitled to all rights provided under section 363(k) of the Bankruptcy Code in connection with the Stalking Horse Bid and any other credit bid made by the Stalking Horse Bidder, and (b) the Stalking Horse Bidder's Prepetition Liens and Prepetition Secured Debt Obligations shall be deemed valid and enforceable, and the Stalking Horse Bidder shall be entitled to credit bid the full amount of the indebtedness and the obligations owing to it under the Prepetition Credit Agreements and the DIP Credit Agreement pursuant to 363(k) of the Bankruptcy Code. The Stalking Horse Bid shall be deemed a Qualified Bid at the Auction, and the Committee has waived and released all rights with respect thereto.

X. Miscellaneous.

40. Pursuant to the Original Bid Procedures Order, the Committee hereby agrees not to object to or challenge the prepetition payment of \$1,000,000 to Newmark & Company Real Estate, Inc. for real estate advisory services.

41. Notwithstanding any provision of the DIP Credit Agreement to the contrary, the Debtors are hereby authorized to use the approximate \$6 million received from the settlement of a litigation claim shortly before the Petition Date.

42. The Stalking Horse Agreement shall be deemed amended to clarify that section 2.01 will not include deposits in connection with rejected executory contracts and unexpired leases as Purchased Assets.

43. As provided in section 2.03(f) of the Stalking Horse Agreement, the Stalking Horse Bidder is obligated to fund costs of administration of these Chapter 11 Cases until the Closing Date, provided, however, that nothing herein shall obligate the Stalking Horse Bidder to fund costs of administration under the Stalking Horse Agreement in the event that the Stalking Horse Bidder is not the Successful Bidder at the Auction. The obligations of the Stalking Horse Bidder under the Stalking Horse Agreement, as amended by the Amendment to the Stalking Horse Agreement, are independent from any obligations of Digiatech, as DIP Lender, under the DIP Credit Agreement, the Interim DIP Order and any final order approving the transactions contemplated thereunder.

44. The failure to include or reference a particular provision of the Amended Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

45. In the event of any inconsistencies between this Order and the Bidding Procedures Motion, this Order shall govern in all respects. In the event of any inconsistencies between this Order and the Amended Bidding Procedures, this Order shall govern in all respects.

46. Any substantial contribution claims by any Bidder are deemed waived.

47. This Order shall be binding on and inure to the benefit of the Debtors, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estates of the Debtors.

48. This Order shall constitute the findings of fact and conclusions of law.

49. To the extent this Order is inconsistent with any prior order or pleading with respect to the Bidding Procedures Motion in these cases, the terms of this Order shall govern.

50. To the extent any of the deadlines set forth in this Order do not comply with the Local Rules, such Local Rules are waived and the terms of this Order shall govern.

51. Notice of the Bidding Procedures Motion as provided therein shall be deemed good and sufficient notice of such Bidding Procedures Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

52. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

53. The Debtors shall serve this Order in accordance with all applicable rules and shall file a certificate of service evidencing compliance with this requirement.

54. The Debtors are authorized to take all reasonable actions necessary to effectuate the relief granted in this Order in accordance with the Bidding Procedures Motion.

55. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Dated: March 11th, 2021
Wilmington, Delaware

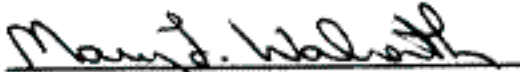

MARY F. WALRATH
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1
Amended Bidding Procedures

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

In re

KNOTEL, INC., et al.,

Debtors.¹

Chapter 11

Case No. 21-10146 (MFW)

Jointly Administered

**AMENDED BIDDING PROCEDURES IN CONNECTION
WITH THE SALE OF THE ASSETS OF THE DEBTORS**

On January 31, 2021, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

On February 22, 2021, the Bankruptcy Court entered an order [Docket No. 227] (the “Bidding Procedures Order”) approving, among other things, the bidding procedures attached thereto as Exhibit 1 (the “Bidding Procedures”).

On [●], 2021, the Bankruptcy Court entered that certain *Order Pursuant To Section 105 Of The Bankruptcy Code And Bankruptcy Rule 9019 Approving Compromise And Settlement Term Sheet Among The Debtors, The Official Committee Of Unsecured Creditors, And Digiatech, LLC; (II) Amending Bidding Procedures Order; (III) Authorizing Amendments To The Stalking Horse Agreement; And (IV) Granting Related Relief* [Docket No. [●]] (the “Settlement Order”).

In connection with the Settlement Order, and to implement the terms thereof, on [●], 2021, the Bankruptcy Court entered an order [Docket No. [●]] (the “Amended Bidding Procedures Order”) approving, among other things, these bidding procedures (the “Amended Bidding Procedures”).²

As described in the Amended Bidding Procedures Order, the Debtors have entered into an asset purchase agreement dated as of January 31, 2021 (together with the First Amendment to the Stalking Horse Agreement dated as of March 11, 2021, the “Stalking Horse Agreement”) with Digiatech, LLC (or its designee, the “Stalking Horse Bidder”) pursuant to which, among other things, the Stalking Horse Bidder has committed to (a) purchase, acquire, and take assignment and

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ claims and noticing agent at <https://www.omniagentsolutions.com/knotel> or, alternatively, via the Bankruptcy Court at <https://ecf.deb.uscourts.gov/cgi-bin/login.pl> with a Public Access to Court Electronic Records (“PACER”) account, which may be obtained at <https://pacer.uscourts.gov>. The location of Debtor Knotel, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 5-9 Union Square West, New York, NY 10003.

² Capitalized terms used but not defined herein have the meanings ascribed in the Amended Bidding Procedures Order or the Stalking Horse Agreement (as defined below), as applicable.

delivery of, free and clear of all liens, claims, encumbrances, and other interests (except as otherwise provided in the Stalking Horse Agreement), substantially all of the Debtors' assets as set forth in the Stalking Horse Agreement, and (b) assume certain liabilities associated with the Debtors' operations to the extent expressly set forth in the Stalking Horse Agreement (collectively, the "Stalking Horse Bid"), for a purchase price (the "Amended Stalking Horse Purchase Price") consisting of (i) a credit bid, pursuant to section 363(k) of the Bankruptcy Code, in an amount equal to \$70,000,000 subject to adjustments; (ii) \$6.81 million in cash (the "Settlement Amount") and (iii) the assumption of certain liabilities.

The Stalking Horse Agreement and the Amended Bidding Procedures Order provide for (i) a break-up fee in the amount of \$2,100,000 (the "Termination Fee") and (ii) reimbursement of the Stalking Horse Bidder's actual, reasonable, documented out-of-pocket expenses up to an amount not to exceed \$500,000 ("Expense Reimbursement", and together with the Termination Fee, the "Bid Protections") on the terms and conditions set forth in the Stalking Horse Agreement.

The Bidding Procedures set forth the process by which the Debtors are authorized to solicit the highest or otherwise best bid or bids (each, a "Bid") for the Debtors' assets (including, for the avoidance of doubt, any causes of action belonging to the Debtors, rights under leases or other contracts, and intellectual property rights or other intangible assets, the "Assets"), culminating in an auction (the "Auction") if competing Qualified Bids (as defined herein) are received. The sale is contemplated to be implemented under section 363(b) of the Bankruptcy Code (the "Sale") pursuant to the terms and conditions of either (a) the Stalking Horse Agreement, as the same may be amended pursuant to the terms thereof, or (b) such other applicable asset purchase agreement upon the receipt of a Successful Bid (as defined herein) that the Debtors have determined in their business judgment is the best or highest bid in accordance with these Bidding Procedures.

Copies of the Bidding Procedures Order, the Amended Bidding Procedures Order, or any other documents in the Debtors' chapter 11 cases are available upon request to **Omni Agent Solutions** by calling (866) 771-0565 (Domestic) or (818) 581-2989 (International) or by visiting <https://www.omniagentsolutions.com/knotel>.

A. Potential Bidder.

For purposes of the Bidding Procedures, a "Potential Bidder" shall refer to any person or entity interested in submitting a bid.

B. Due Diligence.

(i) Access to Due Diligence.

Any Potential Bidder that (i) executes a confidentiality agreement on customary terms that are reasonably acceptable to the Debtors (a "Confidentiality Agreement")³, (ii) provides sufficient evidence, as reasonably determined by the Debtors that the Potential Bidder intends to obtain due

³ Potential Bidders may obtain a Confidentiality Agreement by contacting the Debtors' advisors listed below.

diligence and participate in the sale process for a bona fide purpose consistent with these Bidding Procedures and (iii) provides evidence of such Potential Bidder's financial capability to acquire the Assets, the adequacy of which will be assessed by the Debtors (with the assistance of their advisors) (any such Potential Bidder being referred to as an "Acceptable Bidder") will be eligible to receive due diligence materials and access to certain non-public information regarding the Assets. The Debtors will provide each Acceptable Bidder with such information as is reasonably contemplated to enable such Acceptable Bidder to make a Bid for Assets. The Debtors will also provide to each Acceptable Bidder reasonable due diligence information as requested by such Acceptable Bidder in writing, as soon as reasonably practicable after such request. The Debtors will post substantially all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room (the "Data Room"). The Debtors may restrict or limit access of an Acceptable Bidder to the Data Room if the Debtors determine, based on their reasonable business judgment, that certain information in the Data Room is sensitive, proprietary, or otherwise not appropriate for disclosure to such Acceptable Bidder.

The initial due diligence period will end on the Bid Deadline (as defined herein). Following the Bid Deadline, the Debtors may, in their reasonable discretion, furnish additional non-public information to a Qualified Bidder or Qualified Bidders that submitted a Qualified Bid (each as defined herein), but shall have no obligation to do so.

Each Potential Bidder shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors, regarding qualification as an Acceptable Bidder or Qualified Bidder, the terms of the Potential Bidder's Bid, or the ability of the Potential Bidder to acquire the Assets. 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, to determine that such bidder is no longer a Potential Bidder or that any bid made by such Potential Bidder is not a Qualified Bid.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors will not furnish any confidential information relating to the Debtors, the Assets or liabilities, or the Sale to any person except an Acceptable Bidder or such Acceptable Bidder's duly-authorized representatives, in each case, to the extent provided in the applicable Confidentiality Agreement.

The Debtors and their financial advisors will coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; provided that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment, have not established that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate their Bid. No conditions relating to the completion of due diligence will be permitted to exist after the Bid Deadline.

The Debtors also reserve the right to withhold any diligence materials from an Acceptable Bidder who the Debtors reasonably determine is a competitor of the Debtors or is affiliated with any competitor of the Debtors. Neither the Debtors nor their representatives will be obligated to furnish information of any kind whatsoever to any person that is not determined to be an Acceptable Bidder. The Debtors will make any diligence information available to the Stalking Horse Bidder if such diligence has been made available to any other Acceptable Bidder.

Each Acceptable Bidder will be deemed to acknowledge and represent that it: (a) either directly or through its advisors has had an opportunity to conduct any and all due diligence regarding the Debtors' Assets and liabilities prior to making any Qualified Bid; (b) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities in making any Qualified Bid; and (c) 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 Debtors' Assets or liabilities, or the completeness of any information provided in connection therewith, except as expressly stated in these Bidding Procedures or the Acceptable Bidder's proposed purchase agreement (including, in the case of the Stalking Horse Bidder, the Stalking Horse Agreement). Neither the Debtors nor any of their employees, officers, directors, affiliates, subsidiaries, representatives, agents, advisors, or professionals are responsible for, and will bear no liability with respect to, any information obtained by Acceptable Bidders in connection with the Sale.

The Debtors have designated Moelis & Company, 399 Park Avenue, 5th Floor, New York, NY 10022 Attn: Adam Keil (Adam.Keil@moelis.com), Rachel Murray (Rachel.Murray@moelis.com), Larry Kwon (Larry.Kwon@moelis.com), and Kevin Hagedorn (Kevin.Hagedorn@moelis.com) to coordinate all reasonable requests for additional information and due diligence access.

(ii) **No Communications Among Acceptable Bidders.**

There must be no communications regarding the Debtors' sale process between and among Acceptable Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder), unless the Debtors have previously authorized such communication in writing. The Debtors reserve the right, in their reasonable business judgment, to disqualify any Acceptable Bidders that have communications between and amongst themselves.

C. Bid Requirements.

To be eligible to participate in the Auction, a Potential Bidder must deliver to the Debtors and their advisors, a written, irrevocable offer that must be determined by the Debtors, in their reasonable business judgment, to satisfy each of the following conditions (collectively, the "**Bid Requirements**"):

- (i) **Purpose.** Each Potential Bidder must state that the Bid includes an offer by the Potential Bidder to purchase some or all of the Assets and identify the Assets with reasonable specificity and the particular liabilities, if any, the Potential Bidder seeks to assume.
- (ii) **Purchase Price.** Each Bid must clearly set forth the purchase price to be paid for the Assets (the "**Purchase Price**") and must (a) indicate the source of cash consideration, including funding commitments, and confirm that such consideration is not subject to any contingencies, and (b) identify separately the cash and non-cash components of the Purchase Price, which non-cash components shall be limited only to credit-bids and assumed liabilities. The Bid should include

a detailed sources and uses schedule. The Purchase Price must include (i) an aggregate amount of cash sufficient to pay all amounts owed to Digiatech, LLC, in its capacity as DIP Lender (the “DIP Facility Claims”) outstanding at the closing (or, if the holder of any such DIP Facility Claims so consents, such payment may be effected, in lieu of cash, by way of credit bid pursuant to section 363(k) of the Bankruptcy Code), (ii) the assumption or payment in cash of all allowed administrative claims, all allowed tax priority claims, all allowed other priority claims, and all allowed other secured claims, and (iii) the payment of all cure amounts and all other amounts required to effect the assumption and assignment of all applicable executory contracts and unexpired leases pursuant to section 365 of the Bankruptcy Code (any executory contracts and unexpired leases that are not assumed and assigned will be deemed rejected at closing).

- (iii) **Minimum Bid.** The value of each Bid for all or substantially all of the Debtors’ Assets, as determined by the Debtors in their business judgment, must exceed (a) the Amended Stalking Horse Purchase Price (including the Settlement Amount), plus (b) the maximum amount of Bid Protections payable to the Stalking Horse Bidder under the Stalking Horse Agreement in the form of the Termination Fee in the amount of \$2,100,000 and the Expense Reimbursement of up to \$500,000, plus (c) the minimum Bid increment of \$500,000 (or such other amount as the Debtors may determine, which amount may be less than \$500,000, including with respect to a Bid for less than all Assets). The Debtors and their advisors will determine, in their reasonable business judgment, the value of any assumed liabilities that differ from those included in the Stalking Horse Bid.

Each Bid seeking to acquire only the U.S. Assets or only the Foreign Assets must have a value that in the Debtors’ reasonable business judgment, either independently or in conjunction with one or more other Bids, exceeds the value that would be realized for such individual asset or combination of assets pursuant to the Stalking Horse Bid.

- (iv) **Bid Deposit.** Each Bid must be accompanied by a cash deposit (made by wire transfer or certified or cashier’s check) equal to 7.5% of the aggregate value of the cash and non-cash consideration of the Bid (the “Good Faith Deposit”), which will be held in a segregated account established by the Debtors. To the extent a Qualified Bid is modified before, during, or after the Auction in any manner that increases the purchase price contemplated by such Qualified Bid, the Debtors reserve the right to require that such Qualified Bidder increase its Good Faith Deposit so that it equals 10% of the increased Purchase Price.
- (v) **Committed Financing.** If a Bid is not accompanied by evidence of the Potential Bidder’s capacity to consummate the Sale transaction set forth in its Bid with cash on hand, each Bid must include committed financing documented to the Debtors’ satisfaction that demonstrates that the Potential Bidder has received sufficient debt and/or equity funding commitments to satisfy the Potential Bidder’s Purchase Price and other obligations (including any assumed liabilities) under its Bid. Such funding commitments or other financing must not be subject to any internal

approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants, conditions and term and termination provisions acceptable to the Debtors.

- (vi) **Pro Forma Capital Structure.** Each Bid must include a description of the Bidder's pro forma capital structure.
- (vii) **Good Faith Offer.** Each Bid must constitute a good faith, bona fide offer to purchase the Assets set forth in such Bid.
- (viii) **Marked Agreement.** Each Bid must be accompanied by clean and duly executed transaction documents including, at a minimum, a draft purchase agreement, including the exhibits and schedules related thereto, and any related material documents integral to such Bid pursuant to which the Potential Bidder proposes to effectuate the Sale, along with redlines of such agreements marked to reflect any amendments and modifications from the Stalking Horse Agreement and any other applicable transaction documents relating to the Stalking Horse Bid, which amendments and modifications may not be inconsistent with these Bidding Procedures. Each such draft purchase agreement must provide for payment in cash at closing of the Bid Protections to the Stalking Horse Bidder. The documents contemplated by this Section C (viii) shall herein be referred to as the "Qualified Bid Documents."
- (ix) **Contracts and Leases; Employees.** Each Bid must identify an initial schedule of executory contracts and unexpired leases to be assumed and assigned to the Potential Bidder in connection with the Sale. Each Bid must identify with specificity (i) the party responsible for satisfying cure amounts and other amounts that have accrued under assumed and assigned contracts and leases after the Petition Date and prior to the Closing, including amounts that have accrued but not yet become due prior to the Closing, (ii) the Debtors' leases to be assumed and assigned to the Potential Bidder; and (iii) which of the Debtors' employees or groups thereof will be offered employment with the Potential Bidder to the extent it is the Successful Bidder and the Closing occurs.
- (x) **No Contingencies.** A Bid must contain a clear statement that it is not conditioned on any contingency, including, among others, on obtaining any of the following (a) financing, (b) shareholder, board of directors, or other approvals (including regulatory approvals), and/or (c) the outcome or completion of a due diligence review by the Potential Bidder.
- (xi) **Binding and Irrevocable.** A Potential Bidder's Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Potential Bidder is not selected as the Back-Up Bidder (as defined herein). In the event a Bid is chosen as the Back-Up Bid (as defined below), it must remain irrevocable until the Debtors and the Successful Bidder consummate the Sale.

- (xii) **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable discretion, on a case-by-case basis.
- (xiii) **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the “Adequate Assurance Information”) to demonstrate, to the reasonable satisfaction of the Debtors, that such Potential Bidder (a) has the financial wherewithal and ability to consummate the acquisition of the Assets covered by the Bid (the “Closing”), and (b) can provide adequate assurance of future performance in satisfaction of the requirements under section 365(f)(2)(B) of the Bankruptcy Code, and the Potential Bidder’s willingness to perform, under any contracts that are proposed to be assumed and assigned to such party (any executory contracts and unexpired leases that are not assumed and assigned will be deemed rejected at closing). Such evidence may also include audited and unaudited financial statements, tax returns, bank account statements, a description of the proposed business to be conducted at the premises and/or any other documentation that the Debtors further request. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- (xiv) **Identity.** Each Bid must fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the Assets), and the complete terms of any such participation, along with sufficient evidence that the Potential Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties. A Bid must also fully disclose any connections or agreements with the Debtors, any known, potential, prospective bidder, or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.
- (xv) **Authorization.** Each Bid must contain evidence that the Potential Bidder has obtained authorization or approval from its board of directors and, if required, its shareholders (or a comparable governing body reasonably acceptable to the Debtors) with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- (xvi) **No Fees.** Except as otherwise provided in the Stalking Horse Agreement with respect to the Stalking Horse Bid: (a) each Potential Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction; (b) by submitting its Bid, each Potential Bidder agrees to waive its right to request or receive fees or reimbursement of expenses on any basis, including under section 503(b) of the Bankruptcy Code; and (c) each Bid must expressly state that the Bid does not entitle the Potential Bidder to any break-up fee, termination fee, expense reimbursement, or similar type of payment or reimbursement.
- (xvii) **Adherence to Amended Bidding Procedures.** By submitting its Bid, each Potential Bidder is agreeing to (a) 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 and (b) serve as Back-Up Bidder, if its Bid is selected as the next highest or next best bid after the Successful Bid with respect to the applicable assets.

- (xviii) **Regulatory Approvals and Covenants.** A Bid must set forth each regulatory and third-party approval required for the Potential Bidder to consummate the applicable Sale, if any, and the time period within which the Potential Bidder expects to receive such governmental, licensing, regulatory, or third-party approvals (and in the case that receipt of any such approval is expected to take more than thirty days following execution and delivery of the asset purchase agreement, those actions the Potential Bidder will take to ensure receipt of such approvals as promptly as possible).
- (xix) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Potential Bidder (a) has had an opportunity to conduct any and all due diligence regarding the Assets and liabilities prior to making its Bid, (b) has relied solely upon its own or its advisors' independent review, investigation, and/or inspection of any documents and/or the Assets and liabilities in making its Bid, and (c) 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, liabilities, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Potential Bidder's proposed purchase agreement for the Assets.
- (xx) **Time Frame for Closing.** A Bid by a Potential Bidder must be reasonably likely (based on experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame reasonably acceptable to the Debtors.
- (xxi) **Consent to Jurisdiction.** The Potential Bidder must submit to the jurisdiction of the Bankruptcy Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, the Auction, the construction and enforcement of these Bidding Procedures, the Sale documents, and the Closing, as applicable.

Bids fulfilling all of the preceding requirements, as determined by the Debtors and their advisors, in their reasonable business judgment, will be deemed to be "Qualified Bids," and those parties submitting Qualified Bids will be deemed to be "Qualified Bidders." The Debtors shall provide the Stalking Horse Bidder with the number of Qualified Bids received and the amount of each respective Qualified Bid. The Debtors reserve the right to work with any Potential Bidder in advance of the Auction to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. In addition, the Debtors reserve the right to waive any of the Qualified Bid requirements set forth above and deem a Bid to be a Qualified Bid notwithstanding any non-compliance with such requirements.

For the avoidance of doubt, the Stalking Horse Bidder will be deemed a Qualified Bidder by the Debtors in accordance with these Bidding Procedures, and the Stalking Horse Bid will be deemed a Qualified Bid, which qualifies the Stalking Horse Bidder to participate in the Auction as a Qualified Bidder. If the Stalking Horse Bid is chosen as the Successful Bid, the rights and obligations of the Stalking Horse Bidder shall be as set forth in the Stalking Horse Agreement (as the same may be modified in connection with the Auction). If the Stalking Horse Bid is selected as the Back-Up Bid, it must remain irrevocable only for so long as is required under the Stalking Horse Agreement.

Promptly after the Bid Deadline, the Debtors and their advisors will determine which Potential Bidders are Qualified Bidders and will notify the Potential Bidders whether Bids submitted constitute, alone or together with other Bids, Qualified Bids so as to enable such Qualified Bidders to bid at the Auction. Any Bid that is not deemed a Qualified Bid will not be considered by the Debtors.

Qualified Bids must be received by each of the Debtors' advisors so as to be actually received no later than March 12, at 10:00 a.m., prevailing Eastern Time (the "Bid Deadline").

D. Evaluation of Qualified Bids.

Prior to the Auction, the Debtors and their advisors will evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' reasonable business judgment, the highest or otherwise best Bid (the "Starting Bid"). In determining the Starting Bid, the Debtors will take into account, among other things, (i) the amount and nature of consideration offered in each Qualified Bid, (ii) the impact on customers, vendors, and employees, (iii) the execution risk attendant to any submitted Bids, (iv) the number, type, and nature of any changes to the Stalking Horse Agreement, if any, requested by the Qualified Bidder, including the type and obligations to be assumed in the Qualified Bid; (v) 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, (vi) the tax consequences of such Qualified Bid, (vii) the impact on employees, including the number of employees proposed to be transferred and the Employee Obligations; (viii) the assumption of liabilities, including obligations under contracts and leases, and (ix) the cure amounts to be paid (collectively, the "Evaluation Criteria"). Not later than two business days prior to the date of the Auction, the Debtors will (1) notify the Stalking Horse Bidder as to which Qualified Bid is the Starting Bid and (2) distribute copies of the Starting Bid to each Qualified Bidder who has submitted a Qualified Bid.

If any Bid is determined by the Debtors not to be a Qualified Bid, the Debtors will refund such Potential Bidder's Good Faith Deposit and all accumulated interest thereon on or within ten business days after the Bid Deadline, or as soon as reasonably practicable thereafter.

E. No Qualified Bids.

If no Qualified Bids, other than the Stalking Horse Bid, are received by the Bid Deadline, then the Auction will not occur, the Stalking Horse Bidder will be deemed the Successful Bidder, and the Debtors will pursue entry of an order by the Bankruptcy Court approving the Stalking

Horse Agreement and authorizing the Sale to the Stalking Horse Bidder at the Sale Hearing (as defined herein).

F. Credit Bidding and Credit Bid Backup Bid.

At the Auction, any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of such Secured Creditor's allowed claims pursuant to section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral securing such claim; *provided, further* that a credit bid shall not constitute a Qualified Bid if the bid does not include a cash component sufficient to pay in full, in cash, all claims for which there are valid, perfected and unavoidable liens on any Assets included in such Bid that are senior in priority to those of the party seeking to credit bid (unless such senior lien holder consents to alternative treatment); *provided, further*, that any Secured Creditor, other than the Stalking Horse Bidder, that intends to participate in the Auction with a Bid that includes a credit bid shall, as a condition to such participation, (i) notify the Debtors at least five (5) calendar days prior to the Bid Deadline that it intends to submit a credit bid, and (ii) provide all documentation requested by the Debtors to establish the lien, claims, and encumbered assets that will be the subject of the Secured Creditor's potential credit bid. For the avoidance of doubt, a Secured Creditor shall be required to provide cash consideration in respect of any Assets to be acquired but do not constitute collateral securing such Secured Creditor's claim(s).

G. Auction.

If one or more Qualified Bids is received by the Bid Deadline, the Debtors will conduct the Auction with respect to the Debtors' Assets. The Auction will commence on **March 12, 2021, at 2:00 p.m., prevailing Eastern Time**, by video via Zoom or other similar conferencing service, or such later time or other place as the Debtors will timely notify all other Qualified Bidders.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- (i) the Auction will be conducted openly;
- (ii) only the Qualified Bidders, including the Stalking Horse Bidder, will be entitled to bid at the Auction;
- (iii) the Qualified Bidders, including the Stalking Horse Bidder, must appear, telephonically, or by video via Zoom, or through duly-authorized representatives at the Auction;
- (iv) any interested party will be permitted to attend the Auction by contacting Debtors' counsel Milbank LLP (Mark Shinderman, Esq. (email mshinderman@milbank.com) and Daniel Denny, Esq. (email ddenny@milbank.com) by email to request access to the Zoom meeting room at least one day prior to the start of the Auction;
- (v) bidding at the Auction will begin at the Starting Bid;

- (vi) subsequent Bids at the Auction, including any Bids by any Stalking Horse Bidder, must be made in minimum increments of \$500,000 (or such other amount as the Debtors may determine, which amount may be higher or lower than \$500,000) of additional value, if applicable;
- (vii) each Qualified Bidder will be informed of the terms of the previous Bids and the Debtors shall, during the course of the Auction, promptly inform each Qualified Bidder of which subsequent Bids reflect, in the Debtors' reasonable business judgment, the highest or otherwise best bid(s) for the Assets;
- (viii) the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- (ix) each Qualified Bidder will be required to confirm on the record of the Auction that it has not engaged in any collusion with respect to the bidding or the Sale;
- (x) the Auction will 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 or otherwise best Bid, subject to the Debtors' right to require last and final Bids to be submitted on a "blind" basis;
- (xi) the Debtors reserve the right, in their reasonable business judgment, to adjourn the Auction one or more times to, among other things, (a) facilitate discussions between the Debtors and Qualified Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment, may require to establish 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 amount; and
- (xii) the Auction will be governed by such other Auction Procedures as may be announced by the Debtors and their advisors, from time to time on the record at the Auction; *provided* that such other Auction Procedures are (a) not inconsistent with the Bidding Procedures Order, the Bankruptcy Code, or any other order of the Bankruptcy Court, (b) disclosed orally or in writing to all Qualified Bidders and other attendees at the Auction and recorded on the record, and (c) determined by the Debtors, in good faith, to further the goal of attaining the highest or otherwise best offer for the Assets.

To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding (the "Current High Bid"), which, in the event that the Current High Bid is a credit-bid submitted by the Stalking Horse Bidder, shall be in an amount greater than or equal to the Current High Bid plus the then applicable minimum bid increment, the Termination Fee of \$2,100,000, and the maximum amount of Expense Reimbursement payable to the Stalking Horse

Bidder, and (ii) to the extent a Qualified Bidder fails to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding highest or otherwise best Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors, in their reasonable business judgment, such Qualified Bidder shall be disqualified from continuing to participate in the Auction.

For the avoidance of doubt, nothing in the Auction Procedures will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors in consultation with their outside legal counsel).

H. Acceptance of the Successful Bid or Successful Bids.

Upon the conclusion of the Auction (if such Auction is conducted), the Debtors, in the exercise of their reasonable business judgment, will identify the highest or otherwise best Qualified Bid for the Assets (the “Successful Bid,” and the person or entity submitting a Successful Bid, the “Successful Bidder”), which will be determined by considering, among other things, (a) the total expected consideration to be received by the Debtors, (b) the Qualified Bidder’s ability to close a transaction and the timing thereof (including any anticipated delays to Closing and the cost to the Debtors of such delays), and other matters affecting the execution risk associated with a particular Bid, (c) the expected net benefit to the estates, (d) the impact on customers, vendors, and employees, (e) the certainty of the Debtors being able to confirm a plan, and (f) any other criteria, including the Evaluation Criteria, as may be considered by the Debtors in their reasonable business judgment. The Successful Bidder or Successful Bidders and the Debtors shall, as soon as commercially reasonably practicable after the conclusion of the Auction, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which such Successful Bid was made.

The Debtors shall file a notice in substantially the form annexed to the Bidding Procedures Order as Exhibit 4 (the “Notice of Successful Bidder”) identifying the Successful Bidder and attaching the proposed asset purchase agreement with the Successful Bidder, no later than twelve hours after the conclusion of the Auction. Such Notice of Successful Bidder shall also identify the Back-Up Bidder and contain either (i) a summary of the material terms of the Back-Up Bid or (ii) proposed asset purchase agreement with the Back-Up Bidder.

The Debtors will present the results of the Auction to the Bankruptcy Court at the Sale Hearing, at which certain findings will be sought from the Bankruptcy Court regarding the Auction, including, among other things, that (a) the Auction was conducted, and the Successful Bidder was selected, in accordance with these Bidding Procedures, (b) the Auction was fair in substance and procedure, and (c) consummation of the Successful Bid will provide the highest or otherwise best value for the Debtors’ Assets and is in the best interests of the Debtors’ estates.

If an Auction is held, the Debtors will be deemed to have accepted a Qualified Bid only when (a) such Qualified Bid is declared a Successful Bid at the Auction, and (b) definitive documentation has been executed in respect thereof. Such acceptance is conditioned upon approval by the Bankruptcy Court of the Successful Bid and entry of an order approving such Successful Bid (the “Sale Order”).

I. Sale Hearing.

A hearing before the Bankruptcy Court to consider approval of the Successful Bid or Successful Bids (the “Sale Hearing”), pursuant to which the Debtors and the Successful Bidder will consummate the Sale, will be held on **March 18, 2021, at 2:00 p.m.**, prevailing Eastern Time, before the Bankruptcy Court.

The Sale Hearing may be continued to a later date by the Debtors by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party.

At the Sale Hearing, the Debtors will present the Successful Bid to the Bankruptcy Court for approval.

J. Designation of Back-Up Bidder(s).

If for any reason the Successful Bidder fails to consummate the Qualified Bid within the time permitted after the entry of the Confirmation Order approving the Sale to the Successful Bidder, then the Qualified Bidder(s) with the next-highest or otherwise second-best Bid (or combination of Bids) for the Assets (a “Back-Up Bidder”), as determined by the Debtors after consultation with their advisors, at the conclusion of the Auction and announced at that time to all the Qualified Bidders participating therein, will automatically be deemed to have submitted the highest or otherwise best Bid (a “Back-Up Bid”), and the Debtors will be authorized, but not required, to consummate the transaction pursuant to the Back-Up Bid as soon as commercially reasonably practicable without further order of the Bankruptcy Court (except with respect to any Back-Up Bidder adequate assurance objections that may be heard at a subsequent hearing in accordance with paragraph 25 of the Amended Bidding Procedures Order) upon at least 24 hours advance notice, which notice will be filed with the Bankruptcy Court.

Upon designation of the Back-Up Bidder at the Auction, the Back-Up Bid must remain open until the Closing of the Successful Bid.

K. Return of Good Faith Deposit to Qualified Bidders that Submit Qualified Bids.

The Good Faith Deposit of the Successful Bidder will, upon consummation of the Successful Bid, become property of the Debtors’ estates and be credited to the portion of the Purchase Price. If the Successful Bidder (or Back-Up Bidder) fails to consummate the Successful Bid (or Back-Up Bid), then the Good Faith Deposit of such Successful Bidder (or Back-Up Bidder) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors, in each case, subject to the terms and conditions of the purchase agreement(s) with the Successful Bidder or Back-Up Bidder, as applicable.

The Good Faith Deposit of any unsuccessful Qualified Bidders (except for the Back-Up Bidder) will be returned within the earlier of five business days after the conclusion of the Auction or upon the permanent withdrawal of the proposed Sale of the Debtors’ Assets. The Good Faith Deposit of the Back-Up Bidder, if any, will be returned to such Back-Up Bidder no later than five business days after the Closing with the Successful Bidder.

Except as set forth in the first paragraph of this Section K, all deposits shall be held in a segregated account maintained by the Debtors and at no time shall be deemed property of the Debtors' estates absent further order of the Bankruptcy Court.

L. Reservation of Rights.

The Debtors reserve their rights to modify these Amended Bidding Procedures in good faith, including by setting procedures for an Auction, to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to the Auction, additional customary terms and conditions on the Sale of the Assets. The Debtors shall provide notice of any such modification to any Qualified Bidder, including the Stalking Horse Bidder.

All parties expressly reserve all of their rights (and do not waive any such rights) to seek Bankruptcy Court relief with regard to the Auction, the Amended Bidding Procedures, the Sale, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

M. Consent to Jurisdiction.

All Qualified Bidders at the Auction will be deemed to have consented to the jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to the Sale, the Auction, and/or the construction and enforcement of these Amended Bidding Procedures, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Hearing, or the construction and enforcement of any agreement or any other document relating to a Sale if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Amended Bidding Procedures must request that such dispute be heard by the Bankruptcy Court on an expedited basis.

N. Fiduciary Out.

Nothing in these Amended Bidding Procedures will require any director, manager or officer of any Debtor to take any action, or to refrain from taking any action, with respect to these Bidding Procedures, that would violate his or her fiduciary duties to any Debtor.

O. Sale Is As Is/Where Is.

The Assets sold pursuant to these Amended Bidding Procedures will be conveyed at the Closing in their then present condition, "as is, with all faults, and without any warranty whatsoever, express or implied," except as otherwise expressly provided in the purchase agreement with the Successful Bidder.

* * * * *

Exhibit 2
Amendment to the Stalking Horse Agreement

Execution Version

FIRST AMENDMENT TO STALKING HORSE AGREEMENT

THIS FIRST AMENDMENT TO STALKING HORSE AGREEMENT (this "Amendment") to that certain Stalking Horse Agreement (as amended, the "Agreement"), dated as of January 31, 2021, by and among Knotel, Inc., a Delaware corporation ("Knotel"), the Subsidiaries of Knotel listed on Schedule A attached to the Agreement (each a "Selling Subsidiary" and all Selling Subsidiaries, together with Knotel, "Sellers"), Digiatech, LLC, a Delaware limited liability company, together with any designated affiliate thereof ("Buyer"), and, solely for purposes of Section 10.17 of the Agreement, Newmark Partners, L.P., a Delaware limited partnership ("Parent"), is entered into as of March 11, 2021 (the "Amendment Date"). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to them in the Agreement.

RECITALS:

WHEREAS, Section 10.01 of the Agreement provides that the Agreement may be amended by written agreement of the Parties;

WHEREAS, in accordance with that certain Committee Settlement Term Sheet dated as of March 8, 2021 (the "Term Sheet"), Buyer, Parent, Knotel and all of its debtor subsidiaries in the Chapter 11 Cases (the "Debtors") and the Official Committee of Unsecured Creditors appointed in the Chapter 11 Cases (the "Committee", and together with the Buyer, Parent and the Debtors, the "Settlement Parties") have reached key terms of a global resolution with respect to the settlement and compromise of all claims and causes of action asserted by Settlement Parties against one another, including, among other things, a release and waiver of the Committee's Challenge Rights (as defined in the Bidding Procedures Order [Docket No. 227] and the Final DIP Order [Docket No. 330]) that the Committee has or could have asserted in respect of (i) Buyer's claims as DIP Lender under the DIP Credit Agreement, (ii) Buyer's claims as Prepetition Secured Lender under the Prepetition Credit Agreements, (iii) the Sale Motion and (iv) this Agreement, including, without limitation, the rights of Buyer to credit bid all amounts owing to it under the DIP Credit Agreement and the Prepetition Credit Agreement under Section 363(k) of the Bankruptcy Code;

WHEREAS, subject to (i) the terms expressly set forth in the Term Sheet, (ii) the approval by the Bankruptcy Court of the Term Sheet, and (iii) the completion of definitive documents incorporating the terms of the Term Sheet, including this Amendment, the Term Sheet sets forth the key terms of the agreement of the Settlement Parties to modify certain aspects of the Agreement in order to provide for certain changes to the Stalking Horse Bid, the Auction and the ultimate funding and resolution of the Chapter 11 Cases;

WHEREAS, the Parties desire to amend the Agreement in order to incorporate the terms of the Term Sheet as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants contained in the Agreement, and for other good and valuable consideration, the Parties agree as follows:

1. Amendment:

a. Article I of the Agreement is hereby amended to add the following defined terms in the appropriate alphabetical order:

“Committee” shall mean the Official Committee of Unsecured Creditors Appointed in the Chapter 11 Cases.

“Credit Bid” has the meaning set forth in Section 3.01(a) below.

“Employment Claim Amount” has the meaning set forth in Section 3.01(d) below.

“GUC Fund Amount” has the meaning set forth in Section 3.01(b) below.

“Offer List” has the meaning set forth in Section 7.17(a) below.

“Officer Employee” has the meaning set forth in Section 7.17(a) below.

“Retained Causes of Action” has the meaning set forth in Section 2.01(r) below.

“Wind-Down Amount” has the meaning set forth in Section 3.01(c) below.

b. Article I of the Agreement is hereby amended to delete the definition of “Purchase Price” in its entirety and replace it with the following:

“Purchase Price” means the sum of the Credit Bid, the GUC Fund Amount, the Wind-Down Amount, and the Employment Claim Amount.

c. Section 2.01(r) of the Agreement is hereby deleted in its entirety and replaced by the following:

“(r) all claims or causes of action of any nature under any provision of the Bankruptcy Code or applicable Law relating to the Business, the Purchased Assets, and/or Assumed Liabilities (including, for the avoidance of doubt, any avoidance claims or causes of action under chapter 5 of the Bankruptcy Code or applicable law (the “Avoidance Actions”), subject to the provisions of Section 7.20); provided, however, the Purchased Assets shall not include (x) any claims or causes of action for indemnification, (y) any claims and causes of action against Sellers’ current and former directors and/or officers, or (z) any Avoidance Actions against insiders (as defined in 11 U.S.C §101(31)) ((x), (y), and (z), collectively, the “Retained Causes of Action”);”

d. Section 2.02(f) of the Agreement is hereby deleted in its entirety and replaced by the following:

“(f) the Retained Causes of Action and the assets, properties and rights specifically set forth on Schedule 2.02(f),”

e. Section 3.01 of the Agreement is hereby deleted in its entirety and replaced by the following:

“**Section 3.01 Purchase Price.** Subject to the terms and conditions of this Agreement (as it may be amended, modified, and supplemented from time to time), in consideration of the sale of the Purchased Assets pursuant to the terms hereof, Buyer shall provide consideration to Sellers in the form of:

(a) a total credit bid in the amount of \$70,000,000 (the “Credit Bid”), whereby the Buyer shall credit:

(i) from outstanding Indebtedness under the DIP Facility at the Closing the amount outstanding under the DIP Facility at the Closing, including, for the avoidance of doubt, Roll-Up Loans (as defined in the DIP Order) up to the amount of \$20,400,000;

(ii) from outstanding Indebtedness under the Prepetition First Lien Credit Agreement any amounts outstanding up to the difference between \$70,000,000 minus (B) the amount credit bid pursuant to clause (i) above; and

(iii) the balance from outstanding Indebtedness under the Prepetition Second Lien Credit Agreement.

(b) cash to be delivered by or on behalf of Buyer to Sellers at the Closing in an amount equal to the sum of the following:

(i) the amount of \$6,200,000 (the "GUC Fund Amount"), which shall be set aside for distribution to holders of allowed general unsecured claims pursuant to a plan of liquidation;

(ii) the amount of \$500,000 (the "Wind-Down Amount"), which shall be used by Sellers to prepare and obtain confirmation of a liquidation plan and the wind-down of Sellers' estates pursuant to a wind-down budget, which shall be in form and substance reasonably acceptable to the Committee. For the avoidance of doubt, Buyer's delivery of the Wind-Down Amount shall be in addition to the assumption of liabilities set forth in Section 2.03(f); and

(iii) the amount of \$110,000 (the "Employment Claim Amount"), which shall be used by Sellers to settle a threatened action by a former employee of Sellers.

The above amounts set forth in Section 3.01(b)(i)-(iii) shall be payable first from all available cash-on-hand held by Sellers at the Closing and deliverable to Buyer under Section 2.01(b) hereof or otherwise, an accounting of which shall be provided by Sellers to Buyer and the Committee at least two (2) Business Days prior to the Closing. Any remaining amounts shall be paid by Buyer in cash at Closing and shall be subject to the obligations of Parent under Section 10.17 hereof.

(c) On or before the Auction, Buyer shall have the absolute right to increase the Purchase Price, including, without limitation by increasing the amount of the Credit Bid to include additional amounts owing under the Prepetition Credit Agreements."

e. Section 7.02 of the Agreement is hereby deleted in its entirety and replaced by the following:

"Section 7.02 Access to Information. From the date hereof until the Closing, Sellers shall (a) afford Buyer and its Representatives, on reasonable prior notice, full and free access to and the right to inspect all of the Leased Real Property, properties, assets, premises, Books and Records, Contracts and other documents and data related to the Business, subject, in each case, to applicable and appropriate COVID-19 Measures; (b) furnish Buyer and its Representatives with such financial, operating and other data and information related to the Business as Buyer or any of its Representatives may reasonably request; (c) instruct the Representatives of Sellers to cooperate with Buyer in its investigation of the Business; and (d) permit, cooperate, and facilitate communication

between Buyer and any Contract counterparty in connection with Buyer's negotiation of proposed cure amounts and any other potential disputes with respect to such Contract. Any investigation pursuant to this Section 7.02 shall be conducted in such manner as not to interfere unreasonably with the conduct of the Business or any other businesses of Sellers. No investigation by Buyer or other information received by Buyer shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Sellers in this Agreement (as it may be amended, modified, and supplemented from time to time)."

f. Section 7.06 of the Agreement is hereby deleted in its entirety and replaced by the following:

"Section 7.06 Preservation of Records. Sellers (or any subsequently appointed bankruptcy estate representative, including, but not limited to, a trustee, a liquidating trustee, a creditor trustee or a plan administrator) and Buyer agree that each of them shall preserve and keep the Books and Records held by it relating to the pre-Closing Business for a period commencing on the Petition Date and ending at such date on which the Chapter 11 Cases have been closed, and shall make such Books and Records available to the other Party and the Committee (and permit such other Party and the Committee to make extracts and copies of such Books and Records at its own expense) as may be reasonably required by such Party or the Committee, as applicable, in connection with, among other things, any insurance claims, any other matters related to the Chapter 11 Cases, legal proceedings or Tax audits against or governmental investigations of Sellers or Buyer or in order to enable Sellers or Buyer to comply with their respective obligations under this Agreement (as it may be amended, modified, and supplemented from time to time) and each other agreement, document or instrument contemplated hereby or thereby. In the event that Sellers, on the one hand, or Buyer, on the other hand, wish to destroy such records during the foregoing period, such Party shall first give twenty (20) days' prior written notice to the other and such other Party shall have the right at its option and expense, upon prior written notice given to such Party within that twenty (20) day period, to take possession of the records within thirty (30) days after the date of such notice."

g. Section 7.17(a) of the Agreement is hereby deleted in its entirety and replaced by the following:

"(a) No later than March 10, 2021, Buyer shall have (x) provided to Knotel (with a copy made available to the Committee) a list (the "Offer List") of Employees to whom Buyer or its designated Affiliate or Affiliates shall extend offers of employment (the "Offer Employees") and (y) extended written offers of employment to certain officers of Knotel (the "Officer Employees"). Any offers of employment to Offer Employees and Officer Employees shall be made by Buyer or its designated Affiliate or Affiliates prior to the Closing and shall be effective as of the Closing Date. Buyer shall be entitled to supplement the Offer List to add additional Employees at any time prior to the Closing by written notice to Knotel, and any additional Employee added to the Offer List shall be deemed an Offer Employee. Buyer may provide in each offer of employment to an Offer Employee that such offer of employment is subject to such Offer Employee's compliance with and completion of Buyer's standard hiring practices and policies. All such individuals who accept such offers of employment by the Closing Date, and commence such employment immediately after the Closing, with Buyer or its Affiliates are hereinafter referred to as the "Transferred Employees.""

h. Article VII of the Agreement is hereby amended by adding the following as a new Section 7.20:

“Section 7.20 Avoidance Actions. Neither Buyer nor any Designated Buyer shall sell, transfer, assign, or convey the Avoidance Actions to any other person or entity, and Buyer and any Designated Buyer covenants and agrees that it will not pursue or attempt in any manner to collect on the Avoidance Actions, and these covenants will survive the Closing Date for a period of six (6) years and five (5) days following the Closing Date notwithstanding any other provision of the Agreement (as it may be amended, modified, and supplemented from time to time). For the avoidance of doubt, it is intended that Buyer and any Designated Buyer will waive and not pursue the Avoidance Actions to the fullest extent permitted by law.”

i. Section 10.17 of the Agreement is hereby deleted in its entirety and replaced by the following:

“Section 10.17 Parent Guaranty. Notwithstanding anything to the contrary under this Agreement, as it may be amended, modified, and supplemented from time to time, Parent undertakes to cause Buyer and any Designated Buyer to timely meet, and guarantees the performance of, all of Buyer’s obligations and any Designated Buyer’s obligations herein (including, for the avoidance of doubt, the GUC Fund Amount, the Wind-Down Amount, the Employment Claim Amount, the Assumed Liabilities, and any additional economic obligations under this Agreement, as it may be amended, modified, and supplemented from time to time, and in each Transaction Document and to the extent Buyer or any Designated Buyer does not timely meet any obligation herein or in any such Transaction Document (including any payment obligations) Parent shall directly perform such obligation on behalf of Buyer or such Designated Buyer. This guaranty shall be a guaranty of payment and performance and not of collection, and Parent hereby agrees that its obligation hereunder shall be primary and unconditional (and not as a surety), subject in all respects to the terms and conditions of this Agreement, as it may be amended, modified, and supplemented from time to time. To the extent Parent is called upon to perform any such obligation on behalf of Buyer or any Designated Buyer, Parent shall have all of the rights that Buyer or such Designated Buyer, as applicable, would have had if Buyer or such Designated Buyer, as applicable, performed such obligation directly.”

j. Schedule A of the Agreement is hereby amended to add the following Selling Subsidiary:

“Knotel Canada, Inc.”

2. Ratification. The Agreement, as amended hereby, is ratified by the Parties and is valid and in full force and effect. In the case of any conflict between the Agreement and this Amendment, the provisions of this Amendment shall control. For the avoidance of doubt, all defenses and set-off rights in connection with Buyer’s or any Designated Buyer’s assertion of claims transferred to Buyer or any Designated Buyer under the Agreement are expressly preserved. This Amendment shall be effective as of the Amendment Date.
3. Applicable Law. This Amendment shall be governed by, and shall be construed and interpreted in accordance with, the law of the State of Delaware.

4. Counterpart Signatures. This Amendment may be executed in multiple counterparts, each of which, when so executed, shall be deemed an original, but all such counterparts, taken together, shall constitute one and the same Amendment.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be duly executed and delivered by their proper and duly authorized officers effective as of the Amendment Date.

KNOTEL, INC.,
on behalf of itself and as a Seller and on
behalf of each of its Subsidiaries listed on
Schedule A as the sole stockholder or
member, as applicable, of each such
Subsidiary

By _____
Name:
Title:

DIGIATECH, LLC, as Buyer

By _____
Name:
Title:

NEWMARK PARTNERS, L.P, as Parent
(solely for purposes of Section 10.17)

By _____
Name:
Title:

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

AND IN THE MATTER OF KNOTEL, INC. and KNOTEL CANADA, INC.

APPLICATION OF KNOTEL CANADA, INC. UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

Court File No.: CV-21-00658434-00CL

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

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF ASHLEY JUNG
(sworn March 11, 2021)**

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